

CNC Carriage Transport Solutions Pty Ltd – Terms & Conditions of Carriage

1. **Definitions**
 - 1.1 **Contract** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
 - 1.2 **CNC** means CNC Carriage Transport Solutions Pty Ltd ATF The Brown Family Trust T/A CNC Carriage Transport Solutions Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of CNC Carriage Transport Solutions Pty Ltd.
 - 1.3 **Sub-Contractor** means and includes:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom CNC may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
 - 1.4 **Client** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CNC to provide the Carriage as specified in any proposal, quotation, order, invoice or other documentation, and:
 - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.5 **Consignee** means the person to whom the Goods are to be delivered by way of the Carriage.
 - 1.6 **Carriage** means all the services supplied by CNC to the Client to facilitate the movement of Goods from one place to another by CNC as may be requested by the Client from time to time (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as the carriage, storage, stowing, packing or handling of the Goods, or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, of fumigating, transhipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations).
 - 1.7 **Goods** shall mean cargo together with any container, trailer, tilt, igloo, wagon, tank, frame(s), packaging, or pallet(s) to be moved from one place to another by way of Carriage by CNC.
 - 1.8 **Dangerous Goods** means Goods which are, or may become, noxious, dangerous, hazardous, inflammable, explosive or offensive (including waste or contaminated or radioactive materials), or may become liable to cause death, injury or damage to any person or property whatsoever (and includes goods likely to cause damage, such as goods likely to harbour or encourage vermin or other pests, and all such goods as falling within the definition of hazardous and dangerous goods in the legislation governing carriage by road, rail, sea or air in the states and territories of Australia) whether prescribed by legislation or otherwise.
 - 1.9 **Confidential Information** means information of a confidential nature whether oral, written or in electronic form including, but not limited to this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **Personal Information** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
 - 1.10 **Cookies** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using CNC's website, then the Client shall have the right to enable / disable provided on the website, prior to making enquiries via the website.**
 - 1.11 **Price** means the Price payable for the Carriage (plus any GST where applicable) as agreed between CNC and the Client in accordance with clause 5 below.
 - 1.12 **GST** means Goods and Carriage Tax as defined within the "A New Tax System (Goods and Carriage Tax) Act 1999" (Cth).
2. **Acceptance**
 - 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Carriage provided by CNC.
 - 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
 - 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
 - 2.4 These terms and conditions are to be read in conjunction with CNC's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by CNC to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
 - 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions Act (Queensland) 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.
3. **Errors and Omissions**
 - 3.1 The Client acknowledges and accepts that CNC shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
 - (a) resulting from an inadvertent mistake made by CNC in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by CNC in respect of the Carriage.
 - 3.2 In the event of such an error or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or willful misconduct of CNC, the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
4. **Change in Control**
 - 4.1 The Client shall give CNC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax numbers, change in trustees, or business practice). The Client shall be liable for any loss incurred by CNC as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
 - 5.1 At CNC's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by CNC to the Client in respect of Carriage undertaken; or
 - (b) CNC's quoted Price (subject to clauses 5.2) which shall be binding upon the Client provided that the Client shall accept in writing CNC's quotation within thirty (30) days.
 - 5.2 CNC reserves the right to change the Price:
 - (a) if a variation to CNC's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of CNC, delivery times or date or otherwise, etc.);
 - (b) to reflect any increases to CNC in the cost of undertaking the Carriage of the Goods which are beyond the reasonable control of CNC (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in fuel, fuel levies, taxes or customs duties or insurance premiums or warehousing costs);
 - (c) for any delay over thirty (30) minutes in either loading and/or unloading (from when CNC reports for such loading or unloading), or any overnight or extended storage of the Goods, occurring other than from CNC's default;
 - (d) where the Price is calculated by weight, measurement or value, CNC may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
 - 5.3 Time for payment for the Carriage being of the essence, the Price will be payable by the Client on the date/s determined by CNC, which may be:
 - (a) on, or before, delivery of the Goods;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is twenty-one (21) days following the end of the month of the date of any invoice/s and/or statement furnished to the Client by CNC.
 - 5.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CNC nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 5.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (excluding Amex (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and CNC.
 - 5.6 CNC may in its discretion allocate any payment received from the Client towards any invoice that CNC determines and may do so at the time of receipt or at any time afterwards. On any default by the Client CNC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CNC, payment will be deemed to be allocated in such manner as preserves the maximum value of CNC's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
 - 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to CNC an amount equal to any GST CNC must pay for any provision of Carriage by CNC under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
 - 5.8 Receipt by CNC of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then CNC's ownership or rights in respect of the Carriage shall continue.
6. **Carriage of Goods**
 - 6.1 CNC is not a "Common Carrier" and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by CNC subject only to these conditions and CNC reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
 - 6.2 The Client authorises CNC (in its discretion at any time without notice to the Client) to:
 - (a) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arranges with any third party to perform or undertake the Carriage of the Goods (or any part thereof). In so engaging such third parties, CNC has and will represent to such third parties that the terms of this Contract, including the benefit of any terms conferred upon CNC, shall extend to such third parties in providing their goods and/or services;
 - (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary, to proceed to or stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever) or method of carriage of the Goods that may be deemed reasonable or necessary in the circumstances, (including, but not limited to, using the services of any third party to ensure the safety of other road users and property and/or compliance with lawful authority requirements and/or Police or private escorts, road closures and/or transport control, using specialist equipment such as special cooling);
 - (c) comply with any order, direction, recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.
 - 6.3 CNC's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.
 - 6.4 CNC may open, at the Client's risk and expense, any document or any packaging, or container in which the Goods are placed or carried, to inspect the Goods to determine their nature or condition, or to determine their ownership or destination, where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced, or otherwise.
 - 6.5 Any time specified by CNC for Carriage of the Goods is an estimate only and CNC will not be liable for any loss or damage incurred by the Client as a result of any delay (including where arising from any action under clause 6.2). However both parties agree that they shall make every endeavour to enable the Carriage of the Goods to be undertaken at the time and place as was arranged between both parties. In the event that CNC is unable to undertake Carriage of the Goods as agreed solely due to any action or inaction of the Client then CNC shall be entitled to charge a reasonable fee for the Carriage of the Goods at a later time and date.
 - 6.6 Subject to clause 16, but without prejudice to any other provision hereof, this Contract and any agreement CNC makes under its authority and any contract made by any person to whom CNC has delegated such authority, shall be made by the Client or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage including storage thereof by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit. All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 5.3.
7. **Client-Packed Containers**
 - 7.1 Subject to any written special instructions to the contrary:
 - (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure;
 - (b) CNC is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.
 - 7.2 Goods requiring special appliances for loading and unloading are accepted for carriage only on condition that such appliances are made available by the Client at the collection or delivery address. If CNC is, without prior arrangement, called upon to load or unload such Goods, CNC shall not be liable to the Client for any loss whatever, however caused, arising out of such loading or unloading and the Client shall indemnify CNC against all claims and demands whatever which could not have been made if such assistance had not been given.
 - 7.3 Any handling, installation, removal, assembly or erection of any kind included in the Carriage of the Goods is undertaken on the basis that CNC accepts no liability for any loss, damage or injury of any kind whatsoever, howsoever arising (including, but not limited to, any negligence or breach of contract by CNC) caused or incurred or occurring during any part of such activity including loss, damage or injury to any person, property or thing or any Goods.
8. **Client's Responsibility**
 - 8.1 The Client expressly warrants, represents, confirms and/or acknowledges that:
 - (a) CNC has relied upon the Client in its description of the Goods (including weight, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, CNC accepts no liability for any discrepancy that may arise with the description;
 - (b) unless specified otherwise in writing, CNC has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those relating to the any applicable dangerous goods codes) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
 - (c) the Client is either the owner, or the authorised agent of the owner, of any Goods or property that is the subject matter of this Contract, and:
 - (i) and the Client is authorised by all persons owning or interested in the Goods to enter into this Contract; and
 - (ii) by entering into this Contract, the Client accepts these terms and conditions for the Consignee or any owner or party with interest in the Goods, as well as for all other persons on whose behalf the Client is acting.
 - (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
 - (e) the person handing over the Goods to CNC is authorised to sign and accept these terms and conditions;
 - (f) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
9. **Insurance**
 - 9.1 The Goods are carried and stored at all times at the Client's sole risk, and not at the risk of CNC. CNC is under no obligation whatsoever to effect insurance on any Goods, nor arrange for any Sub-Contractor or agent engaged in the course of undertaking the Carriage of the Goods to affect such insurance, without the Client's written instruction. Any such insurance is at the Client's expense. Where the Client's instruction does not specify the class of insurance to be effected, CNC may, in its sole discretion, effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resulting from:
 - (a) wear, tear, moths, vermin, damp, mildew or loss of market;
 - (b) loss, damage or expense proximately caused by delay;
 - (c) Gradual Deterioration or malicious damage of the Goods insured;
 - (d) any force majeure event, rust or oxidation, unless due to or consequent upon fire, collision, overturning or other accident;
 - (e) any exclusion common to that class of insurance; and
 - (f) any other exclusion advised by the Client to CNC, and detailed in the special instructions.
10. **Dangerous Goods**
 - 10.1 Unless otherwise agreed in writing, CNC will not accept Dangerous Goods for carriage, nor anything which may encourage vermin or pests. The Client shall be liable for (and shall indemnify CNC against) all loss and damage and additional charges and expenses incurred or sustained by CNC arising out of:
 - (a) any false or misleading or inaccurate information or description of such Dangerous Goods; or
 - (b) any default or failure to declare the Goods as dangerous Goods and to provide full particulars thereof.
 - 10.2 When Dangerous Goods are accepted for carriage, the Client warrants that:
 - (a) the carriage requested by the Client is not prohibited;
 - (b) the Client has fully disclosed in writing to CNC before CNC took possession of the Goods:
 - (i) full particulars and description of the Dangerous Goods;
 - (ii) all requirements of lawful authorities for such carriage;
 - (iii) the name, nature and value of the Dangerous Goods; and
 - (iv) all other relevant information.
 - 10.3 The Client is liable for any loss or damage suffered by CNC or any Sub-Contractor or other person through the Carriage of Dangerous Goods (whether declared or not).
 - 10.4 CNC may, at its sole discretion, at the Client's expense and without compensation to the Client or to any other person interested in the Goods, and without prejudice to its charges or any other rights hereunder:
 - (a) remove, sell, destroy or otherwise dispose of any undecleared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Client or any other person interested in the Goods; and
 - (b) dispose or destroy or abandon or render harmless:
 - (i) any Goods which CNC believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination; and
 - (ii) any undecleared Dangerous Goods which are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature.
11. **Delivery of the Goods**
 - 11.1 CNC shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Client in writing, or at any other location directed by the Client orally.
12. **Loss or Damage**
 - 12.1 Subject to clause 16, and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Goods shall be and remain at the Client's sole risk, and CNC shall not be under any liability for:
 - (a) any loss or damage suffered by the Client (or any third party) as a result of the Client contravening clause 8;
 - (b) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or compliance with the directions of any person or lawful authority entitled to give them;
 - (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), 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 are or have been in the possession of CNC or not) or any injury or loss of any nature whatsoever;
 - (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (e) any act or omission whether willful, reckless, negligent or otherwise of CNC, or its servants or agents or Sub-Contractors;
 - (f) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
 - (g) any act, omission or neglect of the Client, including any breach of its obligations under this Contract, insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.
13. **Conditions of Storage**
 - 13.1 CNC is authorised to remove the Goods from one warehouse to another without cost to the Client. CNC will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
 - 13.2 The Client is entitled, upon giving CNC reasonable notice, to inspect the Goods in store but a reasonable charge may be made by CNC for this service.
 - 13.3 Subject to payment for the balance of any fixed or minimum period of storage agreed, the Client may require the Goods to be removed from the store at any time on giving CNC not less than five (5) working days' notice. If the Client gives CNC less than the required notice, CNC will still use its best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
 - 13.4 The Client agrees to remove the Goods from storage within twenty-eight (28) days of a written requirement from CNC to do so. In default, CNC may, after fourteen (14) days' notice to the Client, SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable