

PART D – SPECIAL TERMS: CARRIAGE/TRANSPORTATION SERVICES

44. Definitions

For the purpose of this Part D:

- (a) unless otherwise defined in this Part D, capitalised words have the same meaning ascribed to them in Part A “*General Terms and Conditions*” of these terms and conditions; and
- (b) **Services** includes services provided by us in connection with the carriage of Supplied Items, including carriage, storage, loading, unloading, packing, unpacking and all other incidental services in connection with the transportation of the Goods whether by air, sea, rail or road.

45. Not a common carrier

45.1 We are not a common carrier and will accept no liability as such.

45.2 All Supplied Items are carried and other Services are performed by us subject only to the terms and conditions in these terms and conditions and we reserve the right to refuse the carriage of goods for any person and the carriage of any class of goods at our discretion.

46. Our obligations

In respect to the Services provided, we will:

- (a) take reasonable care to protect and safeguard the Supplied Items;
- (b) provide the Services exercising the degree of skill, care and efficiency that would be expected from a competent service provider experienced in providing carriage;
- (c) obtain and maintain at our own expense all proper and necessary licences as may be required by Law in connection with the provision of the Services;
- (d) use reasonable endeavours to deliver the Supplied Item to the address nominated by you and to effect delivery at the date and time requested by you (subject to compliance with all applicable laws); and
- (e) use reasonable endeavours to comply with your reasonable and lawful directions.

47. Route and deviation

47.1 You authorise any deviation from the usual route or manner of carriage of the Supplied Items that may, in our reasonable opinion, be considered desirable or necessary in the circumstances.

47.2 If you expressly or impliedly instruct us to use, or it is expressly or impliedly agreed that we will use a particular method of handling or storing the Supplied Items, or a particular method of carriage, whether by road, rail, sea or air, we will give priority to that method but if, in our reasonable opinion, it cannot practicably or conveniently be adopted by us, you authorise us to handle, store or carry or to have the Supplied Items handled, stored or carried by another method or methods at our discretion.

48. Your warranties

48.1 You warrant and acknowledge that:

- (a) the Supplied Items are fit for carriage and have been suitably packaged for those purposes;
- (b) you have the authority of all persons owning or having any interest in the Supplied Items to accept these conditions on their behalf;
- (c) the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements supplied by you or any other party is correct;
- (d) there is a suitable practicable road and approach for us and our vehicles to the place from which the Supplied Items are to be collected and the place to which the Supplied Items are to be delivered;
- (e) any place from which the Supplied Items are to be collected or to which any of the Supplied Items are to be delivered will have safe and adequate loading facilities and equipment available for our use;
- (f) carriage is supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by you;

- (g) where required by law, you have accurately completed and supplied a weight declaration form;
- (h) you have complied with all laws in relation to carriage of the Supplied Items;
- (i) the Supplied Items are not dangerous goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to damage any property whatsoever (**Dangerous Goods**);
- (j) the Supplied Items will be free from any contaminants and/or hazardous substances (including, without limitation, asbestos, insects, fire ants, weeds or seeds), and where applicable, will be thoroughly cleaned before we collect the Supplied Items;
- (k) we rely on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by you but do not admit their accuracy; and
- (l) we accept no responsibility for collection of cash or other payments from any party.

49. Your indemnities

You indemnify us:

- (a) in respect of any liability whatsoever in respect of the Supplied Items to any person who claims to have, who has, or who in the future may have any interest in the Supplied Items or any part of the Supplied Items; and
- (b) against all losses, damages, claims, fines, expenses, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against us as a result of:
 - (i) a breach of your obligations under these terms and conditions;
 - (ii) any material inaccuracies in safety data sheets; or
 - (iii) any negligence, wilful misconduct or recklessness of you or your consignee.

50. Charges

Where we store Supplied Items for you (in any manner and in any place we determine at our absolute discretion), you must:

- (a) pay our expenses and charges to comply with any law or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other person;
- (b) if any Supplied Items are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that we become liable to pay;
- (c) supply or pay for labour or machinery, or both, to load or unload the Supplied Items; and
- (d) if the Supplied Items are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.

51. Liability

51.1 The Supplied Items are at all times your sole risk. You acknowledge and agree that, to the extent permitted by law, neither us or any other person will, in any circumstances, be under any liability whatsoever (whether in contract, tort, bailment or otherwise) for:

- (a) any loss of or damage to the Supplied Items; or
- (b) misdelivery or non-delivery of the Supplied Items or any of them, unless such loss, damage, misdelivery, or non-delivery was caused by our negligence or wilful default, reduced proportionately to represent the extent to which you or any other persons negligent or wrongful acts or omissions caused the loss, damage, misdelivery, or non-delivery of the Supplied Items.

51.2 Notwithstanding any other provision of this contact, we will not be liable for:

- (a) any loss of or damage to the Supplied Items:
 - (i) caused by us following your instructions;
 - (ii) caused by the Supplied Items becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;

- (iii) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including stone, rain, hail or storm damage;
 - (iv) caused by the Supplied Items being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
 - (v) caused by a decline in value, or loss of value as a result of the Supplied Items becoming past their use by or expiry date;
 - (vi) where such loss becomes apparent as the result of a stock count or stocktake;
 - (vii) where such loss or damage comprises of mechanical, electrical or electronic breakdown, derangement, or malfunction of the Supplied Items;
 - (viii) caused by the inherent vice or the nature of the Supplied Items; or
 - (ix) caused by insufficiency or unsuitability of packing or preparation of the Supplied Items to withstand the ordinary incidents of carriage;
- (b) loss or damage suffered in connection with any delay in the delivery or collection of Supplied Items; or
- (c) any loss of or damage to the Supplied Items where the loss of or damage to the Supplied Items occurs during storage.

52. Delivery

- 52.1 You warrant that We are authorised to deliver the Supplied Items at the address nominated to us by you for that purpose. We will be conclusively presumed to have delivered the Supplied Items if, at that address, we obtain from any person a receipt or signed delivery docket for the Supplied Items.
- 52.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by us or you otherwise fail to take delivery of the Supplied Items, we will attempt to contact you to obtain alternative instructions for delivery (which may be subject to additional charge at our discretion).
- 52.3 If we are unable to obtain alternative instructions that we can reasonably and practicably carry out, we may at our option deposit the Supplied Items at that place (which will be conclusively presumed to be due delivery) or store the Supplied Items.
- 52.4 If the Supplied Items are stored by us, you will pay or indemnify us for all costs and expenses incurred in such storage and we will be at liberty to redeliver them to you from the place of storage at your expense.

53. Storage

- 53.1 Where Supplied Items are stored by us, you:
- (a) will supply details of the persons entitled to collect the Supplied Items and an inventory of the Supplied Items to be stored; and
 - (b) must effect and maintain an insurance policy in your name that covers loss of or damage to the Supplied Items while the Supplied Items are being stored and must provide a certificate of currency in respect of the policy within seven (7) days of receiving a request from us.
- 53.2 We may remove the Supplied Items from a place of storage to another place of storage at our discretion.
- 53.3 Storage charges do not include removing, packing, unpacking, stowing, restoring or delivering the Supplied Items.
- 53.4 You must give forty-eight (48) hours' notice to us or your intention to remove Supplied Items from storage.
- 53.5 We will not be obliged to deliver any Supplied Items:
- (a) except to you or to a person authorised in writing by you to receive the Supplied Items; or
 - (b) where we have not received payment of all amounts due by you to us on any account whatsoever.
- 53.6 You must remove Supplied Items from storage within seven (7) days of receipt of written notice from us.
- 53.7 If any identifying document or mark is lost, damaged, destroyed or defaced, we may open any document, wrapping, package or other container in which the Supplied Items are placed or carried to inspect

them, either to determine their nature or condition, or to determine their ownership.

54. General Lien

- 54.1 The Supplied Items are accepted subject to a general lien for all charges now due or that may become due to us by you on any account whatsoever.
- 54.2 Without prejudice to any other rights we may have under law, if charges remain outstanding for more than thirty (30) days, or the Supplied Items are not collected within thirty (30) days of the date required or designated, we may, without notice, and immediately do any of the following:
- (a) remove all or any of the Supplied Items and store them as we think fit at your risk and expense; and/or
 - (b) open and sell all or any of the Supplied Items as we consider fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage caused.
- 54.3 The parties agree that the lien attaches to Supplied Items when the Supplied Items are accepted by us for carriage.

55. Notification of claim

- 55.1 We will be discharged from all liability whatsoever in respect of the Supplied Items unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to us:
- (a) in the case of Supplied Items allegedly lost or damaged in the course of loading, unloading or transit within seven (7) days from the delivery of the Supplied Items; or
 - (b) in the case of Supplied Items allegedly lost or damaged during storage, within seven (7) days of the date of removal or attempted removal of the Supplied Items from storage.
- 55.2 We will, in any event, be discharged from all liability whatsoever in respect of the Supplied Items unless suit is brought:
- (a) in the case of the Supplied Items allegedly lost or damaged in the course of loading, unloading or transit, within three (3) months of their delivery or of the date on which they should have been delivered; or
 - (b) in the case of Supplied Items allegedly lost or damaged during storage, within three (3) months of the date of removal or attempted removal of the Supplied Items from storage.