

**1. Definitions**

- 1.1 "Carrier" shall mean LAWSON SIDELOADER SERVICES Pty Ltd and its successors and assigns.
- 1.2 "Sub-Contractor" shall mean and include;
  - (a) railways or airways operated by the Commonwealth or any State or any other country or by any corporation; or
  - (b) any other person, firm or carrier with whom the Carrier may arrange for the carriage of any Goods that are 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 clause 1.2(a) and 1.2(b).
- 1.3 "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.4 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
- 1.5 "Goods" shall mean cargo together with any container, packaging, or pallet(s) supplied by the Customer to the Carrier for the purposes of movement from one place to another by way of the Carrier's Services (and where the context so permits shall include any supply of Services as hereinafter defined).
- 1.6 "Services" shall mean all services supplied by the Carrier to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined supra).
- 1.7 "Price" shall mean the cost of the Services as agreed between the Carrier and the Customer subject to clause 4 of this contract.

**2. Acceptance**

- 2.1 Any instructions received by the Carrier from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of the Carrier.
- 2.3 None of the Carrier's agents, contractors or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Carrier in writing nor is the Carrier bound by any such unauthorised statements.
- 2.4 These terms and conditions are to be read in conjunction with the Carrier's consignment note, agreement, airway bills, manifests, or any other forms as provided by the Carrier to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

**3. Services**

- 3.1 The Services shall be as described on the invoices, consignment note, airway bills, manifests, sales order or any other forms provided by the Carrier to the Customer.

**4. Price and Payment**

- 4.1 At the Carrier's sole discretion the Price shall be the Carrier's quoted price that shall be binding upon the Carrier provided that the Customer shall accept the Carrier's quote within twenty-eight (28) days.
- 4.2 The Carrier may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier (including, without limitation, foreign exchange fluctuations, increases in fuel prices, terminal fees, taxes, customs duties, insurance premiums or warehousing costs).
- 4.3 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other order forms. If no time is stated then payment shall be on delivery of the Goods.
- 4.4 At the Carrier's sole discretion, payment for approved Customer's shall be due Thirty (30) days end of month after the invoice date.
- 4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and the Carrier.
- 4.6 The Price shall be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent those taxes are expressly included in any quotation given by the Carrier.

**5. Carrier not Common Carrier**

- 5.1 The Carrier 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 the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage or transport of articles for any person corporation or carrier and the carriage or transport of any class of articles at its discretion.

**6. Customer-Packed Containers**

- 6.1 If a Container has not been stowed by or on behalf of the Carrier the Carrier shall not be liable for loss of, or damage to, the Goods caused by;
  - (a) the manner in which the Container has been stowed; or
  - (b) the unsuitability of the Goods for carriage in Containers; or
  - (c) the unsuitability or defective condition of the Container.

**7. Nomination of Sub-Contractor**

- 7.1 The Customer hereby authorises the Carrier (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods or provision of any services which are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon

delivery of the said Goods to such Sub- Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Carrier shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

**8. Method of Transport**

- 8.1 If the Customer instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method designated but if that method cannot conveniently be adopted by the Carrier the Customer shall be deemed to authorise him to carry or have the Goods carried by another method or methods.

**9. Route Deviation**

- 9.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.

**10. Delivery**

- 10.1 The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Customer for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this contract if at that address the Carrier obtains from any person a receipt or a signed delivery docket for the Goods.
- 10.2 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 10.3 The failure of the Carrier to deliver shall not entitle either party to treat this contract as repudiated.
- 10.4 The Goods are carried entirely at the risk of the Customer and not of the Carrier and unless otherwise expressly agreed in writing no responsibility in tort or contract or otherwise will be accepted by the Carrier for any loss of or damage to or deterioration of Goods or misdelivery or failure to deliver or delay in delivery of Goods including chilled, frozen refrigerated or perishable Goods either in transit or in storage for any reason whatsoever.

**11. Loss or Damage**

- 11.1 The Carrier shall be under no liability whatsoever unless;
  - (a) the Customer provides written notice to the Carrier detailing the alleged damage, and that such written notice shall be received by the Carrier seven (7) days after the delivery of the Goods; or
  - (b) In the case where the Goods have been lost in transit then the Customer shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of dispatch of the Goods.

**12. Unpaid Carrier's Rights to Dispose of Goods**

- 12.1 The Carrier shall have a lien on the Goods and any documents relating to the Goods and/or any other Goods or cargo of the Customer in the possession or control of the Carrier and any documents relating to those other Goods or cargo for all sums payable by the Customer to the Carrier for that purpose and shall have the right to sell such Goods or cargo by public auction or private treaty without notice to the Customer. The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

**13. Insurance**

- 13.1 The Carrier will not arrange insurance of the Goods.

**14. Claims**

- 14.1 No claims for demurrage or damage will be accepted after 60 days.

**15. Charges Earned**

- 15.1 The Carrier's charges shall be considered earned as soon as the Goods are loaded from or delivered to the Customer's premises.

**16. Waiting time**

- 16.1 A charge may be made by the Carrier in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period shall commence upon the Carrier reporting for loading or unloading. Labour to load or unload the containers contents shall be the responsibility and expense of the Customer or Consignee.

**17. Empty Container Dehiring, Demurrage and Detention Fees**

- 17.1 The Customer shall notify the Carrier in writing AFTER a container has been unpacked and is ready for collection (Empty Notification).
- 17.2 The Carrier requires 48 hours (2 business days) from the Empty Notification to collect the empty container for dehiring and is not responsible for any demurrage incurred prior to the expiry of this period.
- 17.3 Empty notifications received after the closing time of the relevant empty yard less normal loading and travel time shall be deemed to be notified at 9:00am on the next business day.
- 17.4 The Carrier is not responsible for any demurrage or delays due to unavailability of dehire booking slots, empty yard availability, unusual traffic or road conditions or other delays beyond the Carrier's control.
- 17.5 The Carrier's liability for demurrage and detention charges shall be limited to \$50 per twenty foot container or \$100 per forty foot container, per day, irrespective of shipping line or equipment type and in no case shall exceed 75% of the base delivery charge excluding fees and levies.
- 17.6 The Carrier is not liable for any demurrage or late charges incurred in relation to containers dehired directly to the stevedore terminals.

**18. Dangerous Goods**

18.1 The Customer or his authorised agent shall not tender for carriage any explosive, inflammable or otherwise dangerous 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.

**19. Consignment Note**

19.1 It is agreed that the person delivering any Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note for the Customer.

**20. Customers Responsibility**

20.1 The Customer expressly warrants that the Customer is either the owner or the authorised agent of the owner of any Goods or property the subject matter of this contract of cartage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.

**21. Disclaimer**

21.1 By entering into any agreement to which these conditions apply, the Customer on his own behalf and as agent of the owner, sender and consignee agrees and further offers to limit the liability of all servants, employees and agents of the Carrier in respect to the Goods and subject to the agreement to the extent that each such servant, employee and agent shall be protected by and entitled to the full benefit of all provisions in these conditions excluding or restricting tortious liability of any kind;

- (a) The offer hereinbefore referred to shall be accepted by the act of each such servant employee or agent in performing any function in relation to or affecting the Goods the subject of the agreement;
- (b) For the purposes of the foregoing provisions of this clause the Carrier is and shall be deemed to be acting as agent on behalf of the trustee for the benefit of all persons who are or become its servants, employees or agents from time to time and all such persons shall to this extent be and be deemed to be parties to the agreement concerned.

21.2 In addition to and without prejudice to the foregoing conditions the Customer undertakes that it shall in any event indemnify the Carrier against all liabilities suffered or incurred by the Carrier arising directly or indirectly from or in connection with the Customer's instructions or their implementation or the Goods, and in particular the Customer shall indemnify the Carrier in respect of any liability it may be under to any servant, agent or subcontractor, or any haulier, carrier, warehouseman, or other person whatsoever at any time involved with the Goods arising out of any claim made directly or indirectly against any such party by the Customer or by any sender, consignee or owner of the Goods or by any person interested in the Goods or by any other person whatsoever.

**22. Trade Practices Act 1974 and Fair Trading Acts**

22.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Commonwealth Trade Practices Act or Fair Trading Acts of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

22.2 Liability of the Carrier arising out of any one incident, whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by the Carrier.

- (a) The supplying of the Services again; or
- (b) The payment of the cost of having the Services supplied again; or
- (c) The lesser of AUD\$200.00 or AUD\$2.00 per kilogram of the gross weight of any Goods, packages or units lost or damaged or \$20.00 per package or unit lost or damaged. For the purpose of this clause the word "package" shall include the contents even if particulars have been provided or incorporated in any document of the Carrier.

**23. Default & Consequences of Default**

23.1 Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and shall accrue at such a rate after as well as before any judgement.

23.2 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Carrier from and against the entire Carrier's costs and disbursements including on a solicitor and own client basis and in addition all of the Carrier's nominees costs of collection.

23.3 Without prejudice to any other remedies the Carrier may have, if at any time the Customer is in breach of any obligation (including those relating to payment); the Carrier may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Carrier will not be liable to the Customer for any loss or damage the Customer suffers because the Carrier exercised its rights under this clause.

23.4 All unpaid charges shall be paid in full and without any offset, counter claim or deduction, in the currency of the place of receipt of the Goods or at the Carrier's option, in the currency of the place of delivery at the TT selling rate in effect on the day of payment. If the date determined above falls on a day which banks are closed for business, the rate ruling on the next succeeding business day shall govern.

23.5 In the event that:

- (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Customer will be unable to meet its payments as they fall due, or;
- (b) the Customer becomes insolvent, convenes a meeting with its

creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors, or;

- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then without prejudice to the Customer's other remedies at law;
- (i) the Carrier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies; and
- (ii) all amounts owing to the Carrier shall, whether or not due for payment, immediately become payable.

**24. Security and Charge**

24.1 Notwithstanding anything to the contrary contained herein or any other rights which the Carrier may have howsoever:

- (a) Where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Carrier or the Carrier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Carrier (or the Carrier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) Should the Carrier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) To give effect to the provisions of subclause (a) and (b) hereof the Customer and/or the Guarantor (if any) do hereby irrevocably nominate constitute and appoint the Carrier or the Carrier's nominee as the Customer's and/or Guarantor's true and lawful attorney to execute mortgages and charges (whether registerable or not) including such other terms and conditions as the Carrier and/or the Carrier's nominee shall think fit in his/her/its/their absolute discretion against the joint and/or several interest of the Customer and/or the Guarantor in any land, realty or asset in favour of the Carrier and in the Customer's and/or Guarantor's name as may be necessary to secure the said Customer's and/or Guarantor's obligations and indebtedness to the Carrier and further to do and perform all necessary and other acts including instituting any necessary legal proceedings, and further to execute all or any documents in the Carrier's absolute discretion which may be necessary or advantageous to give effect to the provisions of this clause.

**25. Privacy Act 1988**

25.1 The Customer and/or the Guarantor/s agree for the Carrier to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor/s in relation to credit provided by the Carrier.

25.2 The Customer and/or the Guarantor/s agree that the Carrier may exchange information about Customer and Guarantor/s with those credit providers named in the Application for Credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

- (a) To assess an application by Customer;
- (b) To notify other credit providers of a default by the Customer;
- (c) To exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and
- (d) To assess the credit worthiness of Customer and/or Guarantor/s.

25.3 The Customer consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

25.4 The Customer agrees that Personal Data provided may be used and retained by the Carrier for the following purposes and for other purposes as shall be agreed between the Customer and Carrier or required by law from time to time:

- (a) provision of Services;
- (b) marketing of Services by the Carrier, its agents or distributors in relation to the Goods and Services;
- (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services;
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and
- (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.

25.5 The Carrier may give, information about the Customer to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Customer; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

**26. General**

- 26.1 If any provision of these terms and conditions shall be invalid, void or illegal or unenforceable the validity existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.2 All Services supplied by the Carrier are subject to the laws of Victoria and the Carrier takes no responsibility for changes in the law that affect the carriage of the Goods.
- 26.3 The Carrier shall be under no liability whatever to the Customer for any indirect loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Carrier of these terms and conditions.
- 26.4 In the event of any breach by the Carrier the remedies of the Customer shall be limited to damages. Under no circumstances shall the liability of the Carrier exceed the Price of the Services.
- 26.5 The Customer shall not set off against the Price amounts due from the Carrier.
- 26.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
- 26.7 When recovering costs and customer has exceeded payment terms and responsibility the customer is liable for all recovery costs incurred by debt collector where required.
- 26.8 The carriage and these terms and conditions are governed by the Laws of the State of Victoria and the Customer agrees to the jurisdiction of the Victorian courts
- 26.9 The Carrier reserves the right to review these terms and conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Carrier notifies the Customer of such change.

-- End Terms --