

1 DEFINITIONS AND INTERPRETATION

In these Terms and Conditions of Carriage:

Claim includes any claim, including a notice, demand, debt, account, action, expense, damage, loss, cost, lien, liability, proceeding, litigation (including reasonable legal costs), investigation or judgment of any nature, whether known or unknown.

Consumer Guarantee means a consumer guarantee as set out in under Part 3-2, Division 1 of the Australian Consumer Law.

Customer means a customer who has engaged the Services of Static Transport.

Goods means the chattels, articles or things tendered for carriage or bailment or other Services by the Customer and shall include the container(s), unit load device(s) or other packaging containing same and any other pallet(s), items or goods delivered with same to the Static Transport or the Subcontractor.

Loss means any damage, loss, liability, expense or cost whether direct or indirect, consequential or incidental.

Services means the services selected by the Customer, including, but not limited to carriage, transport, movement, packing, handling, storage/warehousing, hauling, recoveries, salvage, and/or any other service agreed between Static Transport and the Customer pursuant to these terms and conditions:

Static Transport means Static Transport Pty Ltd (ACN 155 974 020), its employees, servants, agents, subsidiaries and/or associated entities.

Subcontractor means any person, firm or company (other than Static Transport) by whom the Services or any part thereof are arranged, performed or undertaken by.

2 GENERAL

Static Transport agrees to supply the Services to the Customer on these Terms and Conditions in a professional manner, with due care, skill and diligence. The method(s) of undertaking the Services shall be at the sole discretion of Static Transport and the Customer hereby authorises Static Transport to adopt any method(s) other than any method which may have been instructed or agreed.

3 NOT A COMMON CARRIER

Static Transport is not a common carrier and does not accept liability as a common carrier. Static Transport may refuse the carriage, transport or storage of Goods for any person or corporation for any reason whatsoever, and the carriage, transportation or storage of any Goods is at Static Transport's absolute discretion.

4 DELIVERY

- (a) Static Transport shall use reasonable endeavours to deliver the Good(s) as specified by the Customer. Static Transport shall not be bound to deliver the Good(s) except to the Customer or to such other person(s) as may be authorised in writing by the Customer to receive the Good(s) or to effect delivery in such other manner as specified by the Customer.
- (b) If Static Transport is unable to deliver the Good(s) for any reason (including failure on the part of the Customer or other nominated receiver within a reasonable time), Static Transport shall be entitled to store the Good(s) 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 storage and additional charges until the delivery is accomplished.
- (c) Static Transport shall not be liable for any failure or delay in delivering the Good(s) where such failure or delay is wholly or partly due to any cause or circumstance outside the reasonable control of Static Transport including, but not limited to, war, strikes, lockouts, industrial disputes or arrest, government restrictions or intervention, transport delays, fire, act of God, breakdown of any mechanical equipment including any Goods, shortage of supplies or labour, storm or tempest, theft, vandalism, riots, civil commotions or accidents of any kind.
- (d) The Customer shall provide adequate and suitable facilities for the loading and/or unloading of the Goods from the Company's, or its servants', employees', Subcontractors' or otherwise, vehicles.

5 WAREHOUSING

- (a) The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company. In every case, whether warehousing is incidental or the primary Service provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Services under these Terms and Conditions.

6 PAYMENT OF FEES

- (a) Static Transport's fees are earned as soon as the Good(s) is/are picked up or accepted for storage and the Customer must pay all fees which may include towage, salvage, sundries, storage and freeway tolls based on the tax invoice issued by Static Transport and in accordance with the trading terms agreed with Static Transport.
- (b) Static Transport may incur and recover third party expenses in performing the Services for which the Customer must reimburse Static Transport, unless expressed as inclusive in Static Transport's quotation, including but not limited to storage, tolls etc.
- (c) The Customer shall pay to Static Transport all sums for Services immediately when due without deduction or deferment on account of any claim, counterclaim or set off.

- (d) All prices quoted by Static Transport are exclusive of GST.
- (e) On all accounts overdue to Static Transport, Static Transport shall be entitled to charge interest calculated in accordance with the *Penalty Interest Rates Act 1983* (Vic) from the time such accounts become overdue.
- (f) If, on demand, the Customer fails to pay charges due to Static Transport in respect of any Services rendered by Static Transport, Static Transport will have a general and a particular lien over the Good(s) and/or any other property of the Customer in Static Transport's possession, and without notice to the Customer, may sell the Good(s) and all or part of any other property of the Customer which are in Static Transport'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.

7 CHANGE AND CANCELLATION

Static Transport may charge a cancellation fee equal to 50% of the price of the Services if the Customer cancels or seeks to re-schedule the Services within 48 hours of the booking time.

8 SALE AND DISPOSAL OF GOODS

- (a) The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:
 - (i) Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the consignee or for any other reason, and
 - (ii) any perishable Goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

9 SUBCONTRACTORS

- (a) Static Transport 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 Static Transport or providing any right or exemption from liability to Static Transport shall also be available and shall extend to protect all Subcontractors and every servant and agent of Static Transport and of any Subcontractor.

10 LIMITATION OF LIABILITY AND INDEMNITY

- (a) The Customer is responsible for making Static Transport aware of any fragile components or pre-existing damage to the Good(s). If the Customer alleges that Static Transport has damaged the Good, the Customer must prove the state of the Good(s) prior to Static Transport undertaking the Services.
- (b) If the Australian Consumer Law applies, Static Transport's Services may come with guarantees that cannot be excluded under the Australian Consumer Law. The Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. The Customer is also entitled to have the Services replaced if they fail to be of acceptable quality and the failure does not amount to a major failure.
- (c) To the extent permitted by law, Static Transport will not be responsible or liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether:
 - (i) Caused by the negligence and/or recklessness of the Company's servants, employees, Subcontractors or otherwise; or
 - (ii) resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or Subcontractors; and/or
 - (iii) In relation to pre-existing damage to the Good(s).
- (d) To the extent permitted by law, the Good(s) shall at all times be at the risk of the Customer, and Static Transport shall not be liable for any Loss or Claim whether in tort (including negligence), contract (including a fundamental breach of contract) or for any act or omission of Static Transport that is outside the authorised scope of its activities under this contract, 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 Good(s) whatsoever, howsoever caused.
- (e) To the extent permitted by law, the exclusion of liability in clause 7(d) extends to include not only loss or damage to the Good(s), but loss, damage or injury to any person property or thing damaged 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.
- (f) Notwithstanding any other provision in these conditions of carriage, but subject always to clauses 7(d) and 7(e), to the maximum extent permitted under the Australian Consumer Law, Static Transport's liability for breach of a Consumer Guarantee, if the Consumer Guarantees apply at law, is limited to any one or more of the following, at Static Transport's election:
 - (i) the supplying of the Services again; or

- (ii) the payment of the cost of having the Services supplied again by an alternative supplier.
- (g) Notwithstanding any other provision in these conditions of carriage, but subject always to clauses 7(d) and 7(e), to the maximum extent permitted by law, Static Transport limits its liability for any Loss or Claim in connection with this Agreement, to the price of the Services.
- (h) The Customer indemnifies and holds Static Transport harmless to the full extent permitted by law for any loss or damage whatsoever arising in connection with the supply of the Services to the Customer.

11 GENERAL

- (a) These Terms and Conditions of Carriage will govern the future supply of services by Static Transport to the Customer unless new Terms and Conditions of Carriage are issued by Static Transport to the Customer.
- (b) If any provision of the Agreement is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these terms and conditions.
- (c) The Agreement is governed by and is to be construed in accordance with the laws applicable in Victoria, Australia.

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