

Conditions of Carriage & Storage

1. DEFINITIONS

1.1 "Agreement" means this document.

"Carriage" means the whole of the operations and services undertaken by the Carrier as specified on the face of this document including storage packaging or handling or other services where this is applicable.

"Carrier" means **ALL PURPOSE ENTERPRISES PTY LTD.** on whose behalf this agreement has been signed and includes its respective servants and agents.

"Container" includes any container, trailer, tilt, igloo, wagon, transportable tank, flat pallet or any other unit load device used to consolidate goods.

"Customer" includes the sender, shipper, Consignor, Consignee, receiver of the goods, any person owning or entitled to the possession of the goods, and anyone acting on behalf of such persons.

"Dangerous Goods" means goods which are or may become dangerous, inflammable or damaging including radioactive material(s), or which are or may become liable to damage any property whatsoever.

"Freight" includes all charges payable to the Carrier.

"Goods" means the goods accepted from the Customer and includes any container not supplied by or on behalf of the Carrier.

"Place of Receipt" means the place designated as such on the face of this Agreement.

"Place of Delivery" means the place designated as such on the face of this agreement.

"Storage" means the whole of the operations and services undertaken by the Carrier in respect of the goods in receiving, storing and subsequently making the goods available for collection.

"Storage Period" means the period of storage (if any) indicated on the face of this Agreement.

"Sub-Contractor" means any sub-contractor of the Carrier and that sub-contractor's servants, agents or sub-contractors, indirect and direct sub-contractors.

2. INTERPRETATION

2.1 Headings

Headings are inserted for ease of reference only and shall be disregarded in the interpretation of this Agreement.

2.2 Gender

Words importing the singular include the plural and vice versa and words importing a gender include other genders.

2.3 Corporation

Person includes a corporation and vice versa

2.4 Severability

The parties acknowledge and agree that:-

2.4.1 all the provisions of this agreement are reasonable in all the circumstances and that each provision is and shall be deemed to be severable and independent.

2.4.2 this agreement is subject to all compulsory rules and requirements of law to which the carriage is subject to the intent and effect that if any provision hereof is to any extent repugnant to or inconsistent with any such rules or requirements or if all or any part of any provision is judged invalid or unenforceable, such provision shall to that extent, but no further, be deemed not to form part of these Conditions of Carriage and Storage and shall not affect the validity or enforceability of the remaining provisions.

2.4.3 notwithstanding anything herein contained, the Carrier shall continue to be subject to any condition or warranty implied by the Trade Practices Act 1974 (Cth) or the Fair Trading Act 1989 (Qld): if and to the extent that the said Acts are applicable to this agreement and prevent the exclusion, restriction or modification of any such condition or warranty.

2.5 Representation and collateral Contracts Negated

This agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending otherwise relating to these provisions or binding of the parties with respect to the storage and carriage or the matters to which this agreement relates.

2.6 References to Statute

A reference to an Act of Parliament or Code or section or schedule of that Act or Code shall be read as if the words "or any statutory modification or re-enactment thereof or substitution therefore" were added to the reference and includes all statutory instruments issued under that act or Code as at the date of this agreement.

2.7 Joint and Several Liability

Where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer bind those persons jointly and severally, and a reference to the Customer includes a reference to any one or more of those persons.

2.8 Successors

A reference to a party to this agreement or any other document or agreement includes its successors and permitted assigns.

2.9 Further Assurances

Each party shall do anything necessary or desirable to give full effect to this agreement, and shall refrain from doing anything which might prevent full effect being given to this agreement.

2.10 Governing Law



- 2.10.1 this agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
- 2.10.2 each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.
- 2.10.3 no action arising out of this agreement may be brought by a party more than one (1) month after the cause of action has arisen except in the case of non-payment where the appropriate statutory limitation to an action for recovery of a simple contractual debt will apply.

2.11 Method of Payment

All payments required to be made under this Agreement to the Carrier shall be made:-

- 2.11.1 either in cash or by a draft or cheque drawn by a bank as defined in the Banking Act 1959 of the Commonwealth of Australia; or
- 2.11.2 by crediting the account of the Carrier (specified for that purpose) with cleared funds.

2.12 Moratorium Negatived

Any statute, proclamation, order or regulation establishing a moratorium or limiting, postponing or otherwise prejudicially affecting any of the rights, powers or remedies conferred on any of the parties shall not, to the extent lawful, apply to any of the provisions of this Agreement.

2.13 Carriers Discretion

Where discretion is given to the Carrier by any provision hereof, the exercise of that discretion by the Carrier shall be absolute and unfettered. Such an exercise of discretion may be unreasonable or arbitrary.

3. Carriage/Demise

3.1 Common Carrier Negatived

The Carrier is not a common carrier and will accept goods for carriage only on these conditions.

3.2 Carrier's Undertaking

The Carrier undertakes to:-

- 3.2.1 procure the carriage of the goods from the place of receipt to the place of delivery, and/or
- 3.2.2 procure the storage of the goods for the storage period.
- 3.3 The Carrier at its discretion may subcontract on any terms all or any part of its undertaking herein.

4. Customers Warranties Acknowledgments and Indemnities

4.1 The Customer warrants that –

- 4.1.1 the goods are fit for carriage and storage;
- 4.1.2 the Customer has the authority of all persons owning or interested in the goods to enter into the contract on their behalf;
- 4.1.3 the person delivering any goods to the Carrier for carriage and/or storage is authorised to sign this document for the Customer and by such signature or by the signature of any other person acting for the Customer, the Customer accepts these terms and conditions.

4.2 The Customer acknowledges that:-

- 4.2.1. no agent or employee of the Carrier is permitted to alter or vary these conditions;
- 4.2.2. no representations have been made by any employee or agent of the Carrier to the Customer.
- 4.2.3. the Carrier may inspect the goods and for such purpose or may open or remove any container;
- 4.2.4. the Carrier enters into this Agreement for and on behalf of itself and its servants, agents and sub-contractors, all of whom shall be entitled to the benefit of the agreement and shall be under no liability whatsoever to the Customer or anyone claiming through him in respect of the goods, in addition to or separately from that of the Carrier under this Agreement.

4.3 The Customer shall indemnify the Carrier agent:-

- 4.3.1. all claims demands costs or expenses whatsoever and by whomsoever made or howsoever arising as a result of
the Customer making an under declaration as to the actual weight and/or an incorrect description of all or any part of a consignment.
- 4.3.2. any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of the warranties and acknowledgments herein;
- 4.3.3. any loss or damage to the Carrier's containers or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the goods in such containers;
- 4.3.4. any liability loss or damage suffered by the Carrier resulting from the Customer's unreasonable detention of any containers or other equipment of the Carrier but the Carrier's rights against any other persons shall remain unaffected;
- 4.3.5. for the purpose of this clause, "loss expressly includes:-



4.3.5.1 consequential loss; and

4.3.5.2. any fine, levy, charge or other monetary imposition to which the Carrier may become liable as an incident to the carriage, and resultant from any breach by the Customer of this agreement.

5. Himalaya Clause/Subcontracting

5.1 Where the Customer is not the owner of some or all of the goods the Customer shall be deemed for all purposes to be the agent of the owner.

5.2 The Customer undertakes that no claim or allegation shall be made against any servant, agent or subcontractor of the

Carrier which imposes or attempts to impose upon any liability whatsoever in connection with the goods, whether or

not arising out of negligence or a willful act or omission on the part of any of them, and if any such claim or allegation

should nevertheless be made to indemnify the Carrier against all consequences thereof.

5.3 Every such servant, agent, and subcontractor, shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit.

5.4 The Customer shall save harmless and keep the Carrier indemnified against all claims or demands whatsoever by

whomsoever made in excess of the liability of the Carrier under these conditions in respect of any loss, damage or injury

however caused, whether or not by the negligence of willful act omission of the Carrier, his servants, agents or

sub-contractors.

6. Route and Deviation

6.1 Carriage commences when the goods are delivered to the Carrier at the place of receipt and carriage ceases when the goods are tendered at the place of delivery.

6.2 Carriage shall be suspended:-

6.2.1. when the goods are held by the Carrier at some place other than the destination at the request or for the

convenience of the Customer or because the Customer refuses or is unable to take delivery at the destination; or

6.2.2. when the goods are detained by any statutory authority, AND shall be resumed when the Carrier resumes the

carriage of the goods.

6.3 The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be necessary.

6.4 The Carrier may at its discretion at any time without notice to the Customer:-

6.4.1. use any means of transport or storage whatsoever;

6.4.2. proceed by any route from the place of receipt whether or not such route is the nearest or most direct or customary route;

6.4.3. proceed to or stay at any place whatsoever (although in a contrary direction to or out of or beyond the customary or intended or advertised routes) once or more often in any order backwards or forwards, and store the goods at any such place whatsoever;

6.4.4. comply with any order, directions or recommendations as to loading, unloading, departure, routes, places of call, stoppages, destination, arrival, discharge, delivery or any other ways whatsoever given by any government or authority or any person, body acting or purporting to act with the authority of such government or authority.

6.5 Any action taken by the Carrier under clause 6.4 and any delay resulting therefrom shall be deemed to be included

within the contractual route and storage and shall not be a deviation.

6.6 The Customer shall take delivery of the goods as soon as the Carrier is ready to deliver them and if the Customer fails

to take delivery of the goods the Carrier may without notice unload the goods and/or store the same in the open or

undercover, and with or without refrigeration. Such storage shall constitute delivery and thereupon all liability

whatsoever of the Carrier in respect of the goods shall cease.

6.7 If the Carrier effects arrangements for storage or preservation or forward carriage of goods after delivery, it does so as

agent of the Customer and solely at the Customer's risk and expense.

7. Liability

7.1 At all times and in all circumstances and for all purposes the goods shall be and remain at the sole risk for the Customer

and the Carrier shall be under no liability whatsoever.

7.2 Without limiting the generality of the foregoing the Carrier shall not be liable for any loss, or misdelivery of or damage

to goods occasioned during carriage and/or storage which has arisen from:-

7.2.1 Act of God;



- 7.2.2 any consequence of war, invasion, act of foreign enemy, hostilities (whether war be declared or not), civil war, rebellion, insurrection, military or usurped power or confiscation, requisition, destruction of, or damage to property by or under the order of any government or public or local authority;
 - 7.2.3 seizure under legal process;
 - 7.2.4 act or omission whether willful, reckless, negligent or otherwise of the Carrier or of its servants or agents or sub-contractors;
 - 7.2.5 inherent liability to wastage in bulk or weight, latent defect or inherent defect, inherent vice or natural deterioration of the goods;
 - 7.2.6 riots, civil commotion, lockout, general or partial stoppage or restraint of labour from whatever cause whether partial or general;
 - 7.2.7 the Customer not taking or accepting delivery after tender of the goods at the place of delivery by the Carrier;
 - 7.2.8 fraud by the Customer;
 - 7.2.9 any act, omission or neglect of the Customer;
 - 7.2.10 compliance with the instructions of any person entitled to give them;
 - 7.2.11 the lack of, or defective condition of packing, insufficient or improper packing;
 - 7.2.12 handling, loading, stowage or unloading of the goods by the Customer;
 - 7.2.13 insufficiency or inadequacy of marks or numbers on the goods, covering, or unit loads, insufficient or improper labelling or addressing;
 - 7.2.14 any loss or damage (including concealed damage) to or deterioration, contamination, evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non-delivery of goods whensoever and howsoever occurring or any damage, injury or loss of any nature whatsoever sustained or arising in consequence thereof or otherwise howsoever for or in respect of any thing done purported to be done or omitted to be done by the Carrier;
 - 7.2.15 any other matter or thing (including any delay or failure by the Carrier to effect the carriage with reasonable dispatch or at all) occurring or arising during or in connection with the carriage or otherwise in relation to the goods;
 - 7.2.16 any other cause or event of whatsoever kind and nature and howsoever occurring.
- 7.3 The defences and exclusions or liability provided for in this clause and throughout this Agreement generally shall apply
- in any action against the Carrier for loss or damage to the goods whether the action be founded in contract or in tort or otherwise.

- 7.4 The Carrier shall be entitled to the benefit of the exclusion of liability provided for herein even if it is provided that the
 - loss or damage resulted from an act of omission of the Carrier done with intent to cause damage or recklessly and with
 - knowledge that damage would probably result.
- 7.5 Nothing whatsoever done or omitted to be done or their conduct by the Carrier in breach of the contract or otherwise
 - howsoever lawfully or unlawfully, shall under any circumstances constitute a breach going to the root of this agreement,
 - or a deviation or departure therefrom or repudiation thereof such as to have the effect of disentitling the Carrier from
 - obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitation of liability and other like
 - protections on the Carrier contained in those conditions and all such rights, defences, exceptions, immunities, limitations of liability and like protections shall continue to have full force and effect in any event whatsoever.
- 7.6 For the purpose of this clause, "Loss" includes consequential loss.

8. Dangerous Goods

- 8.1 If the Carrier accepts dangerous goods for carriage such goods must be accompanied by a full declaration of their
 - nature and contents and be properly and safely packed in accordance with statutory regulations applicable to the
 - carriage of those goods;
- 8.2 The Customer shall indemnify the Carrier against all loss (including consequential loss), damage or injury however
 - caused arising out of the carriage of any dangerous goods, whether declared as such or not and whether or not the
 - Customer was aware of the nature of the goods.
- 8.3 Where dangerous goods are delivered to the Carrier without written consent or where they are not distinctly marked to
 - indicate the nature and character of the goods or if in the opinion of the Carrier the articles are or are liable to become
 - of a dangerous and flammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned, or
 - rendered harmless without compensation to the Customer and without prejudice to the Carriers right to freight.
- 8.4 The Customer undertakes that the goods are packed in a manner adequate to withstand the ordinary risks or carriage



having regard to their nature and in compliance with all laws and regulations which may be applicable during carriage.

9. General Lien

- 9.1 Goods are received and held by the Carrier to subject to:-
- 9.1.1.1 a lien for moneys due to the Carrier and/or storage of and other proper charges or expenses upon or in connection with the goods; and
 - 9.1.1.2 a general lien for all moneys or charges due to the Carrier from the Customer and the Owner of such goods for any services rendered or accommodation provided by the Carrier to the Customer or Owner.
- 9.2 Where any client remains unsatisfied within seven (7) days from the date on which the Carrier gave notice of the exercise of his lien to the customer (or Owner as the case may be), the goods may at the Carrier's discretion be sold by public auction or private treaty and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation thereto (including the expenses of the sale) and the Carrier shall account to the Customer or the owner of the goods for any surplus.

10. Storage

- 10.1 Any storage of goods shall be as agent of the Customer and solely at the Customer's risk and expense, but the provisions of clause 7 hereof shall nevertheless apply.
- 10.2 At the Carrier's discretion the goods may be stored at any place and at any time and be removed from any place at which they may be stored or otherwise held to any other place to be stored.
- 10.3 Dangerous goods held by the Carrier for storage will be subject to the indemnity given by the Customer in respect of dangerous goods in clause 8 hereof.

11 Carriers Charges

- 11.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person.
- 11.2 Freight shall be deemed fully earned on receipt of the goods by the Carrier and is non-refundable in any event.

12 Force Majeure

- 12.1 Where a party is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the party affected ("force majeure"), to carry out any obligation under this agreement, and that party:-
- 12.1.1 gives the other party prompt notice of such force majeure with reasonably full particulars thereof, and insofar as known, the probable extent to which

it will be unable to perform or be delayed in performing that obligation; and

- 12.1.2 uses all possible diligence to remove that force majeure as quickly as possible, that obligation is suspended, so far as it is affected by force majeure, during the continuance thereof.
- 12.2 Any obligation to pay money under this agreement shall not be excused by force majeure.
- 12.3 The requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts or other labor disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

13 Insurance

- 13.1 The Carrier will not effect any insurance of the goods for the benefit of the Customer or otherwise, except:
- 13.1.1 on the prior written instruction of the Customer; and
 - 13.1.2 at the Customer's sole expense.
- 13.2 Should the Customer fail to specify the class of any insurance to be effected pursuant to clause 13.1, the Carrier may effect that class of insurance which the Carrier in its discretion considers most appropriate to the goods.
- 13.3 Any insurance effected pursuant to clause 13.1 shall exclude:-
- 13.3.1 all claims resultant from wear, tear, moths, vermin, damp, mildew or loss of market;
 - 13.3.2 all claims resultant from loss, damage or expenses proximately caused by delay;
 - 13.3.3 strikes, riots, civil commotions or malicious damage of the goods insured;
 - 13.3.4 gradual deterioration, rust or oxidization unless due to consequent upon fire, collisions, overturning and other accident of the conveyance; or
 - 13.3.5 any other exclusion advised by the Customer to the Carrier prior to the effecting of such insurance.



