

CONDITIONS OF CARRIAGE

Definitions:-

1. In these conditions "the carrier" means **Conlon Murphy Pty Ltd T/A Barge Express** carrying on business in its own name and under any business name and its officers, servants, agents and subcontractors. THE CARRIER IS NOT A COMMON CARRIER and accepts no liability as such. The Carrier may refuse the carriage or transport of goods for any person, corporation or company and the carriage and transport of any class of goods at its discretion. In these conditions "the consignor" includes the person(s) corporation, firm and their/it's servants and/or agents forwarding the goods. Where the goods are being forwarded on behalf of a third party (including the owner) the person consigning the goods warrants that he/she/it has the authority to enter into this agreement on behalf of that third party.

Compliance with Laws:-

2. The carrier accepts the goods subject to these conditions including the following:-

1. (1) The consignor has complied with all applicable laws (including where necessary the Australian Code for the Transport of Dangerous Goods by Road and Rail, Air Navigation Order part 33, and the International Maritime Dangerous Goods Code) relating to the notification, description (on the consignment note or separately) consigning and packaging of the goods and the expense charges of the carrier in complying with any such law or with any order or requirement thereunder, or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the consignor. Additional freight charges shall be paid on such goods if deemed necessary by the carrier.

2. (2) If any of the goods are subject to the control of Customs, or 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 consignor:

(3) That the consignor has fully and adequately described the goods on the consignment note:

(4) The carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the carrier by an authorised officer of the carrier:

(5) The carrier is entitled to open any document wrapping, package or other container in which the goods are placed or carried to inspect the goods either to determine their nature or condition or to determine their ownership or destination where any consignment note or identifying document is lost, marked, destroyed or defaced.

Limitation of Liability:-

3. (1) Subject to clause 20 hereof the carrier shall not be under any liability where in tort or in contract for any loss of or damage misdelivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in its custody or control, or any consequential loss arising therefrom howsoever caused including, but not limited to, any negligence or breach of contract by the carrier.

(2) In the event of this contract of carriage including any handling, installation, removal, assembly or erection of any kind whatsoever it is undertaken on the strict basis that the carrier accepts no liability whether in tort or contract for any loss, damage, injury of any kind whatsoever, howsoever arising (including but not limited to any negligence, or breach of contract by the carrier) caused or, incurred or incurring during any part of the movement. The disclaimer extends to include not only loss of or damage to itemised equipment itself but loss damage or injury to any person, property or thing damaged during the movement and to included any consequentially or otherwise arising from any loss damage or injury aforesaid howsoever caused including, but not limited to any negligence or breach of contract by the carrier.

Containers:-

4. These conditions shall apply to the container or containers or other packaging containing the goods into any pallet or pallets delivered with the goods to the carrier. The consignor shall be responsible for the conformity of such containers, packaging and pallets with any other requirements of the consignee and for any expenses incurred by the carrier arising from any failure so to conform.

Freight:-

5. Freight shall be considered earned whether the goods are delivered to the consignor or not, and whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.

Charges:-

6. Every special instruction to the effect that the charges shall be paid by the consignee shall be deemed to include a stipulation that if the consignee does not pay the said charges within seven days from the date set for payment, or if no date is set for payment, within seven days of delivery or tendered delivery of the goods, then the consignor shall pay the said charges.

Additional Freight Charge:-

7. A carrier may charge freight by weight, measurement or value, and at any time re-weigh or re-value or re-measure or require the goods to be re-weighed, re-valued or re-measured and charge proportional additional freight accordingly.

Proceedings Against the Carrier:-

8. These conditions shall be governed and construed in accordance with the laws of the Northern Territory and any proceedings against the carrier shall be brought to the court of appropriate jurisdiction at its Darwin Registry and not elsewhere within twelve months of the day of the contract.

Delay in Delivery:-

9. Should the consignee named on the consignment note 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 its right to make an additional charge for every call made or for the amount of time of any delay until delivery is effected.

Delivery at Intermediate Points:-

10. The carrier will deliver the goods at intermediate points only by special arrangement and then only provided if suitable facilities are available at all hours.

Method of Carrying Goods:-

11. The carrier may carry all goods or have them carried or onforwarded by any methods which the carrier in its absolute discretion deems fit and notwithstanding any instructions, verbal or otherwise, that the goods are to be carried by a certain mode. The carrier reserves the right to charge for demurrage at the rate charged to the carrier directly or indirectly by any railway or shipping authority or by any other person, firm or company.

Authorisation of Deviation from Usual Route:-

12. The consignor hereby authorises any deviation from the usual route or manner of carriage of goods which may in the absolute discretion of the carrier be deemed desirable or necessary in the circumstances

including but not limited to, travel by a route that is not the shortest or most direct, or travel in stages or segments (whether involving changes of vehicles or not).

Carriage by Independent Contractor of Sub-Contractor:-

13. The carrier may arrange for the carriage of the goods by any independent contractor or sub-contractor of the carrier.

Exclusion of Liability Extends to Servants:-

14. In respect of any clause therein which excludes or in any way limits the liability of the carrier in respect of the carriage of goods, the carrier in addition to acting for itself is acting as agent of and trustee of its servants and also any other person or company with whom the carrier may arrange for the carriage of goods and the servants of such person or company and its servants are parties to this contract so far as the said clause or clauses containing exclusion or limitation of liability are concerned and if in so far as may be necessary to give effect to this clause the carrier shall hold the benefit of these conditions for its servants and for any such person or company and his or its servants.

Conditions to Have Full Force in all Circumstances:-

15. All the rights, immunities and limitations of liability in the above conditions of carriage shall continue to have their full force and effect in all circumstances and notwithstanding any breach of contract or of any conditions hereof by the carrier.

Packing:-

16 (1) In regard to goods which the carrier has been requested by the consignor to pack and which are described on the face hereof, the carrier shall not be liable for any loss or damage whatsoever whether in the course of packing or transit or otherwise and howsoever occasioned to the said goods or any of them.

(2) Where the carrier is required to load or unload any liquids, part liquids or substances or any commodities or products into bulk tanks or vessels, drums or containers, it shall not be liable for any loss, damage or contamination of the product during any such loading or unloading, operation or packing while such product is in transit by any means of transportation or whilst goods are held in store or bulk storage tanks for any reason whatsoever.

Lien:-

17. 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 consignor under the account whether in respect of the goods comprised herein or in respect of any other goods for which the carrier provides transport or other service. If the lien is not satisfied and/or the goods are not collected, the carrier may at its option and without any notice, in the case of perishable goods forthwith and in any other case upon the expiration of one month either:-

1. (i) Remove such goods or part thereof and store them in such place and manner as the carrier may think proper and at the risk and expense of the consignor or as the case may be; or 2. (ii) Open any package and sell such goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and cost of sale without being liable to any person for any loss or damage thereby caused.

Insurance:-

18. INSURANCE WILL NOT BE ARRANGED BY THE CARRIER. IT IS THE RESPONSIBILITY OF THE CONSIGNOR TO ENSURE THAT ADEQUATE INSURANCE COVER IS ARRANGED IN VIEW OF THE APPLICATION OF ALL CLAUSES HEREOF UPON WHICH THE CARRIER ACCEPTS GOODS FOR CARRIAGE.

Authorisation of Carrier:-

19. The consignor authorises the carrier (if the carrier should think fit so to do) to contract either in the carrier's name as principal or as an agent for the carriage of the goods, or for leasing or using any container in which the goods may be placed or packed and to give any receipt for the goods, or any container whether subject to any terms or conditions or not in any such contract will be made upon the terms and subject to the conditions of any bill of lading or other forms or terms of contract for carriage whether by sea, rail, road or air or of any lease agreement, equipment hand-over agreement, interchange receipt or any other document as the case may require.

Provisions Severable:-

20. 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.

Applicable Legislation:-

21. Notwithstanding the provisions hereof they shall be read subject to any implied terms, conditions, or warranties imposed by the Trade Practices Act 1974 or any other Commonwealth or State Legislation in so far as such may be applicable and prevents either expressly or impliedly the exclusion or modification of any such term, condition or warranty.