

# CONDITIONS OF CONTRACT

1. In these conditions:

"The Carrier" shall mean **MCR Logistics Pty Ltd** A.C.N. 120 422 817 carrying out business in its own name and under any other business name and unless the context otherwise requires its officers, servants, agents and sub-contractors.

"Sender" shall mean the person with whom this contract is made.

"Goods" shall mean the cargo accepted from the sender together with any container, packaging or pallets supplied by or on behalf of the sender.

"Services" shall mean and include the whole of the operations and services undertaken by the Carrier in connection with the goods including but not limited to the carriage, transport and/or the storage of the goods.

"Sub-Contractor" shall mean and include:

- i. All companies which, at any time, become subsidiaries of MCR Logistics Pty Ltd.
  - ii. Railways or airlines operated by the Commonwealth of Australia or any State of Australia.
  - iii. Any other person, firm or company with whom the Carrier may arrange for the carriage of any goods, the subject of this contract, and
  - iv. Any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in i. and iii. above.
2. 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 COMPANY AND THE CARRIAGE OR TRANSPORT OF ANY CLASS OF ARTICLES AT ITS DISCRETION.
3. The Carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement shall be in writing and signed by an Executive Officer of the Carrier.
4. The Carrier may have goods carried, stored or otherwise handled by any servant or agent of sub-contractor of the Carrier or any servant or agent of any sub-contractor or by any other person and any such arrangement shall be deemed to be ratified by the Sender upon delivery of the said goods to such a sub-contractor or agent who shall thereupon be entitled to the full benefit of these terms and conditions to the safe extent as the Carrier and insofar as it may be necessary to ensure that such sub-contractor or agent shall be entitled the Carrier shall be deemed to enter into this contract for its own benefit and also as trustee for the sub-contractor or agent. Every exemption from liability or defence and immunity of any nature applicable to the Carrier or to which the Carrier is entitled shall also be available to protect the sub-contractor or agent. If the Sender undertakes any legal action whatsoever against the sub-contractor or agent in relation to the services or otherwise in connection with this agreement, the Sender hereby agrees to indemnify the Carrier from any consequences of the said legal action.
5. The Sender acknowledges and agrees that neither the Carrier nor any servant or agent or sub-contractor of the Carrier nor any other person who carries the goods at any time pursuant to this consignment note shall in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort, or otherwise) for any personal injury or loss or damage to or is-delivery, delayed or non-delivery of the goods or any of them whether in transit or in storage or otherwise for any consequential loss or injury of any kind whatever whether such person injury is caused alleged to have been caused by the negligence or wrongful act or default of the Carrier or its servants or agents or sub-contractors or the servants or agents of any sub-contractors or by any cause whatever.
6. i. Subject only to Clauses 22 and 23 hereof the goods are at the risk of the Sender and not the Carrier, and the Carrier shall not be responsible in tort or contract or bailment or otherwise for any, and the consequences of any loss of or damage to or deterioration of goods or mis-delivery 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 including without limiting the foregoing the negligence breach of contract or wilful act or default of the Carrier or others and this clause shall apply to all, and the consequences of all, such loss of or damage to or deterioration of goods or mis-delivery or failure to deliver or delay in delivery of goods as aforesaid whether or not the same occurs in the course of performance by or on behalf of the Carrier of the contract or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of a fundamental term thereof.
- ii. The Carrier will not insure the goods. The sender is at all times at risk in respect of the goods and must attend, if he so chooses, to insuring them. It is strongly recommended that he do so.
7. Should a person require the Carrier to pick up goods on that person's behalf from a third party, any receipt the Carrier may give the third party when effecting the pick up is no more than a record of the pick up and is not to be construed as confirmation of the quality or condition of the goods.
8. All charges shall be deemed to have been earned when the Carrier takes possession of the goods for carriage and under no circumstances shall any charges be refunded, discounted or abated notwithstanding that the goods may not be delivered or that they are delivered in a damaged condition.
9. Where it is agreed that the charges for carriage will be paid by the receiver or by a third party the Sender agrees to indemnify the Carrier against any loss resulting from the non-payment of the charges by such receiver or third party and, without limiting the generality hereof, the Sender agrees that if such charges are not paid by the receiver or third party, the Sender will pay the same to the Carrier on demand.
10. The Sender warrants that any person delivering goods to the Carrier has authority to sign this consignment note.
11. The Sender warrants:
- i. That he is the owner of the goods or otherwise has authority of the owner to consign the goods upon and subject to these conditions, and
  - ii. That the goods comply with the requirement of any applicable law (including the Australian Code for the Transport of Dangerous Goods by Road and Rail and Air Navigation Orders Part 33) relating to the consigning and packaging of the goods and the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs warehouse of other authority or company shall be paid by the Sender.
  - iii. If any of the goods are subject to the control of the Customs all Customs duty, excise duty and costs which the Carrier becomes liable to pay and shall pay in respect of such goods pursuant to any law relating to Customs or excise shall be paid by the Sender.
  - iv. That the Sender shall not tender for carriage any volatile spirit or corrosive substance, inflammable or otherwise, or goods that are or

that may become inflammable and or offensive (including radioactive material) or which are or may become liable to damage any property whatsoever, without presenting a full description disclosing the nature of such goods and complying with all applicable laws relating to such goods. In any event, the Sender shall be liable for all loss and damage caused by the carriage of such goods. If, in the opinion of the Carrier, the said goods are, or are liable to become dangerous, inflammable, corrosive or offensive or of damaging nature the same may, at any time, be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Sender and/or the Consignee and if necessary at the Sender's expense and without prejudice to the Carrier's right to any charges hereunder.

- v. That the goods are packed in a manner adequate to withstand the ordinary risk of carriage having regard to their nature. The Sender will indemnify the Carrier against all loss and expenses suffered or incurred by the Carrier by reason of any breach of the foregoing warranties.
- vi. The Sender has fully and adequately described the goods on the Consignment Note/Linepad/Electronic Transfer, and duty.
- v. The Sender duly accepts our written quote an/or applicable schedule rate for this consignment.
12. The goods are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier by the Sender or any account whether in respect of the goods comprised herein or in respect of any other goods for which the Carrier provides transport or any other service. If the lien is not satisfied and/or the goods are not collected the Carrier may at its option and without notice in case of perishable goods forthwith, and in any other case upon the expiration of one (2) month either:
  - i. Remove such goods or part thereof and store them in such place and manner as the Carrier shall think proper and at risk and expense of the Sender or as the case may be, or
  - ii. Open any package and sell such goods or part thereof upon such items as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for any loss or damage thereby caused.  
Any such sale shall not prejudice the right of the Carrier to recover from the person or persons liable to pay the same any charges due or payable in respect of any carriage or other service of sale.
13. Without limiting the generality of these conditions, the limitations and exclusions of the Carrier's liability herein shall continue to apply and to be of full force and effect in all circumstances notwithstanding any breach, or alleged breach, by the Carrier of this contract of carriage nor any departure by the Carrier from the conditions of this contract of carriage howsoever occurring.
14. The provisions of these conditions of carriage shall apply to the container or containers or other packaging containing the goods and to any pallet delivered with the goods to the Carrier. The Sender shall be responsible for the conformity of such containers, packaging and pallets with any requirements of the Receiver and for the expense incurred by the Carrier arising from any failure of them so to conform.
15. Any Instruction to the Carrier to exchange or transfer consigned pallets to the Carrier's pallet hire account is accepted on the basis that the sender will indemnify the Carrier against any loss or non-recovery of the consigned pallets however arising. Evidence of the instruction to the Carrier and any non-recovery shall be as shown on the face of the consignment not which shall be deemed conclusive proof of the instruction and/or non-recovery. A charge may be made by the Carrier for the costs of hiring, recovery and replacement (if applicable) of all pallets hired by the Carrier unless exchange pallets are available at the time of delivery.
16. If the Sender expressly or impliedly instructs the Carrier to use or it is expressly impliedly agreed that the Carrier will use a particular method of handling or storage he goods or a particular method of carriage whether by road, rail, sea or air, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Sender hereby authorises the Carrier to handle or store or to carry to have the goods carried by another method or methods. The Carrier shall be entitled to open any document wrapping package or other container in which the goods are placed or carried, to inspect the goods to determine their nature or condition for the purpose of determining their ownership or destination where any consignment note or other identifying document or mark is lost, damaged, destroyed or defaced.
17. The Sender will 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 excess of 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 goods shall be the responsibility and expense of the Sender or Receiver. Should the Receiver not be in attendance during normal trading hours or at the time specified, the Carrier reserves the right to make further charge for every attempt made until delivery is effected.
18. The Carrier may charge freight by weight, measurement or value and may at any time re-weigh or re-measure or re-value or require the goods to be re-weighed, re-measured or re-valued and charge proportional freight as necessary.
19. The Carrier is authorised to deliver the goods at the address given to the Carrier by the Sender for that purpose. It is expressly agreed that 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. If the nominated place of delivery should be unattended or if delivery cannot be otherwise effected by the Carrier, the Carrier may at its option deposit the goods at that place and this deposit shall be conclusively presumed to be due delivery hereunder. Alternatively, the Carrier may store the goods and if the goods are stored the Sender shall pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. The Carrier shall be at liberty to re-deliver them to the Sender from the place of storage at the Sender's expense.
20. The Carrier shall not be liable for any damage or loss whatsoever occasioned to any goods which the Carrier has been requested by the Sender to pack and which are described on the face hereof whether such damage or loss should occur in the course of packaging or in transit or otherwise.
21. 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 hereof.
22. In respect of contracts made in Queensland these conditions should be read subject to The Carriage of Goods by Land (Carrier's Liability) Act 1967 of that State but, except where repugnant to the provisions of that Act these conditions shall continue to apply.
23. Where goods are carried on any sea-going vessel the carriage is subject to the terms and conditions of such shipowner's Bill of Lading in use at the time of shipment and in no circumstances shall the Carrier be liable for loss or damage howsoever occasioned whilst the goods are in the care, custody or control of such shipowner.
24. These conditions shall be read subject to any implied terms, conditions or warranties imposed by the Trade Practices Act 1974 (as amended) or any other Commonwealth or State legislation which prevents, the exclusion or modification of any such term, condition or warranty.

**THESE ACCOUNT APPLICANT ACKNOWLEDGES THESE TERMS HAVE BEEN READ AND ACCEPTED BY EXECUTING THE CREDIT ACCOUNT APPLICATION**