

Z Trucks Pty Ltd - Contract of Carriage

DEFINITIONS AND INTERPRETATION

- Words in the singular shall include the plural and vice versa.
- Headings appearing in this contract are to be used as a guide only.
- In these conditions:
 - "Carrier" shall mean Z Trucks Pty Ltd ACN 144 936 229 and its successors, carrying on business on behalf of all current and future Company or Business Names, its officers, its servants and employees.
 - "Charges" include freight and all expenses and money obligations incurred and payable by the client.
 - "Client" means the person identified in the Declaration and Acknowledgement below and with whom the Company contracts to provide Services and any reference to the Client in this contract shall include, unless the terms specifically provide otherwise, the Consignor or any agent acting on its behalf.
 - "Consignee" means the receiver of the goods being the subject of this contract.
 - "Consignor" means the person authorised by the Client to despatch goods at his request.
 - "Contract" means all contracts entered into between the Carrier and the Client.
 - "Invoice" shall mean Invoice/Statement in electronic or printed form.
 - "Services" means the transport of goods including any incidental storage thereof.
 - "Sub-contractor" means and includes (a) any state or person; (b) any vehicle supplier, contractor or other person, firm or company with whom the Carrier may arrange for the carriage of any goods the subject of this contract; (c) any officer, employee, agent or sub-contractor of any person in (a) and (b) above.

RIGHT TO ASSIGN

- Without limiting any right or privilege available to the Carrier under this contract, Z Fleet may in its absolute discretion assign or transfer any right, benefit or privilege under this contract to any successor, assignee or other person.

NOT A COMMON CARRIER

- 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. The Carrier reserves the right to refuse the carriage or transport of articles for any person, corporation or company and the carriage or transport of any class of articles at its absolute discretion, without providing an explanation for such refusal.

POWER OF DELEGATION

- The Carrier is expressly authorised by the Client to delegate its authority hereunder in any way and may, without limitation, arrange with a sub-contractor or any person, natural or otherwise, for the carriage of any goods the subject of this contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the goods to the sub-contractor who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. Insofar as it is deemed to enter this contract for its own benefit and also as trustee for the sub-contractor.

VARIATION TO METHOD OF CARRIAGE

- If the Client or Consignor 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 save and except that if the method preferred cannot conveniently be adopted by the Carrier, the Carrier may carry or have the goods carried by another method.

INDEMNITY UP AND DOWN THE CHAIN OF COMMAND

- The Client indemnifies the Carrier up and down the chain of command.

NO LIABILITY IN THE EVENT OF LOSS OR DAMAGE

- No responsibility in negligence, tort, contract or otherwise will be accepted by the Carrier for any loss of or damage to or injury to or mis-delivery or failure to deliver or delay in the delivery of goods either in transit or in storage for any reason whatsoever. In the event the Carrier is found liable the limit of damages shall be either the provision of the service again, a refund of the delivery charge or payment of damages equal to an amount no greater than twice the charge made for the provision of the service.

OBTAINING A SIGNATURE AT DELIVERY POINT

- The Carrier may deliver the goods at the address given to the Carrier by the Consignor for that purpose and the Carrier shall be taken to have delivered the goods in accordance with this Contract if at that address he obtains from any person a receipt or signed delivery docket for the goods.

AUTHORITY TO LEAVE

- Where the Consignor has given the Carrier authority to leave the goods in a safe place, the Carrier does so at the Client's risk.

PAYMENT COLLECTION AT DELIVERY

- Goods are accepted by the Carrier subject to the condition that the Carrier accepts no responsibility for the collection of cash on delivery or any other payments on behalf of the Client or any other person. In such arrangements the Carrier will make its best efforts to do so, but shall not be bound by such instructions and responsibility will remain with the Client for such collection.

WHERE DELIVERY CANNOT BE EFFECTED, IT MAY CAUSE ADDITIONAL DELAYS AND CHARGES

- Should the Consignee of the goods not be in attendance during normal trading hours or at the time specified, or if the Carrier arrives to effect delivery at the Consignee's premises and is delayed in effecting prompt delivery at the said premises for any reason whatsoever outside the Carrier's control, then the Carrier reserves the right to make an additional charge for every call made and for the amount of time of any delay until delivery is effected.

RESPONSIBILITY FOR PACKAGING

- Responsibility for the packaging of goods rests with the Client except where the Client has given written instructions and then only at the Client's expense and in accordance with the laws State and Federal relating to the packaging, carriage and delivery of goods in force at the time and such conditions the Carrier determines are reasonable or necessary. The Client shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the Consignee and any expense incurred by the Carrier arising from failure so to conform.

NO INSURANCE

- The Carrier will not insure goods for the benefit of the Client.

DISHONEST APPROPRIATION

- The Carrier shall not be responsible for the loss or dishonest appropriation by any of its employees of any payments made directly to those employees on behalf of the Client and intended for the Carrier. The Client shall indemnify the Carrier for any amount so lost or dishonestly appropriated.

PROPER CHARGES

- The Client shall be and remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in loading or unloading occurring other than from the default of the Carrier. Labour to load or unload the vehicle shall be the responsibility and expense of the Client. The Carrier reserves the right to alter the service booked and charge the Client if in its view it is reasonable or necessary so to do.

CUSTOMS

- The Client hereby appoints the Carrier as the Client's agent at the Client's cost to conduct customs clearance and entry and certifies the Carrier as a consignee solely for the purpose of designating a Customs Broker for performing clearance and entry. The Client is liable for any customs duties, GST and customs broker fees that become payable on customs clearance and entry. The Client shall reimburse the Carrier for all customs duty, excise duty and costs which the Carrier becomes liable to pay.

PROPER ASSESSMENT OF GOODS

- The Carrier may charge freight by weight measurement or value and may at any time re-weigh, re-value or remeasure and charge proportionately for additional freight.

ROAD AND AIR FREIGHT CUBIC CONVERSION

- All road, sea and air consignments are charged per cubic metre or dead weight, whichever is greater.

RESPONSIBILITY FOR PALLETS AND PACKING DEVICES

- The Carrier accepts pallets or any other packing device or material only on the express condition that all charges pertaining to the pallets, packing device or material are to be paid by the Client and in the event of the Carrier signing for receipt of any pallets, packaging or other materials it does so only on behalf of the Consignor who accepts full responsibility for them and for the freight thereon. The Carrier accepts no responsibility for the return of pallets.

FREIGHT EARNED AT BOOKING TIME

- Charges shall apply from the time that the Client requests the Carrier to provide the services.

- The Carrier is entitled to impose a cancellation fee if the Client cancels the services.

LIEN ON GOODS

- If the Client fails to pay charges due to the Carrier for any service rendered by the Carrier on reasonable demand being made by no less than seven (7) days notice in writing to the last known address or by publication in a capital city newspaper in accordance with this contract, the Carrier may detain and sell all or any of the goods of that person which are in its possession and out of the proceeds of sale recover all charges due under this contract together with the costs associated with the detention and sale of the goods and shall thereafter give any surplus of the moneys arising from the sale and such of the goods as remain unsold to the person entitled. Any such sale shall not prejudice charges due or payable for such a service of the detention and sale.

FAILURE TO PAY CAUSES ALL CHARGES TO BECOME DUE AND PAYABLE IMMEDIATELY

- Should the Client fail to pay any charges by the due date, then all other charges incurred by the Client with the Carrier shall become immediately due and payable without deduction or demand whether or not the due date has expired in relation to those charges. The Carrier may cancel any discounted rates and recalculate the outstanding charges. The Carrier, at its own discretion, may instigate recovery proceedings where the Client's account remains unpaid beyond the Carrier's trading terms and recover any pre-legal costs associated with the recovery of the debt.

NO DANGEROUS OR HAZARDOUS GOODS

- The Client shall not tender for carriage any explosives, inflammable or otherwise dangerous or damaging goods without presenting a full description of those goods and in default of doing so the Client shall be liable for all loss and damage caused by the goods.
- The Client warrants that it has complied with all laws relating to the nature, packaging, labelling and cartage of the goods.

THE CONSIGNOR'S AUTHORISED AGENT

- The person delivering the goods to the Carrier for carriage or forwarding is authorised to sign this consignment for the Client.

PROVENANCE OF GOODS

- The Client warrants with the Carrier that the Client is either the owner or the authorised agent of the owner of any goods or property the subject matter of this contract of carriage and by entering into this contract the Client accepts the conditions of contract of the Consignee as well for persons on whose behalf the Consignor is acting.

CARRIER NOT LIABLE FOR LOSS, DAMAGE OR CONSEQUENTIAL LOSS

- Without derogating from clause 6 above, the Carrier shall not be liable for any loss of market, loss of use or consequential loss, concealed damage or damage caused by inherent vice or nature of goods or merchandise carried (including chilled, frozen, refrigerated or perishable goods) either in transit or in storage whether caused by negligence, wrongful act or default of the Carrier or by any other cause. In the event that the Carrier is found liable for loss or damage, it will be liable to the extent of the transport charge.

A BREACH DOES NOT VOID THE CONTRACT

- All the rights, immunities and limitations of liability granted to the Carrier by the above terms shall continue to have the full force and effect in all circumstances and notwithstanding any breach of the contract or any other conditions hereof by the Carrier or any other person entitled to the benefit of such provisions.

PROVISIONS SEVERABLE

- 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.

AUTHORITY FOR CARRIER TO DEVIATE FROM ORIGINAL INSTRUCTIONS

- The Consignor shall be deemed to authorise any deviation from the usual route or manner of carriage of goods which may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.

CLIENT AGREES TO ALLOW ACCESS TO CREDIT AGENCY INFORMATION TO DETERMINE IF CARRIER WILL OFFER CREDIT FACILITIES

- The Client agrees to allow the Carrier to access information supplied by credit reporting agencies and elsewhere as it may request in order that the Carrier may determine whether to provide credit facilities to the Client and that this contract is evidence of and can be used to confirm the Client's authority.

CLIENT AGREES TO PAY ALL REASONABLE COSTS IN RECOVERING COSTS

- The Client agrees to pay all necessary and reasonable costs and charges incurred by the Carrier in recovering charges due and payable to the Carrier for any services rendered by the Carrier, its servants and agents, including the costs incurred by the Carrier for copies of documentation or time spent collating and delivering same, debt collection agency costs and legal costs on a solicitor and client basis.

ADMINISTRATION FEE DUE IF ACCOUNT IS OVERDUE

- The Client agrees that if the account falls overdue, it may be suspended and a weekly administration fee charged at the Commonwealth Bank overdraft rate plus 10% until brought within trading terms.
- The Carrier's trading terms are strictly 7 days and that all accounts are payable in SAUD.

CLIENT ENTICING CARRIER'S SUB-CONTRACTORS AND V/S

- The Client hereby undertakes on its own behalf or as agent or representative of any person, firm or company whether directly or indirectly or in any beneficial capacity not to solicit or in any way entice the sub-contractor of the Carrier to carry out any works on behalf of himself or any other person or entity other than by work of the Carrier herein whilst the sub-contractor continues to perform tasks for the Carrier and for a period of six (6) months thereafter.
- The Carrier and the Client agree that if the Consignor on its own behalf or as agent or representative of any person, firm or company directly engages the sub-contractor of the Carrier to carry out any works on behalf of himself or any other person or entity independently of the Carrier, the Client will pay \$10,000 to the Carrier.

CLIENT LIABLE TO PAY FOR INSTRUCTIONS FROM AUTHORISED AGENT

- Where the Carrier has agreed with the Client to carry goods on an arrangement for deferred payment by way of a credit account, or any other method of payment other than cash on delivery, such credit is extended solely to and for use of the Client personally and without limiting the generality of the foregoing, may not be utilised by any associate or employee of the Client.
- Where any carriage of goods is undertaken by the Carrier at the request of a person from whom the Carrier is authorised by the Client to accept such requests, the Client shall be liable for the costs and charges of such carriage of goods and the delivery by the Carrier of an invoice for same shall be conclusive proof of such liability.

CHANGING TERM OF CREDIT

- The Carrier may from time to time alter its standard terms of credit and such altered conditions or terms shall apply in respect of all transactions taking place after notification to the public of such altered terms of payment by placing the amended terms and conditions on the carrier's website and advising the Client on its invoice.

RATES VALID FOR 28 DAYS AND DO NOT INCLUDE GST

- The Carrier may at any time vary its charges or method of charging without notice to the Client and any rate schedule issued by the Carrier shall be valid 28 days from the date the rates are issued. Rates do not include GST. Any taxes or charges will be levied as an additional charge.

ACCEPTANCE OF QUOTATION

- By engaging the Carrier to supply services the Client acknowledges that these conditions are designed to give reasonable protection to the Carrier and its client-base against the erosion by individuals and companies in a position of trust and knowledge.

MEDIATION

- In the event of a dispute either party may ask the Law Institute of Victoria to appoint a mediator at equal cost to the parties unless adjudicated otherwise.

JURISDICTION

- Parties agree to submit to the Courts of the State of Victoria unless otherwise agreed.

AUTHORITY TO VARY CONTRACT TERMS

- The Carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement is made in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

Dated:

DECLARATION AND ACKNOWLEDGEMENT

I have read the above terms and conditions and affix my/our signature(s) below:

..... X

CLIENT [PROVIDE CORRECT LEGAL NAME AND ACN IF THE CLIENT IS A BODY CORPORATE]
.....

SIGNED FOR AND ON BEHALF OF THE CLIENT [IF THE CLIENT IS A BODY CORPORATE]
..... X

PRINT NAME AND CAPACITY IN WHICH THE ABOVE SIGNATURE IS AFFIXED [FOR EXAMPLE, DIRECTOR]