

## Application of Conditions

- a. These Conditions of Service cover the whole, or any part of, the Services performed by the Carrier for the Customer. All rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect notwithstanding any breach of this contract by the Carrier or any other person entitled to the benefit of such provisions.
- b. The Customer will inform the Carrier promptly in writing of any changes to the details provided in any application for commercial credit and hereby indemnifies the Carrier for any loss or damage associated with the failure of the Customer to inform the Carrier of such changes.

## Definitions

“**Business Days**” means any day of the week excluding Saturdays, Sundays and gazetted public holidays in the State;

“**Carrier**” means Code Transport Pty Ltd ABN 34 651 283 680;

“**Charges**” means the Carrier rates, charges, additional service charges, fees and surcharges agreed between us from time to time (whether expressly or impliedly), the Rate Card charges in clause 8, expenses to comply with any law or regulation or any order or requirement made under them, or with the requirement of any market, harbour, dock, railway, airline, shipping line, roadway, customs, excise, or warehouse authority or other person including any duties, excise and costs charged by any governmental, non-governmental or administrative authority which we become liable to pay in respect of the Goods arising out of or in connection with providing the Services and any tax including GST levied directly on a supply under these Conditions.

“**Conditions**” or “**Conditions of Service**” means the terms and conditions herein and includes any valid Rate Card;

“**Consequential Loss**” means any loss or damage arising from a breach of contract or agreement (including breach of these Conditions), tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss which was not contemplated by the parties at the time of entering these Conditions;

“**Consignment Note**” means consignment note in a form approved by the Carrier;

“**Customer**” means any person at whose request or on whose behalf the Company provides a service;

“**Dangerous Goods**” means any goods deemed of a dangerous or hazardous nature including but not limited to Goods which are or may become dangerous, inflammable, explosive, volatile or offensive (including radioactive materials, arms, ammunition) or Goods which are or may become liable to damage or injure any property or persons, whether you were aware of the dangerous or hazardous nature of the Goods or not, and includes, without limitation, goods forbidden, limited or restricted from time to time by:  
(a) the International Air Transport Association (“IATA”);  
(b) the International Civil Aviation Organisation;  
(c) the Civil Aviation Safety Authority;  
(d) the Australian Dangerous Goods Code; or  
(e) any applicable law, regulation, guideline or requirement of a regulatory body or government of a country or territory from, through or into which the Goods are carried.

“**Dangerous Goods Declaration**” means a written form of declaration that declares whether consignments contain or do not contain Dangerous Goods, and is signed by the Customer or its authorised agent;

“**Date of Despatch**” means the date on which the Goods are accepted by us from you and removed by us from the premises from which you ask us to collect the Goods;

“**Delivery**” means leaving the Goods at the Delivery Address or as close to that as we reasonably and practically can, and “**Delivery**” and “**Delivered**” have corresponding meanings;

“**Delivery Address**” means the address on the Consignment Note or as we are notified otherwise by you as the address to which the Goods must be delivered by us to the consignee;

“**Electrical Goods**” means those Goods which use, convert, store or generate electricity (including batteries) in order to operate;

“**Excluded Goods**” means each of the following items: waste, currency, cash and banknotes; negotiable instruments of any kind; gold, silver and other precious metals; jewellery; gemstones; wrought or unwrought metals; antiques; works of art; securities; living animals or plants; household goods exceeding \$500 in value per consignment unless certified professionally packed as required by us or as otherwise agreed in writing; personal effects; second hand goods, used goods, cigarettes, tobacco and tobacco

products; solar panels, any valuable documents; large sporting goods including but not limited to kayaks, surf skis, or similar equipment exceeding 3 metres in length; Goods packaged in satchels or envelopes or despatched on a pre-paid service;

**“Force Majeure Event”** means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers’ works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, quarantine, strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, workmen, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de-facto or de-jure) and supervening illegality, or any other cause beyond the control of the Company. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export licence;

**“Goods”** means anything carried by the Carrier and includes any receptacle, container or packaging;

**“GST”** has the same meaning as in the GST Law;

**“GST Law”** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth)

**“Implied terms”** means those terms, conditions and warranties implied into contract at law for the supply of goods and services including, without limitation, those terms implied by the Competition and Consumer Act 2010 (Cth);

**“Lost”** means all Goods in the consignment that have not been Delivered and are unable to be located by us;

**“Mechanical Goods”** means those Goods which have a mechanism to operate but which are not Electrical Goods;

**“Pre-approval Goods”** means those Goods which are Dangerous Goods, Electrical Goods, Mechanical or are drugs, weapons, human tissue, organs, blood or blood products, refrigerated (or perishable) items; glass, china or solar panels and these Pre-approval Goods must be pre-approved in writing from the Carrier prior to being accepted for Services.

**“Rate Card”** is defined at clause 8;

**“Services”** means the services provided to the Consignor including but not limited to the acceptance, carriage, transportation, storage and/or delivery of a Goods;

**“You” or “your”** means any person, organisation, business or company who requests the Services from us and with whom we contract and if more than one in relation to any Services, whoever we designate is responsible for the request of the Services.

### **Not a Common Carrier**

The Carrier is not a common carrier and accepts no liability as such. The Carrier may refuse the carriage or transport of goods for any person or corporation and the carriage or transport of any class of goods is at the Carrier’s absolute discretion.

### **Customer Warranties and Undertakings**

The Customer warrants that:

- a. it is either the owner of the Goods and/or the authorised agent of the person(s) owning or having any interest in the goods and it enters into this contract on its own behalf and/or as authorised agent of that person or persons;
- b. it has complied with all applicable laws and regulations relating to the nature, condition, packaging or carriage of the goods (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the goods and that, given their nature, the goods are packaged in a manner, having regard to their nature, adequate to withstand the ordinary risks of carriage;
- c. all the Goods are or will be accurately described in the Consignment Note and/or Carrier’s electronic gateway, accurately marked, addressed and appropriated packed having regard to the nature of the Goods and suitable for the Services with ordinary care in handling;

- d. You will fully declare all Dangerous, Electrical and Mechanical Goods;
- e. You will seek approval for Goods which are Pre-approval Goods;
- f. You will not tender Excluded Goods for Services;
- g. The Customer hereby indemnifies the Carrier against any expenses, charges or losses sustained by the Carrier in complying with the requirements of any law or otherwise incurred as a result of a breach of the warranties in clause 4 including but not limited to any claims by any third party;
- h. The Customer acknowledges that in the event of non-compliance with clause 4(b) that an additional fee will apply in respect of Dangerous Goods, and that the Carrier reserves the right not to carry any non-compliant goods; and
- i. You acknowledge that subject to the Implied Terms and to the extent permitted by law, it is your responsibility to ensure that the Services are sufficient and suitable for your purpose.

### **Performance of Services**

- a. The method(s) of undertaking the Services shall be at the sole discretion of the Carrier and the Customer hereby authorises the Carrier to adopt any method(s) other than any method which may have been instructed or agreed.
- b. The Customer authorises any deviation from the usual route of carriage.
- c. The Services commence when the Goods are delivered to or received by us (Date of Dispatch) and terminates on Delivery.

### **Delivery**

- a. The Carrier shall use reasonable endeavours to deliver the Goods as specified by the Customer. The Carrier shall not be bound to deliver the Goods except to the consignee shown on the Consignment Note or in the Carrier's electronic gateway or to such other person(s) as may be authorised in writing by the Customer to receive the goods or to effect delivery in such other manner as specified by the Customer including an "authority to leave".
- b. If the Carrier is unable to deliver the Goods for any reason (including failure on the part of a consignee to take delivery within a reasonable time) the Carrier shall be entitled to handle and store the goods at the Customer's risk and 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 additional charges for each call until the delivery is accomplished.
- c. The Carrier operates on a default basis of requiring a signature for delivery. Where the Customer has specified a manner of delivery other than "authority to leave" the Carrier shall be deemed to have delivered the goods to the consignee if the Carrier obtains from any person present at the place of delivery confirmation of receipt of the goods (including a signature on the delivery driver's manifest or scanner) which proof shall be binding on the Customer or any other person liable to the freight charges provided that under no circumstance shall the Carrier be required to provide proof of delivery.
- d. Where the Goods is expressed to be on an "authority to leave" basis, if a representative of the consignee is in attendance the Carrier will attempt to obtain a signature. If a receiver is not available, then the Carrier will leave the Goods in a place it deems, in its discretion acting reasonably, to be safe to do so and will inform the Customer accordingly. If the Carrier deems it unsafe to leave the Goods they will be re-directed to a place for pick up by the Customer. No re-delivery will be made without incurring further charges. The Customer accepts the risk of the goods being left in circumstances where they have not exercised the ability to specify a signature on delivery.
- e. The Carrier shall not be liable for any failure or delay in delivering the Goods where such failure or delay is wholly or partly due to any Force Majeure event.

### **Responsibility for Charges**

- a. The Carrier's Charges are earned as soon as the goods are picked up or accepted for Services and the Customer must pay all Charges, irrespective of whether the goods are delivered or not, and whether damaged or not, based on the tax invoice issued by the Carrier and in accordance with these Conditions.
- b. The Customer shall pay to the Carrier all sums for the Services immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. The Carrier will not refund any payment for freight, fuel surcharge and other charges under any circumstances.

- c. It is the Customer's responsibility to ensure all their goods are within the Carrier's freight profile. Goods that are found to be outside of the Carrier's freight profile may be refused at pickup, with the freight charge and a futile pickup fee applying. If the non-compliance is discovered once the Goods are already within the Carrier's network, then additional charges will apply and a delay in delivery may occur. If the Goods are at any time re-weighed or re-cubed, the Customer shall pay any proportional additional freight, fuel surcharge, additional handling and other charges as determined by the Carrier. The Customer shall pay the higher of dead weight and cubic weight, based on a cubic allowance of 250kg per cubic metre, and rounded up to the nearest whole kilogram.
- d. In the event that inaccurate and / or insufficient address details have been supplied, an additional fee will apply. Incomplete consignments at the time of the arranged pickup will occur an incomplete consignment fee. If the Goods are returned to sender a freight handling fee per consignment plus the applicable freight charges will apply. Redirection fees apply to all consignments which the Carrier is requested to undertake. The Customer shall pay any incurred third party.
- e. The provision of credit by the Carrier to the Customer is at the absolute discretion of the Carrier, is subject to the Carrier's credit policy (located on their website) and may be revoked by notice at any time whereupon all outstanding amounts shall become due and payable. Invoices for Services may be delivered in person, sent by post, facsimile or email at the frequency determined by the Carrier. The Customer agrees that evidence of the dispatch by the Carrier of an email is prima facie evidence of the receipt of the email by the Customer and unless the contrary is proven by the Customer the time of receipt will be deemed to be twenty (20) seconds after the time of the dispatch of the email.
- f. The Customer agrees to pay the Carrier administration, handling and merchant fees in respect of any copies of documents required or other processing involved in the conduct of the Customer's account including but not limited to account administration fees, merchant or bank charges or other fees incurred as a result of payment by credit or charge card.
- g. When the Carrier is instructed to collect Charges (all or part) or other expenses from any person other than the Customer, the Customer shall remain responsible for the amounts and shall pay these amounts to the Carrier on demand where these amounts have become due and have not been paid by such other person, the intent being that the Customer shall be primarily liable for all amounts due in respect of the Services provided.
- h. On all accounts overdue to the Carrier, the Carrier shall be entitled to charge interest calculated at 2% above the base rate of the Carrier's bank calculated from the time such accounts became overdue. The Customer acknowledges that such interest charge is not a penalty but is a true measure of damages incurred by the Carrier. The Customer agrees that it will pay all costs, expenses and charges incurred by the Carrier due to any breach of the Conditions and all costs, expenses and charges associated with the recovery of any overdue or other amounts including but not limited to any mercantile agent's costs, legal costs and disbursements on an indemnity basis.

### **Charges and Rate Card**

- a. Charges for the Services are based on the Carrier's tariff which are valid on the Date of Dispatch.
- b. The Carrier may agree with a Customer negotiated rates on some or all parts of the Services. These negotiated rates will be issued to the Customer ("**Rate Card**").
- c. The Rate Card will only be applicable for the Services and associated Charges if it is valid. If a Rate Card does not contain a validity it is deemed to be valid for three (3) calendar months only from the date it is provided in writing to the Customer.
- d. If the Customer has a lapsed (and no longer valid) Rate Card the Carrier will charge according to its tariff.

### **Reweigh**

- a. The Carrier may reweigh your consignment to verify the weights and dimensions stated at the time of your booking. Variations between the stated weights and dimensions and the actual weights and dimensions will directly impact your original quote for Services.
- b. The Carrier reserves the right to change your originally quoted shipping charge to reflect the correct charge, based on the actual weights and dimensions reported by the Reweigh, and apply this new charge on your customer invoice.
- c. This amended charge resulting from the Reweigh will be applied to all shipments with inaccurate dimensions and weights without exception.
- d. Your invoice will show the total amended shipping charge based on the reweigh statistics and any other additional charges that may apply.

### **Carrier's Warranties and Liability**

- a. The Goods shall at all times be at the risk of the Customer and the Carrier shall not be liable in tort (including negligence), contract (including a fundamental breach of contract) or for any act or omission of the Carrier that is outside the authorised scope of its activities under these Conditions, for breach of duty as bailee, for contravention of any statute or breach of statutory duty or otherwise for any loss of, or damage to, failure to deliver, delay in delivery of, or misdelivery of the goods whatsoever, howsoever caused.
- b. The exclusion of liability in Clause 10(a) 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 arising from the Carrier providing the Services under this contract and to any indirect or Consequential Loss or damage whatsoever arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery, howsoever caused including but not limited to loss of income, profits, markets, customers, use, opportunity, reputation or goodwill.
- c. Notwithstanding any other provision in these Conditions, but subject always to Clause 10(a) and Clause 10(b), if any liability whatsoever, howsoever arising, is found to attach to the Carrier or any subcontractor, the Carrier's liability shall be limited in the case of Services supplied under this contract to the lesser of:
  - i. supplying the Services again;
  - ii. payment of the cost of supplying the Services again; or
  - iii. the amount of A\$100.00
- d. The Customer acknowledges that loss or damage are insurable risks and that obtaining insurance is the responsibility of the Customer and if they fail or choose not to do so it is at their risk.
- e. The Carrier shall comply with all statutory obligations that apply to the provision of the Services including but not limited to occupational health and safety laws and any applicable road transport laws.

### **Notice of Loss and Time Bar**

Any claim for loss or damage to the goods or relating to the provision of the Services under this contract must be notified in writing to the Carrier within fourteen (14) days of delivery of the goods or the date by which the goods should have been delivered, whichever is the earlier. Should the Carrier not receive any such notice in writing the Carrier shall be forever discharged from any and all liability to any person (including the Customer) in respect of the goods and or the Services. In any event whatsoever, the Carrier shall be discharged from any and all liability whatsoever unless suit is brought within six (6) months of the provision of the Services, delivery of the goods or when the Services should have been provided or when the goods should have been delivered, whichever is the earlier.

### **Lien**

If, on demand, the Customer fails to pay charges due to the Carrier in respect of any Services rendered by the Carrier, the Carrier will have a general and a particular lien over the goods and/or any other cargo or items the property of the Customer in the Carrier's possession, and without notice to the Customer, may sell all or part of the goods and/or any other cargo or items that are the property of the Customer which are in the Carrier's possession and out of the moneys arising from the sale retain the charges so payable together with all charges and expenses of the detention and sale, and shall render the surplus, if any, of the moneys arising from the sale and such of the goods as remain unsold to the person entitled thereto.

### **Dangerous Goods**

- a. The Customer or the authorised agent shall not tender for carriage any Goods which in the Carrier's sole opinion are or may be explosive, flammable or otherwise dangerous or damaging goods without presenting a full description of those goods and in default of so doing shall be liable for all loss and damage caused thereby.
- b. The Carrier may at any time cause any Dangerous Goods or any Goods which the Carrier believes in its sole opinion are liable or may be liable to become dangerous to be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Customer and without prejudicing the Carrier's right to any charges payable by the Customer to the Carrier.
- c. Anything that has been declared as waste will not be carried.

### **Electrical and Mechanical Goods**

The Customer or the authorised agent shall not tender for carriage any Electrical or Mechanical Goods without presenting a full description of those goods and in default of so doing shall be liable for all loss and damage caused thereby.

The Carrier may at any time cause any Electrical or Mechanical Goods or any Goods which the Carrier believes in its sole opinion are liable or may be liable to become dangerous to be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Customer and without prejudicing the Carrier's right to any charges payable by the Customer to the Carrier.



**Subcontractors**

- a. The Carrier is hereby authorised to subcontract the whole or any part of the Services and such authorisation extends to any subcontractor.
- b. 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 subcontractors and every servant or agent of the Carrier and of any subcontractor. The Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.
- c. The Customer undertakes that no claim will be made against any servant, subcontractor or agent of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the goods or Services under this contract. If any such claim should nevertheless be made, the Customer shall indemnify the Carrier against the consequences thereof.

**Goods and Services Tax**

- a. Words and expressions used in this Clause 16.1 which have a defined meaning in the A New Tax System (Goods and Services Tax Act) (“GST Act”) have the same meaning in this clause as in the GST Act.
- b. Unless expressly stated otherwise, all consideration to be provided under this contract is expressed as exclusive of GST.
- c. Each party agrees that to the extent it makes taxable supplies under this Agreement, it shall issue a tax invoice to the other party.

**Insurance**

- a. Insurance of the Goods is the responsibility of the Customer.
- b. The Customer acknowledges that loss or damage are insurable risks and that obtaining insurance is the responsibility of the Customer and if they fail or choose not to do so it is at their risk.
- c. The Carrier does not issue insurance and is not included in the Charges.

**General**

- a. (Entire Agreement) These Conditions and any valid Rate Cards represent the entire agreement between us.
- b. (Amendment) We may change these Conditions at any time by providing reasonable notice to you, electronically or in writing. If you continue to use our Services after notification of the changes, you are deemed to have accepted those changes.
- c. (Governing Law) These Conditions are governed by the laws of Victoria, Australia and any proceedings against us must be brought in Victoria, Australia only.
- d. (Severance) If any part of these Conditions is void, illegal, unenforceable or invalid, it will be severed from these Conditions to the extent that it is void, illegal, unenforceable or invalid. The remainder of these Conditions will be unaffected by such a severance.
- e. (Interpretation) Unless the contrary intention appears, in these Conditions: (a) capitalised terms used in these Conditions have the meaning given to them in clause 2 (Definitions); (b) the singular includes the plural and vice versa; (c) if a period of time dates from a given day or the day of an act or event, it is to be calculated exclusive of that day; (d) the words “include”, “including”, “for example” or “such as” are not used as, nor are they to be interpreted as, words of limitation, and when introducing an example, do not limit the meaning of the words to which the example relates to that example or examples of a similar kind; (e) a party includes its employees, agents, representatives, contractors and sub-contractors and any servant or agent of its contractors or sub-contractors; (f) a word which denotes a person includes an individual or a body corporate, and also includes the trustee, executor, administrator, and successor in title and permitted assignee of that person; (g) any legislation includes any regulation or instrument made under it and where amended, reenacted or replaced means that amended, re-enacted or replacement legislation; (h) Australian dollars, dollars, A\$ or \$ is a reference to the lawful currency of Australia; and (i) if there is any inconsistency between these Conditions and the Conditions of Service, the Conditions of Service will prevail to the extent of the inconsistency

- f. (Privacy) The Carrier will collect, use and disclose a Customer's personal or other information in accordance with its Privacy Policy as amended from time to time, details of which can be found on the Carrier's Website.
- g. (Assignment) The Consignor shall not assign or transfer this Agreement without the prior written consent of STC. Any purported assignment or transfer without such consent shall be void and of no effect.
- h. (Waiver)
- i. Failure to exercise or enforce or a delay in exercising or enforcing or the partial exercise or enforcement of any right, power or remedy provided by law or under these Conditions by any party will not in any way preclude, or operate as a waiver of, any exercise or enforcement, or further exercise or enforcement of that or any other right, power or remedy provided by law or under these Conditions.
  - ii. Any waiver or consent given by any party under these Conditions will only be effective and binding on that party if it is given or confirmed in writing by that party.
  - iii. No waiver of a breach of any term of these Conditions will operate as a waiver of another breach of that term or of a breach of any other term of these Conditions.

### **Trusts**

- a. If the Customer enters into these Conditions as trustee for any trust ("Trust") then, whether or not the Customer is explicitly identified as entering into these Conditions in that capacity, the Customer warrants and agrees that:
- i. The Customer is bound both personally and in its capacity as trustee of the Trust;
  - ii. The Customer is the sole trustee of the Trust and will not during the term of these Conditions resign that office or appoint a new or additional trustee of the Trust nor cause the Trust to vest;
  - iii. it has entered into these Conditions for the purposes and benefit of the Trust and has obtained the consent or approval of any person which is needed to ensure that the property of the Trust is bound upon execution of these Conditions;
  - iv. it has the power under the relevant deed establishing the Trust (Trust Deed) to enter into these Conditions, to undertake the obligations and liabilities in the manner and the extent contemplated by these Conditions and to apply the assets of the Trust in satisfaction of any money payable under this Agreement;
  - v. it has an unrestricted right to be fully indemnified by the assets of the Trust;
  - vi. it will not cause or suffer the Trust Deed to be varied in any respect (without prior consent of the Company); and
  - vii. it will provide a copy of the Trust Deed to the Company upon request.
- b. The Customer acknowledges that, in entering into these Conditions, the Company has relied on the warranties set out in this clause 19.a.

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