

KINGS TRANSPORT & LOGISTICS TERMS AND CONDITIONS OF TRANSPORT AND/OR STORAGE

- 1. Definitions:**

In these terms and conditions:
means the company responsible for procuring the Services for the Sender, being the company named or otherwise identifiable by reference to the job number on the reverse of this document as the case may be.
means these services offered by the Contractor and requested by the Sender being Transport and Storage of Goods and any services incidental to Transport and Storage of Goods.
means the Contractor's fees for procuring the Services.
means the property or supplies to be transported and/or stored and in respect of which the Sender has engaged the Contractor for the provision of the transport and/or storage Services.
means the person or company engaging the Contractor for the provision of the Services.
means any and all of the services undertaken or procured by the Contractor in relation to the carriage and movement of Goods.
means any and all of the services undertaken or procured by the Contractor in relation to the warehousing of Goods.
means the person to whom the Sender directs the Contractor to deliver the Goods.
means Lumley General Insurance Limited ABN 24, 000, 036 279.
means the policy relating to the insurance of Goods whilst being transported to the Receiver which is provided by the Insurer.

2. Contract Basis

- 2.1.** The Contractor is NOT A COMMON CARRIER, and accepts no liability as such for its Services, and reserves the right to refuse the carriage or transport of Goods for any person, agent or company whatsoever, and any class of goods and any class of description.
- 2.2.** The Contractor relies on the details supplied by the Sender in relation to the quantity, value, type, quality, condition and description of the Goods; and in relation to any address from which the Goods are to be collected or to which the Goods are to be transported. The Contractor cannot verify and does not review the accuracy of the details provided by the Sender and any confirmation or verification of the details as provided by the Sender.

2.3. The Contractor shall be responsible for procuring the Services as required and requested by the Sender and may at its absolute discretion arrange for any and all of the Services to be performed by its employees, agents, subcontractors, related entities or any other person or entity that the Contractor deems fit to perform the Services.

2.4. The Contractor shall not be liable in any way to the Sender in respect of any pallets, including but not limited to, liability for lost, stolen or damaged pallets, pallets taken into custody, pallet tie fees or pallet exchange. The Contractor will not exchange pallets or credit Charges from amounts owing by the Sender; and the Sender must not transfer any pallets to any account the Contractor may have with a pallet tier.

3. Sender's Warranties and Indemnity

- 3.1.** The Sender warrants prior to Service:
 - a.** That it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations including the Australian Code for the Transport of Dangerous Goods by Road and Rail, the Civil Aviation Regulations and the International Maritime Dangerous Goods Code relating to the notification, classification, description (on this contract or separately) labelling, transport, nature, condition, or packaging of the Goods and the Goods are packed appropriately for the nature of the Goods in a proper way to withstand the ordinary risks of Transport, Storage or handling;
 - b.** That the Goods are not explosive, flammable or dangerous including dangerous within the meaning of the Dangerous Goods Act;
 - c.** That the person delivering the Goods to the Contractor or arranging for the delivery of the Goods to the Contractor or pick up of the Goods by the Contractor is authorised to do so by the Sender;
 - d.** That it is either the owner or an authorised agent of the owner of the Goods and by entering into this contract it accepts these conditions for itself or on behalf of the Receiver and any other person for whom the Sender is acting; and
 - e.** That it has provided adequate and accurate instructions in relation to the method and location for collection of the Goods by the Contractor or delivery of the Goods to the Contractor and in relation to the method and location for the Storage of the Goods and/or the delivery of the Goods to the Receiver.
- 3.2.** The Sender holds harmless and indemnifies the Contractor from any loss, damage, expense, penalty, fine or liability arising in any way whatsoever from a breach of these warranties, or these conditions.

4. Conditions to Service

The Goods are accepted by the Contractor for the purposes of providing the Services subject to the following conditions:

- 4.1.** Dangerous Goods
 - a.** In the Contractor's opinion the Goods are liable to cause damage to any person or property or to the environment, or to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Contractor may at any time destroy, dispose of, abandon or render the Goods harmless without any compensation to the Sender or Receiver and without prejudice to the Contractor's right to any Charges;
 - b.** Furthermore, the Sender indemnifies the Contractor against any expenses, loss or damage incurred or sustained as a result of the Goods being or becoming dangerous including as a result of any spillage, seepage, combustion or contamination or as a result of any disposal, destruction, abandonment, repair or rendering harmless of the Goods by the Contractor.
 - c.** The Contractor expressly excludes the following items and will not provide Services in respect of these items unless it otherwise expressly agrees in writing: firearms; live ammunition; live animals or reptiles; illegal substances; or any item that could be described as a weapon.
- 4.2.** If the Sender instructs the Contractor to use a particular method of Transport whether by road, rail, sea or air, the Contractor will give priority to that method designated but if the Contractor cannot conveniently adopt the designated method, the Sender agrees that the Contractor, in its absolute discretion, may arrange to Transport the Goods by any other method.
- 4.3.** If the Sender instructs the Contractor to use a particular method or type of Storage for the Goods, the Contractor will give priority to the specifications requested but if the Contractor cannot conveniently adopt the specifications requested, the Sender agrees that the Contractor, in its absolute discretion, may arrange to Store the Goods in any other manner which it deems appropriate for the nature of the Goods in question. The Contractor undertakes to notify the Sender as soon as is reasonably practicable of any Storage methods utilised which differ from those specified by the Sender.
- 4.4.** The Contractor is authorised to cause the Goods to be delivered to the address specified by the Sender or Receiver whether or not an authorised representative of the Sender or Receiver is present at the specified address to accept delivery of the Goods, and a receipt signed by any person at the specified address will be taken as proof of delivery of the Goods.
- 4.5.** The Contractor may arrange for the Goods to be Transported or Stored together with any other goods and may procure any person on any terms to perform the Services.
- 4.6.** The Contractor may procure that the Goods be carried, stored or otherwise handled by any servant, agent, subcontractor or related entity of the Contractor and the Sender authorizes any deviation from the usual route or manner of carriage or place of storage of Goods which may in the absolute discretion of the Contractor be deemed desirable or necessary in the circumstances.
- 4.7.** The Contractor shall not be responsible for the loss or dishonest appropriation by any of its employees of any payments made directly to those employees on behalf of the Sender and intended for the Contractor. The Sender shall indemnify the Contractor for any amount so lost or dishonestly appropriated.
- 4.8.** The Sender must collect the Goods within 14 days of a written request by the Contractor. If the Goods are not removed within 14 days, the Contractor may sell or otherwise dispose of the Goods as it sees fit.

5. Charges

- 5.1.** The Contractor must:
 - a.** within 7 days of the date of the Contractor's invoice pay the Contractor in full for the Charges. Should the Sender fail to pay by the due date then all Charges shall become immediately due and payable.
 - b.** Where the Sender is in breach of clause 5.1(a) or any other clause of this agreement, the Contractor shall be entitled to serve upon the Sender a notice informing the Sender of the breach and of the Contractor's intention to terminate this agreement as a result of the specified breach ("Notice"). Immediately upon issuing the Sender with a Notice: - All payments outstanding to Contractor which are not yet due will become immediately due and payable by the Sender; and - The Sender will be liable for any costs incurred by the Contractor as a result of the Sender's breach, including any legal fees and costs associated with recovering any monies owed to the Contractor.
 - c.** if any Charges, invoices or other amounts owing by the Sender to the Contractor remain unpaid on their due date for payment, pay interest calculated daily on the unpaid amounts at a rate that is 4% higher than the prevailing rate under the Penalty Interest Act, 1983 (Vic) until the unpaid amounts have been paid in full.
 - d.** pay any charge for demurrage, or any other costs or expenses directly or indirectly incurred by the Contractor in respect of procuring the Services, at the rate specified by the Contractor;
 - e.** pay the Contractor's expenses and charges necessarily incurred by the Contractor in order to comply with any applicable law or regulation or any order or requirement made under them or with the requirement of any harbour, dock, railway, shipping, customs, excise (which includes any customs or excise duty payable on the Goods) or warehouse authority or any other person or organisation.
 - f.** pay vehicle charges based on an hourly rate and calculated from point of pick up to the address specified for delivery and return, regardless of whether the vehicle actually returns to point of origin or not.

5.2. The Sender acknowledges that:

- a.** the Contractor's Charges are earned as soon as the Goods are picked up for Transport or placed in Storage and whether the Goods are delivered to the Receiver or not and whether the Goods are damaged or not, under no circumstances will Charges be reimbursed.
- b.** A Charge may be made by the Contractor in respect of any delay in loading or unloading of the Goods occurring other than as a result of the default of the Contractor (including where the delay is due to the Receiver not being in attendance at the time specified or during normal business hours). The cost of labour to load or unload the vehicle shall be the responsibility and expense of the Sender or Receiver.
- c.** All Charges payable to the Contractor are exclusive of Goods and Services Tax, duties, levies or other taxes which will be added to the Sender's account and additional to the Charges negotiated.
- d.** The Contractor may at any time re-assess (on the basis of re-weighing or otherwise) the Goods and charge additional Charges accordingly for its Services performed.

6. Lien

6.1. The Contractor has a general lien on the Goods for all Charges due or which become due on any account whether for Transport and/or Storage of these Goods or any other Goods or any other Service. The lien shall secure all amounts owing to the Contractor including expenses incurred by the Contractor for exercising its right of lien.

7. Insurance

7.1. The Contractor accepts no liability or responsibility for the insurance of the Goods which remains the Sender's and/or Receiver's sole responsibility. The Contractor is not liable for any loss or damage, including any consequential losses, for the failure of the Sender and/or Receiver to adequately insure the Goods.

7.2. It shall be the responsibility of the Sender to arrange such insurance as it sees fit to cover all or any of the above items of this agreement/conditions and any other risks. The Contractor shall be under no responsibility whatsoever to see that such insurance has been effected.

7.3. If the Sender so requests, the Contractor will arrange for insurance through the Insurer on the terms and conditions as set out in the attached Disclosure Document (if applicable) 7.4. If so requested, the Contractor will organise and effect such insurance and the Sender shall reimburse the Contractor for its costs that are payable in respect of such insurance, which may include an administration fee.

7.5. In so organising and effecting such insurance, the Contractor is not providing any financial advice nor is the Contractor implying any recommendation of the Insurer.

7.6. The Sender acknowledges that the Contractor does not provide any general or specific recommendation or opinion on whether the insurance is suitable for the Sender and before deciding, the Sender should read the relevant policy document and the Insurer's disclosure document attached thereto, to satisfy itself that the insurance is appropriate for the Sender, or contact the Insurer.

8. Damage, Exclusions, Limitations

8.1. Goods are deemed to be in transit despite any interruption of the Transport or that the Contractor may divert from the usual route for Transport.

8.2. If the Sender requests the Contractor to pack the Goods the Contractor is not liable for any loss or damage whether in packaging or in transit no matter how the damage or loss arises, including by negligence of the Contractor.

8.3. Subject to Clause 12, the Contractor will not be liable for, and the Sender releases the Contractor from and indemnifies the Contractor against any liability for or expense arising from loss of, damage to, mis-delivery of, delay in delivery or return of, concealed damage, deterioration, contamination, evaporation, or non-delivery or return of the Goods at any time during the Service or where the Goods are in the Contractor's possession, care, custody or control or any consequential loss however caused even if it arises because of a breach of contract or negligence or a willful act or omission of the Contractor.

8.4. Subject to Clause 12, the Contractor will not be liable for, and the Sender releases the Contractor from and indemnifies the Contractor against any liability or expense arising from any personal injury (including death) or illness, or delay to any works or damage to any property however caused or contributed by the Goods or in relation to the Services. This release and indemnity extends to include injury, illness, delay or damage to any person or property during any part of the Services and to include any consequential loss even if it arises because of a breach of contract or negligence or willful act or omission of the Contractor.

8.5. In the event that the contract requires any handling, installation, removal, or erection of the Goods of any kind by the Contractor, its employees, agents or sub-contractors, then it is undertaken on the strict basis that the Contractor shall not be under any liability for loss or damage or injury of any kind, whether to the Goods or to any person or property and even if caused by the negligence or misconduct of the Contractor and the Sender and Receiver hereby for itself, its principals and agents forever and irrevocably release and agree to indemnify the contractor from all claims, debts, actions and liability for such loss and damage.

9. Restraint

9.1. The Sender hereby undertakes on its own behalf or as agent or representative of any person, firm or company whether directly or indirectly or in any beneficial capacity not to solicit or in any way entice a contractor and/or employee of the Contractor to carry out any work or perform any Services on behalf of itself or for any other person or entity other than by way of the Contractor herein.

9.2. The Contractor and the Sender agree that if the Sender on its own behalf or as an agent or representative of any person, firm or company directly or indirectly engages a subcontractor and/or employee of the Contractor to carry out any works or perform any Services on behalf of itself or any other person or entity independently of the Contractor, the Sender will pay to the Contractor the higher of the sum of \$10,000 or an amount for damages and/or compensation for any loss or damage suffered by the Contractor as a result.

9.3. The Sender agrees that it will not engage a subcontractor and/or employee of the Contractor to work directly for itself to the exclusion of the Contractor for a period of 12 months following the subcontractor severing ties with the Contractor. Should this occur the Sender agrees to pay the Contractor the higher of the sum of \$10,000 or an amount for damages and/or compensation for any loss or damage suffered by the Contractor as a result.

10. For the purpose of assessing credit worthiness and the collection of payments, the Sender hereby irrevocably authorises the Contractor to make such enquiries from time to time as it deems necessary, including, but not limited to, making enquiries and obtaining such reports as may be allowed by law from persons nominated by the Sender as trade referees, the Sender's creditors, bankers and financiers, cash providers, mortgage and trade insurers and credit reporting agencies (hereinafter referred to as "the information sources") and the Sender agrees and consents to the information sources providing to the Contractor such information as is requested by the Contractor and permitted to be given by law for the aforesaid purposes. The Sender also consents to the Contractor disclosing the contents of any credit report or personal information to a credit reporting agency for the purpose of the credit report agency creating or adding to any credit information file in relation to the Sender.

11. Where the Contractor has agreed with the Sender to procure the Services on an arrangement for deferred payment by the way of a credit account, or any other method of payment other than cash on delivery, such credit is extended solely to and for the use of the Sender personally and without limiting the generality of the foregoing, may not be utilised by any associate or employee of the Sender. Where any Service is undertaken by the Contractor at the request of a person from whom the Contractor is authorised by the Sender to accept such requests, the Sender shall be liable for the costs and charges of such Services, and the delivery by the Contractor of an invoice for the same shall be conclusive proof of such liability.

12. Trade Practices Act

12.1. These conditions are to be read subject to any implied terms, conditions or warranties provided by the Trade Practices Act 1974 (or any other Commonwealth or State statute) so far as the Act or other statute is applicable to this contract and prevents the exclusion, restriction or modification of that term, condition or warranty.

12.2. The Contractor excludes, from these conditions, to the extent legally permitted, any terms, conditions and warranties which might otherwise be implied by the Trade Practices Act 1974 or any other Commonwealth or State law. Where the Contractor is lawfully permitted to limit any implied terms, the Contractor limits its liability to either or both of the following, at its option:

- a.** replacing or repairing the goods or resupplying the Services; or
- b.** paying the cost of repairing the goods or resupplying the Services.

13. Jurisdiction

13.1. These conditions are governed by and must be construed under the laws of the State of Victoria and any proceedings against the Contractor must be brought in the Courts of Victoria which shall have exclusive jurisdiction within three months of the date of this contract.

13.2. If proceedings arising out of the provision of or a request for the provision of any particular Services are not commenced in the Courts of Victoria within three months of the date on which the Services were provided or required to be provided, the Contractor will be fully discharged of any liability whatsoever in respect of this contract and/or the Goods or the Services.

14. Variations

14.1. The Contractor may at any time vary its Charges and/or method of charging without giving prior notice to the Sender and any charge or rate schedule shall only be firm on the date it is issued.

14.2. The Contractor reserves the right from time to time to amend these Terms and Conditions without giving prior notice to the customer. All amendments shall have force and effect and it shall be the absolute responsibility of the Sender to ensure from time to time that it has an up-to-date copy of the Terms and Conditions which the Contractor will make available on request.

14.3. Other than as provided in clause 14.1 and 14.2 above, the Contractor will not be bound by any agreement which varies these Terms and Conditions unless it is in writing and signed by an authorised officer or representative of the Contractor.

15. Representations And Warranties Exclusion

15.1. No document, writing or other words or understanding between the parties whatsoever shall in any way vitiate or limit the force and effect of these terms and conditions.

15.2. No representations, warranties or agreements in relation to the Goods or the Services made by any agent, subcontractor or employee of the Contractor or of any related entity of the Contractor shall be relied upon by the Sender or the Receiver and the Contractor shall not be held responsible for any such representations, warranties or agreements and shall not be liable for any loss or damage to any person as a result of that person's reliance on such representations, warranties or agreements.

16. Sewerability

16.1. It is hereby agreed that if any clause or provision of these Terms and Conditions or any part thereof is illegal or unenforceable, that part shall be severed from the remainder of the Terms and Conditions and such unenforceability or severance shall not affect any other part of that provision or any other provision hereof.

17. No Waiver

Any failure by the Contractor to insist on strict compliance with any of these Terms and Conditions or any delay by the Contractor in exercising its rights under these Terms and Conditions will not constitute a variation or waiver of any of these Terms and Conditions or any of the Contractor's rights hereunder and shall not preclude the Contractor from subsequently enforcing any of those rights or insisting on strict compliance.

18. Joint And Several Liability

Where the Sender comprises two or more persons, any agreement or obligation to be performed or observed by the Sender shall bind those persons jointly and each of them severally.