

# ALLSONS

## TRANSPORT PTY LTD

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### Terms & Conditions - 2009

#### **Definitions**

1. In the set terms and conditions:

“Charges” means the Company’s charges for providing the Services being those charges recorded on the face of the consignment note plus the charges referred to in clauses 4,10 and 14.

“Company” means Allsons Transport Pty Ltd.

“Consignor” means the Consignor specified on the face of the consignment note.

“Consignee” means the Consignee specified on the face of the consignment note.

“Goods” means the cargo accepted from the Consignor, together with any container, packaging or pallet supplied by or on behalf of the Consignor.

“Services” means and includes the whole of the conditions and services undertaken by the Company, in connection with the Goods including, but not limited to the carriage, transport and storage of Goods.

“Subcontractor” includes any person who, pursuant to a contract or arrangement with any other person (whether or not the Company) performs or agrees to perform the Services or any part thereof;

and unless the context otherwise requires the singular number shall include the plural, and vice versa, each gender shall include the other two and words denoting persons shall include corporations.

“CAST” means “Central Australian Standard Time” when used in conjunction with “operating hours” or “time”.

#### **Company’s provision of Services**

2. The Company is not a “Common Carrier” and shall accept no liability as such. All Services are provided by the Company subject to these terms and conditions and the Company reserves the right to refuse the carriage, transport or storage of Goods for any person or corporation and the carriage, transport or storage of any class of Goods at its sole discretion.

#### **Formation of this contract**

3. The Consignor warrants that it is either the owner of the Goods or authorised agent of the owner of the Goods with authority to bind the owner to this contract, or otherwise has authority to arrange the carriage of the Goods under this contract.

#### **Insurance and Risk**

4. Company’s charges do not include a fee for insurance and the Company will not arrange insurance.

#### **Loss or Damage to Goods**

5. The Consignor shall indemnify and keep the Company indemnified against all loss, actions, proceedings, costs, claims and damages arising out of or in connection with the Services. This clause will apply even if the loss or damage occurs in events which are not in the contemplation of the parties nor foreseeable by them or in events which could constitute a fundamental breach of this contract.

#### **Claims against the Company**

6. (a) The Consignor shall indemnify and keep indemnified the Company from all liability howsoever arising including any claim for negligence or misconduct, arising out of or in connection with the Services including suits claims proceedings damages and costs which may be made taken or incurred by or against the Company.

(b) The Consignor must provide a Weight Declaration in regards to any Container or Goods the Company is asked to carry.

7. (a) Without limiting clause 6 the Consignor shall indemnify and keep the Company indemnified against all liabilities for payment or payments made by the Company by way of compromise or any other out of Court settlement to any third party or other out of Court settlement to any party or parties making any claim.

(b) The Consignor agrees not to seek payment by way of contribution or recompense or any other means from the Company or its employees or Subcontractors in respect of any amount whatsoever paid by the Consignor to any party or parties in respect of a claim against the Consignor.

(c) The Consignor agrees not to seek to join the Company or its employees or Subcontractors as a co-defendant or third party or in any other capacity in any proceedings whatsoever taken by any party or parties in respect of a claim against the Consignor.

### **Undertaking**

8. The Consignor undertakes that no claim or allegation shall be made, whether by the Consignor or any other person who is or may hereafter be interested in the Goods, against any person (including the Company) by whom (whether as Subcontractor, principal, employer, servant, agent or otherwise) the Services or any part thereof are provided which imposes or attempts to impose upon such person any liability whatsoever and howsoever arising (including without limiting the foregoing from negligence or breach of contract or wilful act or default of the Company or others) in connection with the Goods. If any such claim or allegation should nevertheless be made against any such person, the Consignor shall indemnify the person against whom such claim or allegation is made against the consequences thereof. For the purposes of this clause, the Company is or shall be deemed to be acting as agent on behalf of and for the benefit of all such persons who shall to this extent be deemed to be parties to this contract.

### **Rights, exemptions etc for other people**

9. Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence, indemnity and immunity of whatsoever nature applicable to the Company or to which the Company is entitled hereunder shall also be available and shall extend to protect:

(a) All Subcontractors,

(b) Every Servant or agent of the Company or of a Subcontractor,

(c) Every other person (other than the Company) by whom the Services or any part thereof are provided, and

(d) all persons who are or may be vicariously liable for the acts or omissions of any person falling within (a), (b) or (c) hereof; and for the purposes of this clause, the Company is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons who shall to this extent be deemed to be parties to this contract.

### **Method of Carriage**

10. If the Consignor expressly or impliedly instructs the Company to use or its is expressly or impliedly agreed the Company shall use a particular method of handling or storing the Goods or a particular method of carriage, whether by road, rail, sea or air, the Company shall give priority to that method, but in any event the method or methods of handling, storing and/or carriage adopted by the Company shall remain the sole discretion of the Company and the Consignor hereby authorises the Company to adopt any method or methods other than the method instructed or agreed. The Company reserves the right to charge for demurrage at the rate charged to the Company directly or indirectly by any railway or shipping authority or by any other person, firm or company.

### **Deviation from usual route or place of storage**

11. The Consignor hereby authorises any deviation from the usual route or carriage or place of storage of the Goods which may in the absolute discretion of the Company, be deemed desirable or necessary in the circumstances.

### **Delivery**

12. (a) The Company is authorised to deliver the Goods at the address nominated to the Company by the Consignor for that purpose.

(b) The Company shall be deemed to have delivered the Goods in accordance with this contract if at that address it obtains from any person a receipt or signed delivery docket for the Goods.

(c) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Company, the Company may at its option deposit the Goods at that place or store the Goods. If the Goods are deposited, the deposit shall be deemed to be due delivery hereunder. If the Goods are stored by the Company, the Consignor shall pay or indemnify the Company for all costs and expenses incurred in or about such storage and the Company shall be at liberty to re-deliver them to the Consignor from the place of storage at the Consignor's expense.

12d. Where Goods are delivered utilising Tailgate or Hand Unloading, the Driver shall not be expected to move the Goods an unreasonable distance from the vehicle. This means no more than 15 metres in direct sight of the vehicle, unless prior arrangement has been made with the Company.

13. Where the Goods are accepted for forwarding by rail to an address in a town or to a place where the Company has no receiving depot the Goods shall be deemed duly delivered according to contract if they are delivered to the nearest railhead.

14. Warehouse operating hours are Monday to Friday 7.30am to 3.30pm (CAST). Penalties will apply for opening Warehouse facilities outside these times.

15. Orders received via Fax or Email prior to and including up to 10.30am (CAST) the previous day will be delivered the following day.

#### **Reasonable charges of the Company**

16. The Consignor shall be and remain responsible to the Company for all its proper charges incurred for any reasons, including taxes, duties, levies, imposts, deposits or charges incurred in respect of carriage of the Goods. A charge may be made by the Company in respect of any delay in excess of thirty minutes in loading or unloading occurring other than a result of the default of the Company. Such permissible delay period shall commence upon the Company report for loading or unloading. Provisions of labour to load and unload the Goods shall be the responsibility and expense of the Consignor.

#### **Payment of charges**

17. The Consignor shall pay the Charges to the Company within seven (7) days after the date when delivery is made or would in the ordinary course of events have been made in accordance with this contract, or if the Charges relate solely to storage of Goods, within seven (7) days after the Consignor receives the Company's account therefore.

18. The Charges shall be deemed fully earned as soon as the Goods are loaded and despatched from the Consignor's premises or accepted for storage and shall be payable and non-refundable in any event, whether the Goods are delivered to the Consignee or not, and whether damaged or otherwise.

19. If payment is not received by the due date, an overdue fee of \$15 per overdue invoice may be charged and will be payable. Interest at the rate of 15% per annum will be calculated daily on and from the date the said amount was due for payment until payment in full is received.

19a **REVERSAL FEE:** An additional cost of \$10.00 per invoice will be charged to reverse charges

19b **RE-CONSIGNMENT FEE:** An additional charge will also be imposed for any freight requiring re-direction

#### **Company's lien**

20. The Company shall have a lien on the Goods and any documents relating thereto and on any other Goods of the Consignor in the possession of the Company or any documents relating thereto for all sums payable by the Consignor to the Company and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to the Consignor.

#### **Dangerous Goods and inspection of Goods**

21. (a) The Consignor shall not tender for carriage or storage any volatile spirits or explosive Goods or Goods which are or may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full and adequate description disclosing the nature of such Goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Company the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, the same at any time be retained, destroyed, disposed of, abandoned or rendered harmless by the Company, without compensation to the Consignor and without prejudice to the Company's right to any Charges.

(b) The Company is entitled to open any document package or other container in which any of the Goods are placed or carried to inspect the Goods either to determine the nature or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced.

**Packaging etc – Consignor’s warranty**

22. The Consignor warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods (including where necessary the Australian Code for the Transportation of Dangerous Goods by Rail, Air Navigation Orders and the international Dangerous Goods Code) and the Goods are packed in a manner adequate to withstand the ordinary risks of storage and carriage having regard to the nature and hereby indemnifies the Company against any liability whatsoever as a result of or arising out of the Consignor’s failure to comply with each of these warranties.

**Consignor responsible for packing of Goods**

23. The Consignor is responsible for the packing of the Goods including the packing in the container which may be supplied to the Consignor by the Company and the Company accepts no responsibility for loss or damage to the Goods caused by inadequate or inappropriate packing or packaging.

**Packaging etc – Consignees requirements**

24. It is agreed that the Consignor shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the Consignee and for any expense incurred by the Company arising from any failure to so conform.

**Variation of Terms and Conditions**

25. It is agreed that no servant or agent of the Company nor any other person has any power to waive or vary any of these terms and conditions unless such waiver or variation is in writing, signed by an executive officer of the Company.

**Collection of cash on Consignor’s behalf**

26. All Goods received by the Company for carriage, forwarding or storage are accepted subject to the condition that the Company shall accept responsibility for the collection of cash on delivery or any other payments on behalf of the Consignor or any other person. When Goods are tendered by any person with instructions for the Company to collect such payments, the Company shall not be bound by such instructions notwithstanding that the Company may accept the Goods as tendered and perform other services of carriage, forwarding or storage in relation to those Goods.

**Breach of these Terms and Conditions**

27. All the rights, immunities and limitation of liability in these terms and conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract by the Company or any other person entitled to the benefit of such provisions.

**Severability**

28. It is hereby agreed that if any provision or part of any provision of this contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.

**Company may subcontract**

29. The Company and any Subcontractor shall be entitled to subcontract on any terms the whole or any part of the Services.

**Legislation**

30. Notwithstanding the provisions hereof these terms and conditions shall be read subject to any implied terms, conditions or warranties imposed by the Trade Practices Act 1974 (Commonwealth) or any other Commonwealth or State Legislation in so far as such maybe applicable and prevent either expressly or impliedly the exclusion or modification of any such terms, condition or warranty. To the extent that the Company is liable for breach of any such implied term, condition or warranty, the Company’s liability shall be limited to supplying the Services again or paying the costs of having the Services supplied again.

31. The Consignor acknowledges that it is aware of and understands any applicable legislation relating to the disposal of uncollected Goods and confirms that its place of abode for the purpose of that legislation is that set out on the front of the Consignment Note.

**Applicable Law**

32. These terms and conditions shall be governed and construed in accordance with the laws of South Australia and any proceedings against the Company shall be brought in that State and not elsewhere.

**Headings for convenience only**

33. The headings of these terms and conditions are provided only for convenience and shall have no effect on their interpretation.