

Terms and Conditions of Carriage

- 1) In these terms and conditions:

"Carrier" means Superfreighters Pty. Ltd. (ACN 006 359 388) its related bodies corporate (as defined in the *Corporations Act 2001* (Cth)) and its employees, agents and independent contractors;
"CCA" means the *Competition and Consumer Act 2010* (Cth);
"Consignor" means the person for whom the carriage of the Goods is performed by the Carrier under these Conditions;
"Conditions" mean the terms and conditions contained in this document;
"Goods" shall mean the cargo accepted from the Consignor for shipment/carriage together with any container, packaging or pallets supplied by or on behalf of the Consignor; and
"Non-Excludable Condition" means any conditions, warranties and guarantees provided or implied by any State, Territory or Commonwealth law, including but not limited to the statutory consumer guarantees described in the CCA and the provisions of any State or Territory legislation which cannot be lawfully excluded.
- 2) By the provision of the Goods for shipment, the Consignor accepts these Conditions on behalf of itself and/or anyone else who has an interest in the shipment or the performance of other services irrespective of whether the Consignor signs the front of the consignment note or not. The Carrier's Conditions also cover and can be invoked by anyone engaged by the Carrier to collect, transport, deliver the Consignor's shipment or perform other services as well as the Carrier's employees, directors and agents. Only the Carrier's authorised officers may agree to a variation of these Conditions in writing. If the Consignor provides the Carrier with Goods for shipment along with oral or written instructions that conflict with these Conditions, the Carrier shall is not bound by such instructions.
- 3) The Carrier is be entitled to sub-contract, on any terms, the whole or part of the carriage.
- 4) If the Consignor expressly or impliedly instructs the Carrier to use or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the 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 Consignor hereby authorises the Carrier to handle or store or to carry or to have the Goods carried by another method or methods.
- 5) The Consignor hereby authorises any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Carrier be deemed desirable or necessary in the circumstances.
- 6) The Carrier is authorised to deliver the Goods at the address nominated to the carrier by the Consignor for that purpose and without prejudice to the foregoing it is expressly agreed that the Carrier shall be conclusively presumed 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 otherwise be completed by the Carrier, the Carrier may at its option deposit the goods at that place (which shall be conclusively presumed to be due delivery hereunder) or store the goods and if the goods are stored by the Carrier, the Consignor must indemnify the Carrier for all costs and expense incurred in or about such storage.
- 7) The Consignor shall not tender for carriage any volatile spirits or explosive goods or goods which may become dangerous, inflammable, or offensive (including radio active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such goods and in any event shall be liable for all loss and damage caused thereby and in the opinion of the Carrier the goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Consignor and without prejudice to the Carrier's right to any charges hereunder.
- 8) The Consignor warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and hereby indemnifies the Carrier for any liability whatsoever as a result of or arising out of the Consignor's failure to comply with each of these warranties.
- 9) It is agreed that the Consignor shall be responsible for the conformity of any containers, packaging, or pallets with any requirements of the consignee and for any expense incurred by the Carrier arising from any failure to so conform.
- 10) Payment
 - a) The Consignor waives all its rights to challenge the Carrier's invoice if the Consignor does not contest the invoice in writing within 14 days from the date of the invoice. Even if the Consignor contests the Carrier's invoice within the 14 day period, the Carrier will have no liability to the Consignor in respect of such a claim unless the Consignor commence legal proceedings against the Carrier within 6 months of delivery of the shipment or where the shipment is undelivered, the date for delivery of the shipment requested by the Consignor in the applicable consignment note.
 - b) The Carrier charges (including applicable surcharges) are calculated in accordance with the rates applicable to the Consignor's shipment as set out in or otherwise referred to on the Carrier's then current rate card or in the relevant contract.
 - c) The Carrier's charges are earned as soon as the Carrier collects the shipment from the Consignor, or from the address nominated by the Consignor.
 - d) The Consignor must pay the charges within 14 days from date of the invoice without withholding, deduction, counter claim or set-off.
 - e) The charges the Carrier will charge the Consignor will include:
 - i) any additional expenses the Carrier incur as a result of any incorrect declaration by the Consignor of the weight, cubic volume, description or packaging of the shipment; and
 - ii) the customs duty, storage charges or other charges or expenses the Carrier incurs in relation to the shipment.
 - f) Unless stated to the contrary, the charges in connection with the carriage of a shipment or the provision of other services are exclusive of any GST. If such a tax is applicable to the Consignor, the Consignor must pay the tax in addition to and at the same time as the Consignor is required to pay the Carrier charges in accordance with this clause 10.
 - g) The Carrier may charge the Consignor interest on any overdue amount from the due date until the date of payment in full. The amount of interest will be calculated daily at the rate fixed from time to time under section 2 of the *Penalty Interest Rates Act 1983* (Vic).
 - h) The Carrier has a general and a particular lien on all Goods in the Carrier's possession at any one time that gives the Carrier the right to sell the contents and retain the proceeds of sale in settlement of any amounts that the Consignor may owe the Carrier.
- 11) Extent of Liability
 - a) To the extent permitted by law, the Carrier excludes all conditions, warranties and guarantees provided or implied by any State, Territory or Commonwealth law, including but not limited to the statutory consumer guarantees described in the CCA and the provisions of any State or Territory legislation.
 - b) The Carrier's total liability for a breach of any Non-Excludable Condition is limited to the remedies available under Section 64A of Schedule 2 to the CCA or similar remedies under any applicable State or Territory fair trading legislation.
 - c) Except where clause 11(b) applies, the Carrier bears no liability for any loss the Consignor suffers:
 - i) arising from the carriage, including but not limited to any failure by the Carrier to perform any services in connection with the carriage or other services, any mis-delivery, failure to deliver or delay in performing such services or other services;
 - ii) arising from any loss, damage or destruction to a shipment or any part thereof;
 - iii) arising from the Consignor's use of the Carrier's goods, including but not limited to where such goods are defective;
 - iv) for any reason whatsoever including our breach of contract, negligence, breach of duty as bailee, or wilful act or default.
- 12) Notwithstanding anything herein contained the Consignor, its servants or agents shall not for a period of five months from the date of the cessation of the use of the Carrier Services, without the written consent of the Carrier directly or indirectly engage employ or carry on business with any Sub-contractor, contractor agent or employee engaged or employed by the Carrier in relation to the agreement herein. Should the Consignor, its servants or agents trade directly with the Carrier's contractors sub contractors its servants or agents within five months from cessation then the Consignor will pay compensation to the Carrier equal to five months margin which represents the loss the Carrier will suffer as a result of the Consignor's breach of this clause.
- 13) Exclusions from liability
 - a) The Carrier is not liable for any loss of income, loss of profits, loss of markets, loss of reputation, loss of customers, loss of use, loss of an opportunity, loss of deterioration, loss of business, loss of reputation or

- goodwill, loss of value or use of intellectual property or other proprietary rights even if the Carrier had knowledge that such damages or loss might arise or for any other indirect, incidental, special or consequential damages or loss howsoever arising including without limitation the Carrier's breach of contract, negligence, wilful act or omission or default.
- b) The Carrier is not liable if it does not fulfil any obligations towards the Consignor at all as a result of:
- i) circumstances beyond its control such as (but not limited to) acts of god including earthquakes, cyclones, storms, flooding, fire, disease, fog, snow or frost, war, accidents, acts of public enemies, strikes, embargoes, an act or omission of any customs, security, airline, airport or government official, perils of the air, local disputes or civil commotions, national or local disruptions in air or ground transportation networks and mechanical problems to modes of transport or machinery;
 - ii) latent defects or inherent vice in the contents of the shipment;
 - iii) criminal acts of third parties such as theft and arson;
 - iv) the Consignor's acts or omissions or those of third parties such as its breach of (or any other party claiming an interest in the shipment causing the Consignor to breach) its obligations under these Conditions, the contents of the shipment consisting of any article that is a prohibited item even though the Carrier may have accepted the shipment by mistake; and
 - v) the Carrier's refusal to make any illegal payments behalf of the Consignor.
- c) The Carrier is not a common carrier and does not accept any liabilities of a common carrier. The Carrier may refuse to handle, carry or store a shipment for any reason (in its absolute discretion). Without limiting anything in this clause, the Carrier reserves the right to reject any shipment which does not conform to the Carrier's required shipment profile.
- 14) Severability, jurisdiction and assignment
- a) If any provision of this agreement is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are to be severed and if this cannot be done, the entire provision is to be severed from this agreement without affecting the validity or enforceability of the remaining provisions of this agreement.
 - b) Save as provided by any compulsory application of a convention, these Conditions shall be subject to and governed by the laws of Victoria. Each party irrevocably submits to the non-exclusive jurisdiction of the courts of Victoria and the Federal Court of Australia and any courts that may hear appeals from those courts about any proceedings in connection with this agreement.
 - c) The Carrier may, in its absolute discretion, assign or otherwise deal with any of its rights or obligations under this agreement in any way it considers appropriate.
- 15) Freight Warranty
- a) Where the Customer is a consumer, as defined in the CCA, the following mandatory text applies: Our goods come with guarantees that cannot be excluded under the CCA. 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 goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.
 - b) Coverage and qualification The Services will be subject to the terms of the Freight Warranty unless the Customer is ineligible, or the Customer has elected prior to commencement of the Services that Freight Warranty will not apply.
 - c) Claim Parameters
 - i) Any claim under the Freight Warranty for damage to or loss of Goods (FW Claim) must be made in writing on a claim form supplied by Superfreighters. The FW Claim form is to be sent to the address details listed in this Agreement or emailed to: customerservice@superfreighters.com.au
 - ii) The Customer must notify Superfreighters in writing of any FW Claim within the following time limits:
 - (1) where the Receiver has indicated in writing on the consignment note that loss or damage has occurred in respect of the Goods, within seven (7) days of the Services being undertaken;
 - (2) where the Receiver has acknowledged that the Goods have been delivered and received in good order and condition, twenty-four (24) hours from the date of delivery of the Goods to the Delivery Address; or
- (3) in respect of FW Claims for nondelivery, within seven (7) days of the Services being undertaken.
 - iii) The Customer may only make one (1) FW Claim per consignment note.
 - iv) The Customer must attach to any FW Claim form (either physically or electronically), documentary evidence acceptable to Superfreighters (for example, receipt, valuation or tax invoice) as proof of value of the Goods.
 - v) FW Claims will only be paid by Superfreighters after the Customer has paid all outstanding Charges in respect of the consignment which is subject to the FW Claim. For clarity, Charges include the Charge for movement of the freight and the applicable Freight Warranty charge.
 - vi) Where the Customer makes a valid FW Claim and there are outstanding amounts owed by the Customer to Superfreighters, Superfreighters reserves the right to pay the FW Claim either directly to the Customer or as a credit to the Customer's account.
- d) Limitations The Freight Warranty is subject to the following limitations:
- i) FW Claims are limited to loss of or damage to the Goods only. For the avoidance of doubt, the Freight Warranty does not cover any Consequential Loss suffered by the Customer.
 - ii) The maximum amount that may be claimed from Superfreighters under the Freight Warranty is the lesser of:
 - (1) the Freight Warranty Limitation Amount; and
 - (2) the cost price of the Goods, as supported by documentary evidence acceptable to Superfreighters (for example receipt, valuation or tax invoice from the seller of the Goods).
 - iii) GST and freight charges relating to the consignment covered by the Freight Warranty shall not be included in the calculation of any amount payable under the Freight Warranty in respect of the Goods and any payment by Superfreighters arising out of any FW Claim made by the Customer.
 - iv) Where a FW Claim has been paid and that payment reflects the full value of the Goods, Superfreighters reserves the right to take possession of the Goods as salvage and to dispose of such Goods as it sees fit.
- e) Exclusions Superfreighters will not be liable for any FW Claims made by the Customer in any of the following circumstances:
- i) where the Customer has not selected a level of Freight Warranty to apply to the consignment or has not paid the Freight Warranty charge;
 - ii) where the Customer fails to submit the FW Claim to Superfreighters within the relevant time limits;
 - iii) subject to clause 15 c)ii)(2), where Superfreighters is in possession of a POD for the consignment signed by a person to indicate that the Goods were received in good order and condition;
 - iv) where the Goods consigned are Excluded Goods;
 - v) where Superfreighters in its reasonable opinion considers the packaging of the Goods to be inadequate for road transportation;
 - vi) where the Goods are determined by Superfreighters, acting reasonably, to have been defective prior to the Services;
 - vii) where damage, mechanical failure or other operational defect in the Goods could not, in the reasonable opinion of Superfreighters, have been caused by the Services;
 - viii) where Superfreighters fails, delays or is unable to carry out its obligations under this Agreement due to a Force Majeure Event;
 - ix) to the extent the Customer has caused or contributed to the damage to or loss of Goods;
 - x) where the Goods have not been packed in the original manufacturer's packaging or the equivalent; or
 - xi) where the delivery address is a post office box, a roadside drop or postal mail box.