

BRUCE AVERY TRANSPORT
(ACN 009 411 367)



TERMS AND CONDITIONS

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IT IS AGREED as follows:

1. DEFINITIONS AND INTERPRETATION**1.1 Definitions**

Agreement means

- (a) these Terms and Conditions; and
- (b) the Consignment Note,

And to the extent of any inconsistency between the Consignment Note and these Terms and Conditions, the terms of the Consignment Note prevails.

Carrier means Bruce Avery Transport Pty Ltd;

Consignee means the Consignee nominated in a Consignment Note;

Consignment Note means in a consignment note relation to the Goods;

Consignor means the Consignor nominated in a Consignment Note;

Dangerous Goods means Goods that are classified as dangerous in the Dangerous Goods Code or which are or may become dangerous, inflammable, explosive, volatile, offensive or damaging in nature;

Dangerous Goods Code means the Australian Dangerous Goods Code;

Freight Charges means the charges set out in a Consignment Note and includes the Fuel Levy;

Goods means the Goods the subject of a Consignment Note;

Interest Rate means the Interest Rate set out in the Schedule;

Loss includes but is not limited to costs (including party to party legal costs and the Carrier's Legal Costs) expenses, personal injury and property damage;

Owner means the Owner of the Goods;

PPSA means the Personal Property Securities Act;

PPSR means the Personal Property Securities Register.

1.2 Interpretation

In these Terms and Conditions, unless the context otherwise requires:

- (a) a person includes any Carrier, partnership, joint venture, association, corporation or other body corporate and any governmental department or agency;
- (b) if a period of time is specified and dates from a given day or the day of an act or event, it is to be calculated exclusive of that day;

- (c) a reference to an annexure, attachment or schedule is a reference to an annexure, attachment or schedule to this Agreement, and a reference to this Agreement includes an annexure, attachment or schedule;
- (d) no provision of this Agreement will be construed adversely to a party solely on the ground that the party was responsible for the preparation of this Agreement or that provision;
- (e) all dollar amounts are Australian dollars; and
- (f) time will be of the essence of this Agreement in all respects.

2. GENERAL

This Agreement apply to all transactions between the Carrier and the Consignor. This Agreement takes precedence over any terms and conditions contained in any document of the Consignor.

3. NOT A COMMON CARRIER

- (a) The Carrier is not a common Carrier and does not accept any liability as a common Carrier. All services are provided pursuant to these terms and conditions.
- (b) The Carrier reserves the right to refuse a carriage, storage, packaging and handling, storage or warehousing of any Goods at its discretion.
- (c) The Consignor acknowledges and agrees that:
 - (i) the Carrier contracts with the Consignor both on its own behalf and on behalf of its servants, agents and subcontractors, and the Consignor undertakes not to make any claims against such servant, agent or subcontractor which may impose on any of them any liability whatsoever in connection with the Goods or their storage or carriage, whether or not arising out of the negligence or wilful act or omission of any of them; and
 - (ii) in respect of any clause in this Agreement that excludes or in any way limits the liability of the Carrier in respect of the Goods or their storage or carriage, the Carrier, in addition to acting for itself, is acting as agent of and trustee for each of its employees and also any other person or company with whom the Carrier arranges for the storage or carriage of the Goods (and the employees of such person or company) so that these parties are parties to this Agreement in so far as to the exclusions or indemnities contained herein are concerned, and, in so far as may be necessary to give effect to this clause, the Carrier will hold the benefit of these terms and conditions for its employees and any such person or company and its employees; and
 - (iii) the Consignor will indemnify the Carrier against:

- (A) the consequences of such claims or allegations; and
- (B) all claims or demands whatsoever by whomsoever in respect of any Loss, damage or injury howsoever caused whether or not by the negligence or a wilful act or omission of the Carrier, its servants, agents or subcontractors.

4. CONSIGNOR'S WARRANTIES

The Consignor warrants that:

- (a) It is the owner of the Goods or the agent of the owner of the Goods;
- (b) any packaging, wrapping, container, transportable tank, pallet, parcel, carton or case which has been supplied for or on behalf of the Consignor is adequate and suitable for the purposes of the carriage of the Goods; and
- (c) except as otherwise specified, the Goods are not Dangerous Goods or cargo, the carriage, storage, packaging and handling of which would be illegal or prohibited by any law or regulation of any state, territory or the Commonwealth, due to its nature, packaging or labelling.

5. STORAGE OF GOODS

- (a) Any Goods delivered to the Carrier's premises by or on behalf of the Consignor are stored by the Carrier as the agent of the Consignor and at the Consignor's sole risk.
- (b) The Carrier shall be entitled to store the Goods in such manner as it sees fit, subject to any special arrangements made with the Consignor.
- (c) Unless otherwise agreed, the Carrier will not effect insurance for the benefit of the Consignor or any other party whilst the Goods are stored at the Carrier's premises.

6. PACKAGING

- (a) The Carrier may open, at the Consignor's risk and expense, any document, packaging or container in which Goods are placed to inspect their condition or determine their ownership or destination where any consignment note is lost, damaged, destroyed, defaced or otherwise.
- (b) Subject to any agreement to the contrary:
 - (i) the Consignor is solely responsible for the safe and proper packaging of the Goods and for any loss suffered or incurred by any person (including the Consignor); and
 - (ii) the Carrier is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading the Goods.

7. PALLETS

- (a) Unless otherwise agreed, the Carrier will not exchange any pallets with any person and the Consignor must not transfer any pallets to any account the Carrier may have with any pallet provider.
- (b) Where the Carrier agrees to exchange any pallets or the transfer of pallets to the Carrier's account with any pallet provider, the Consignor agrees to indemnify the Carrier against any loss or non recovery of a pallet.
- (c) The Carrier may charge for the cost of hiring, recovery and replacement (if applicable) for all pallets hired by the Carrier, unless exchange pallets are available at the time of delivery of the Goods.

8. DELIVERY

- (a) The Carrier will deliver the Goods to address specified in the Consignment Note.
- (b) The Carrier is not bound to deliver the Goods to the Consignee on or before any due date and shall not be liable to the Consignor nor the Consignee or any other person in the event of the non-delivery of Goods by any particular date.
- (c) Whilst the Carrier will take note of any instructions from the Consignor in relation to a preferred route, the Carrier may change or vary any route if it believes it is necessary or desirable to do so.
- (d) The Consignor must take delivery of the Goods as soon as the Carrier is ready to deliver them. If the Consignor refuses or is unable to take delivery, the Carrier may without notice unload the Goods and/or store the Goods in the open or undercover and with or without refrigeration. Such storage shall constitute delivery and all liability of the Carrier in respect of the Goods shall cease to the greatest extent permitted by law.

9. DANGEROUS GOODS

- (a) If the Carrier agrees to accept any Dangerous Goods, the Consignor must provide a full declaration as to the nature and contents, and such Goods must be properly and safely packed in accordance with statutory regulations applicable to the carriage of those Dangerous Goods.
- (b) The Consignor hereby indemnifies the Carrier in respect of the Carrier's liability for any death, bodily injury, loss and/or damage wholly or partially as a result of or arising out of carriage of the Dangerous Goods.
- (c) If at any time the Carrier forms the opinion that the Goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Carrier may at the Consignor's cost destroy, dispose of, abandon or render the Dangerous Goods harmless without compensation to the Consignor, the Owner or any third party without prejudice to the Carrier's right to any Freight Charges.

10. FREIGHT CHARGES

- (a) The Freight Charges will be:
 - (i) the charges set out on any invoice or Consignment Note; or
 - (ii) the Carrier's quoted price provided the Consignor accepts the quoted price in writing or places an order within 30 days.
- (b) The Carrier may change any quoted price, before or after acceptance if:
 - (i) the Consignor requests the Carrier vary the quotation, as to the nature or quantity of the Goods, the delivery address, or any facilities for the loading or unloading of the Goods; or
 - (ii) the costs to the Carrier of delivering the Goods increases due to factors beyond the control of the Carrier.
- (c) The Consignor must pay the Fuel Levy. The Fuel Levy will be updated by the Carrier from time to time and notice will be provided to the Consignor.
- (d) In addition to the Freight Charges, the Carrier reserves the right to charge the Consignor for:
 - (i) any additional expenses the Carrier incurs as a result of any inaccurate declaration by the Consignor of the weight, description or packaging of the Goods;
 - (ii) any redelivery for failed deliveries (for example because there is no one at the premises to sign for the Goods);
 - (iii) storage charges or other charges and expenses of the Carrier incurs in relation to holding the Goods; and
 - (iv) any additional expenses the Carrier incurs as a result of any inaccurate delivery instructions provided to the supplier by the Consignor.

11. PAYMENT

- (a) The Consignor must pay all Freight Charges:
 - (i) on delivery of the Goods;
 - (ii) within 14 days of the date of any invoice provided the Carrier has agreed to provide credit to the Consignor; or
 - (iii) such other date as may be agreed in writing by the parties.
- (b) All Freight Charges are exclusive of GST. The Consignor must pay to the Carrier the GST payable by the Carrier at the same time as the Freight Charges are payable.

- (c) Interest is payable on all invoices at the Interest Rate from the date that the invoice is due for payment until it is paid.
- (d) The Consignor indemnifies the Carrier from all costs and disbursements (including legal costs on a solicitor and own client basis) incurred by the Carrier in recovering any amounts due and payable by the Consignor under this Agreement.

12. INSURANCE

- (a) The Carrier will not effect insurance for the benefit of the Consignor, Consignee or any other party unless express written instructions are received before the Goods are accepted by the Carrier.
- (b) The Goods are carried and stored at the sole risk of the Consignor.
- (c) If the Consignor requires the good to be insured then the Consignor must pay to the Carrier the amount of any insurance premium. Where the Consignor does not specify the class of insurance, the Carrier may in its discretion effect that class of insurance which it considers appropriate.

13. LIEN

- (a) The Carrier has a possessory lien over the Goods and other property of the Consignor in its possession or under its control from time to time with respect to any Freight Charges or other amounts due under this agreement.
- (b) If the Consignor fails to pay any amount due and payable to the Carrier, the Carrier may without notice and, in respect of perishable Goods immediately:
 - (i) store the Goods as the Carrier thinks fit at the Consignor's risk and expense; or
 - (ii) sell the Goods as the Carrier thinks fit and apply the proceeds to discharge the lien and costs of sale.
- (c) The Carrier may deduct or set off from any monies due from the Carrier to the Consignor under any contract, debts and moneys due from the Consignor to the Carrier under this Agreement or any contract.

14. EXCLUSIONS AND LIMITATIONS

- (a) To the fullest extent permitted by law, the Goods remain at the sole risk of the Consignor.
- (b) To the fullest extent permitted by law, the Carrier is not liable for:
 - (i) any loss or damage to the Goods occasioned during the storage or carriage of the Goods whether caused by the wilful, reckless, negligent act omission or otherwise of the Carrier or its servants or agents or subcontractors;

- (ii) any loss or damage arising from any Force Majeure or any confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process;
 - (ii) compliance with the directions of any person or lawful authority entitled to give them;
 - (iii) the deterioration, contamination, evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods have been in possession of the Carrier or not);
 - (iv) any instructions, advice, information or service given or provided to any persons, whether in respect of the Goods or any other thing or matter;
 - (v) any act or omission whether wilful, reckless, negligent or otherwise of the Carrier or its servants or agents or subcontractors;
 - (vii) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging; or
 - (viii) any act, omission or neglect of the Consignor, including insufficient or improper packaging, labelling or addressing or failure to take delivery, or any handling, loading, storage or unloading of the Goods.
- (c) To the fullest extent allowed by law, the Carrier's liability for breach of any term implied into this Agreement by law is hereby excluded.
- (d) Any advice, recommendation, information, assistance or service given by the Carrier in relation to Goods, is given in good faith and is believed to be accurate, appropriate and reliable at the time it is given. It is provided without any warranty of accuracy, appropriateness or reliability. The Carrier does not accept any liability or responsibility for any loss suffered as a result of the Consignor's reliance on such advice, recommendation, information, assistance or service.
- (e) Subject to the Carrier's obligations under any guarantee, warranty, term or condition implied or imposed in relation to this Agreement under the Australian Consumer Law or any other applicable legislation and which cannot be excluded, and to the fullest extent permitted by law:
 - (i) liability of the Carrier under or in connection with this Agreement, whether whether arising directly or indirectly, in contract, tort, negligence, breach of statutory duty or otherwise shall not exceed the 100% of the invoice(s) paid by the Consignor to the Carrier under this Agreement; and
 - (ii) the Carrier is not liable for and no measure of damages will, under any circumstances include:
 - (A) special, indirect, consequential, incidental or punitive damages; or

- (B) damages for loss of anticipated savings, whether in contract, tort (including negligence) in equity, under statute, or on any other basis, whether or not such loss or damage was foreseeable.

15. INDEMNITY

- (a) The Consignor is liable for and indemnifies and keeps indemnified the Carrier, its servants and agents from and against any liability and or loss of any kind whatsoever, including for loss or damage to property, injury to or death of any person arising directly or indirectly from:
 - (i) any breach of any warranty or any of the terms or conditions of this Agreement by the Consignor;
 - (ii) the carriage or storage of the Goods including Dangerous Goods; and
 - (iii) any delay, non delivery or other failure to deliver the Goods.
- (b) The indemnity includes, but is not limited to, any legal costs incurred by the Carrier in relation to meeting any claim or demand or any party/party legal costs for which the Carrier is liable in connection with any such claim or demand.
- (c) Each indemnity is a continuing obligation separate from the Consignor's other obligations and survives the termination of this Agreement.

16. AGENCY AND ASSIGNMENT

- (a) The Consignor agrees that the Carrier may at any time appoint or engage an agent or subcontractor to perform an obligation of the Carrier arising out of or pursuant to this Agreement.
- (b) The Carrier has the right to assign and transfer to any person all or any of its title, estate, interest, benefit, rights, duties and obligations arising in, under or from this Agreement provided that the assignee agrees to assume any duties and obligations of the Carrier owed to the Consignor under this Agreement.
- (c) The Consignor must not assign, or purport to assign, any of its obligations or rights under this Agreement without the prior written consent of the Carrier.

17. DEFAULT

- (a) Each of the following constitutes an event of default:
 - (i) the Consignor breaches or is alleged to have breached this Agreement (including, but not limited to, defaulting on any payment due under these Terms and Conditions) and where the breach is capable of being remedied fails to remedy that breach within 14 days of being given notice by the Carrier to do so;
 - (ii) the Consignor, being a natural person, commits an act of bankruptcy;
 - (iii) the Consignor, being a corporation, is subject to:

- (A) a petition being presented, an order being made or a meeting being called to consider a resolution for the Consignor to be wound up, deregistered or dissolved;
 - (B) a receiver, receiver and manager or an administrator under Part 5.3A of the Corporations Act 2001 being appointed to all or any part of the Consignor's property and undertaking;
 - (C) the entering of a scheme of arrangement (other than for the purpose of restructuring); and
 - (D) any assignment for the benefit of its creditors;
- (iv) the Consignor purports to assign its rights under this Agreement without the Carrier's prior written consent; or
 - (v) the Consignor ceases or threatens to cease conduct of its business in the normal manner.
- (b) Where an event of default occurs, except where payment in full has been received by the Carrier, the Carrier may:
 - (i) terminate this Agreement;
 - (ii) terminate any or all orders and credit arrangements (if any) with the Consignor;
 - (iii) refuse to deliver any Goods.
 - (c) Upon an event of default all invoices outstanding will become immediately due and payable.

18. TERMINATION

In addition to the express rights of termination provided in this Agreement, a party may terminate this Agreement by giving 30 days written notice to the other party.

19. FORCE MAJEURE

- (a) If circumstances beyond the Carrier's control prevent or hinder its delivery of the Goods, the Carrier is free from any obligation to deliver the Goods while those circumstances continue. The Carrier may elect to terminate this agreement or keep the agreement on foot until such circumstances have ceased.
- (b) Circumstances beyond the Carrier's control include, but are not limited to, unavailability of materials or components, strikes, lockouts, riots, natural disasters, fire, war, acts of God, Government decrees, proclamations or orders, transport difficulties and failures or malfunctions of computers or other information technology systems.

20. DISPUTE RESOLUTION

- (a) If a dispute arises between the Carrier and the Consignor, the following procedure applies:
- (i) A party may give another party a notice of the dispute and the dispute must be dealt with in accordance with the procedure set out in this clause;
 - (ii) A party must not commence legal proceedings (except proceedings seeking interlocutory relief) in respect of a dispute unless the dispute has been referred for resolution in accordance with this clause;
 - (iii) A party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute pending the completion or termination of the procedure set out in this clause.
- (b) If a dispute is notified, the dispute must immediately be referred to the parties' respective senior management. Those representatives must endeavour to resolve the dispute as soon as possible and in any event within 10 Business Days (or other period as agreed).
- (c) Unless otherwise agreed, the parties agree to endeavour to resolve any dispute that cannot be settled by negotiation between the parties or their representatives by mediation administered by the Australian Commercial Disputes Centre (ACDC) before having recourse to arbitration or litigation. The mediation must be conducted in accordance with the ACDC Guidelines for Commercial Mediation which operate at the time the matter is referred to ACDC. The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. The terms of the Guidelines are incorporated into these Terms and Conditions. This clause survives termination of these Terms and Conditions.
- (d) Notwithstanding the existence of a dispute (including the referral of the dispute to mediation), each party must continue to perform its obligations under these Terms and Conditions.
- (e) The parties must hold confidential, unless otherwise required by law or at the direction of a court of competent jurisdiction, all information relating to the subject matter of the dispute that is disclosed during or for the purposes of dispute resolution. The parties acknowledge that the purpose of any exchange of information or documents or the making of any offer of settlement pursuant to this procedure is to attempt to settle the dispute between the parties. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

21. PPSA

- (a) This Agreement is a security agreement for the purposes of the Personal Property Securities Act (PPSA).
- (b) The interest of the Carrier in the Goods and all proceeds from the sale of the Goods by the Consignor to a third party is a security interest.

- (c) The Consignor consents to the Carrier registering its security interest on the Personal Property Securities Register (PPSR) and agrees to provide all assistance reasonable required by the Carrier to facilitate registration.
- (d) The Consignor waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (e) The Carrier and Consignor agree that this agreement and all related information and document(s) are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Carrier and Consignor agree that the Carrier will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (f) The Carrier and the Consignor agree each of the following requirements or rights under the PPSA do not apply to the enforcement of the Carrier's security interest in the Goods or of this agreement:
 - (i) any requirement for the Carrier to give the Consignor a notice of removal of accession;
 - (ii) any requirement for the Carrier to give the Consignor a notice of the Carrier's proposed disposal of the Goods;
 - (iii) any requirement for the Carrier to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - (iv) any requirement for the Carrier to give the Consignor a statement of account if the Carrier does not dispose of the Goods;
 - (v) any right the Consignor has to redeem the Goods before the Carrier exercises a right of disposal; and
 - (vi) any right the Consignor has to reinstate this agreement before the Carrier exercises a right of disposal of the Goods.
- (g) To the maximum extent permitted by law, the Consignor agrees that sections 130, 142 and 143 of the PPSA will not apply.
- (h) To the maximum extent permitted by law, the Consignor waives any rights it may have pursuant to and hereby contracts out of sections 95, 123, 126(2), 132, 134(2) and 135 of the PPSA.
- (i) Expressions defined in the PPSA have the same meaning when used in this agreement.

22. MISCELLANEOUS

- (a) This Agreement is governed by the laws of Western Australia and each party irrevocably submits to the non-exclusive jurisdiction of the courts of Western Australia.
- (b) This Agreement and any quotes, orders and written variations agreed to in writing by the Carrier represent the whole agreement between the parties relating to the subject matter of these terms.
- (c) This Agreement supersedes all oral and written negotiations and communications by and on behalf of either of the parties.
- (d) In entering into this Agreement, the Consignor has not relied on any warranty, representation or statement, whether oral or written, made by the Carrier or any of its employees or agents relating to or in connection with the subject matter of this Agreement.
- (e) If any provision of this Agreement at any time is or becomes void, voidable or unenforceable, the remaining provisions will continue to have full force and effect.
- (f) A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.
- (g) A notice or other communication required or permitted to be given by one party to another must be in writing to the address shown on a Consignment Note and delivered personally, sent by pre-paid mail to the address of the addressee specified; sent by fax to the fax number of the addressee specified in the relevant Consignment Note, with acknowledgment of receipt from the facsimile machine of the addressee or sent by email to the email address of the addressee specified in the relevant Consignment Note with acknowledgement of delivery.
- (h) A notice or other communication is taken to have been given (unless otherwise proved) if mailed, on the second Business Day after posting; or if sent by fax or email before 4 pm one Business Day at the place of receipt, on the day it is sent and otherwise on the next Business Day at the place of receipt.
- (i) A party may only change its postal or email address or fax number for service by giving notice of that change in writing to the other party.