

## 1. Definitions

In these conditions -

"Carrier" shall mean Johnston's Transport Industries Pty Ltd;  
"Carriage" shall mean and include the whole of the services undertaken by the Carrier in respect of the Goods (Including, but not limited to, transport, storage, handling, erection, lifting, installation, assembly, packing, loading and unloading) and "carry" shall have a corresponding meaning;  
"Consignor" shall mean and include the party on whose behalf the Carrier is undertaking the Carriage, the party entering into any contract of Carriage with the Carrier, and any party shown as the consignor on any consignment note relating to such a contract of Carriage;  
"Goods" shall mean the goods received from the Consignor including any container, packaging or pallets received therewith;  
"Sub-contractor" shall mean and include any person who pursuant to any contract or arrangement (other than a contract of employment) performs or agrees to perform the Carriage or any part thereof;  
Words importing the singular include the plural, and words importing one or more genders include all genders.

## 2. Not a Common Carrier

THE CARRIER IS NOT A COMMON CARRIER and accepts no liability as such, and it is agreed that the Carrier shall not be liable to be sued as, or as if it had undertaken the liability of, a common carrier. The Carrier reserves the right to refuse the Carriage of goods for any person and the Carriage of any goods or classes of goods at its discretion.

The Carriage of any goods by the Carrier is performed by the Carrier upon and subject to these conditions only.

## 3. Warranties, Authority and Agency

3.1 The Consignor warrants that:

- (a) the Consignor has complied with all applicable laws and regulations relating to the nature, condition, packaging or carriage of the Goods and that the Goods are packed in a manner, having regard to their nature, adequate to withstand the ordinary risks of Carriage;
- (b) the Goods are accurately described in writing in the space provided on the consignment note, if any, which relates to the Carriage;
- (c) in agreeing to the terms hereof the Consignor is or has the authority of the person or persons owning or having any interest in the Goods or any part thereof; and
- (d) the Goods do not include any explosive, inflammable or otherwise dangerous goods or goods which are or may be liable to damage other goods or property whatsoever other than as are specifically and fully described and disclosed as such in writing to the Carrier (including on any consignment note relating to the Carriage) and that the Consignor has complied, and will comply, with the Australian Code for the Transport of Dangerous Goods by Road and Rail.

3.2 If in the opinion of the Carrier the Goods, either by themselves or in combination with any other goods, are likely for any reason to cause injury to persons or damage to other goods or to property or to the environment, the Goods may be retained, destroyed, disposed of, abandoned, removed or rendered harmless by the Carrier without compensation to the Consignor and without prejudice to the Carrier's right to any charges hereunder including the cost of such action.

3.3 Any person delivering the Goods or any portion thereof to the Carrier is authorised to enter into a contract of Carriage on behalf of the Consignor and to sign any consignment note or handling equipment service voucher for the Consignor.

3.4 The Consignor indemnifies the Carrier against:

- (a) any liability whatsoever (without limiting the foregoing, whether arising as a result of any breach of this contract or negligence or wilful act or omission or misconduct on the part of the Carrier or any of its servants or agents) in respect of the Goods to any person (other than the Consignor) who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof; and
- (b) any expenses, charges or losses sustained or incurred by the Carrier as a result of a breach of any of the warranties herein.

3.5 Notwithstanding that the Consignor may enter into the contract of Carriage as agent for a principal, whether disclosed or not, the Consignor shall remain personally liable under the contract for Carriage, such liability to include but not be limited to liability for payment of the charges.

## 4. Method of Carriage and Deviation

4.1 The method or methods of undertaking the Carriage shall be at the sole discretion of the Carrier and the Consignor hereby authorises the Carrier to adopt any method or methods other than any method which may have been instructed or agreed.

4.2 The Consignor authorises any deviation from the usual route of carriage.

## 5. Delivery

5.1 The Carrier is authorised to deliver the Goods at any address nominated by the Consignor to the Carrier for that purpose.

5.2 If the Carrier is unable to deliver the Goods for any reason, the Carrier shall be entitled to handle and store the Goods in such manner as it may in its discretion determine, and shall be entitled to make a reasonable charge in respect of such handling and/or storage and subsequent delivery of the Goods.

5.3 The Carrier shall be entitled to make a reasonable charge in respect of any delay in loading or unloading occurring otherwise than from default on the part of the Carrier.

## 6. Storage

6.1 The Consignor shall notify the Carrier in writing of an address to which the Carrier may forward any notice to the Consignor, and shall promptly notify the Carrier in writing of any change of such address. Any notice to be given by the Carrier to the Consignor shall be sufficiently given if sent by prepaid ordinary post to that address, and shall be deemed to be delivered the day after the date of postage.

6.2 The Consignor shall pay the Carrier's storage and other charges calculated in accordance with the Carrier's schedule of charges from time to time current and payable in respect of the Goods. All charges shall be payable monthly in advance.

6.3 The Consignor shall indemnify the Carrier against any duties, payments, costs or expenses relating to the Goods for which the Carrier may become liable or agree to pay other than the Consignor's costs relating to the storage of the Goods or the cost of any Sub-contractor engaged by the Carrier for that purpose.

6.4 The Carrier is authorised to store the Goods in any place, store or warehouse and to remove the Goods from one place, store or warehouse to another without cost to the Consignor.

6.5 The Consignor shall give to the Carrier not less than 5 working days' notice in writing or confirmed in writing of requirement to remove goods from storage.

6.6 The Goods are stored during the pleasure of the Carrier, and shall be removed and all storage and other charges paid by the Consignor upon the expiration of 21 days' notice in writing to remove the Goods given at any time by the Carrier to the Consignor. In default of compliance with such notice, the Carrier may (without prejudice to any other rights or obligations which it may have under this Contract or otherwise at law) sell all or any of the Goods by public auction or private treaty and apply the net proceeds in satisfaction of any amount owing by the Consignor to the Carrier.

## 7. Loss or Damage

7.1 UNLESS AS MAY OTHERWISE BE EXPRESSLY AGREED IN WRITING OR REQUIRED BY LAW, THE GOODS SHALL AT ALL TIMES BE AT THE RISK OF THE CONSIGNOR AND NO RESPONSIBILITY in tort or contract or otherwise WILL BE ACCEPTED BY THE CARRIER FOR ANY LOSS OF OR DAMAGE TO OR DETERIORATION OF OR FAILURE TO DELIVER OR DELAY IN THE DELIVERY OR MISDELIVERY OF THE GOODS HOWSOEVER CAUSED.

7.2 This exclusion of liability extends to include not only loss of or damage to the Goods themselves, but loss, damage or injury to any person, property or thing damaged during or in the course of the Carriage, and to any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery.

7.3 All the rights, immunities and limitations of liability in these Conditions of Contract shall continue to have full force and effect notwithstanding any breach of this contract, negligence, wilful act or omission, misconduct or other wrongful act on the part of the Carrier or any other person entitled to the benefit of such provisions or any of their servants or agents.

## 8. Insurance

Insurance will not be arranged by the Carrier except with the express instructions in writing of the Consignor and then only as agent for and at the expense of the Consignor.

## 9. Payments and Liens

9.1 Every arrangement to the effect that charges shall be paid by any person other than the Consignor shall be deemed to include a stipulation that if such other person does not pay the charges within 7 days of the date set for payment or, if no date is set for payment, within 7 days of the acceptance of the Goods by the Carrier from the Consignor, the Consignor shall pay the said charges.

9.2 The Carrier shall have a general lien on the Goods and any other goods of the Consignor which are in the possession of the Carrier for all charges now due or which may hereafter become due to the Carrier by the Consignor. If the lien is not satisfied, the Carrier may at its option and without any notice sell such Goods or part thereof by public auction or private treaty and upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of detention and sale without being liable to any person for any loss or damage thereby caused.

## 10. Sub-contracts and Sub-contractors

10.1 The Carrier is authorised (if it should think fit to do so) to sub-contract the whole or any part of the Carriage and such authorisation extends to any Sub-contractor.

10.2 Any clause herein excluding or limiting the liability of the Carrier or providing any right or exemption from liability to the Carrier shall also be available and shall extend to protect all Sub-contractors and every servant or agent of the Carrier and of any Sub-contractor.

10.3 Without limiting the effect of any other clause herein, the Consignor or any other person or persons owning or having any interest in the Goods or any part thereof shall not be entitled to make any claim against any person other than the Carrier by whom the Carriage or any part thereof is undertaken, or any servant or agent of any such person or of the Carrier, in relation to the Goods or arising out of the Carriage. Nevertheless, should any such claim be made the Consignor shall indemnify the Carrier and any such person or servant or agent against the consequences of any such claim as may be made by any party other than the Consignor.

10.4 For purposes of sub-clauses 10.2 and 10.3 the Carrier is, or shall be deemed to be, acting as agent or trustee on behalf of each of the persons to whom the benefits thereof are extended and each of such persons shall to this extent be or be deemed to be parties to this contract.

## 11. Miscellaneous

11.1 Freight and other related charges for the Carriage shall be deemed fully earned as soon as the Goods are accepted by the Carrier from the Consignor.

11.2 The Carrier may charge for the Carriage of the Goods in whole or in part by weight or measurement as may be agreed with the Consignor and may at any time re-weigh or re-measure the Goods and charge proportional additional freight if they shall prove to have been wrongly described.

11.3 The Carrier is entitled to open any document or any container (of whatever description) in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination.

11.4 The Carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an executive officer.

## 12. Provisions Severable

It is hereby agreed that if any provision or part of any provision of these conditions is unenforceable such unenforceability shall not affect any other part of such provision or any other provision thereof.

## 13. Trade Practices Act Applicable

Notwithstanding any condition herein limiting or excluding liability, if and to the extent to which the Carriage involves the transportation of Goods otherwise than for the purposes of a business, trade, profession or occupation carried on or engaged in by the Consignor, the contract shall be subject to any implied warranty provided by the Trade Practices Act 1974 if and to the extent that the said Act is applicable to this contract and prevents the exclusion, restriction or modification of such warranty.

## 14. Claims Against the Carrier

14.1 If, notwithstanding clause 7, the Carrier is liable for damage to or loss of or delay in the delivery of the Goods or any part thereof, no claim in respect of such loss or damage may be made unless notice in writing of the claim is given to the Carrier within 7 days after the Carriage was undertaken or, in the event of alleged failure to undertake or properly undertake the Carriage, within 7 days after the Carriage would in the ordinary course of business have been effected.

14.2 These conditions shall be governed and construed in accordance with the laws of the State in which the consignment note is issued and any proceedings against the Carrier shall be brought in that State and not elsewhere within 12 months from the date of the consignment note.