

# ALLTRANS HEAVY HAULAGE PTY LTD

## TERMS AND CONDITIONS

To the fullest extent legally possible, all contracts and dealings between Alltrans Heavy Haulage Pty Ltd ABN 31126365580 (**Alltrans Heavy Haulage**) (and each subsidiary, affiliate, associated company, related entities, successors or assigns) and any owner of goods or any party requesting Alltrans Heavy Haulage to provide the Services (the **Owner**) relating to the Services are subject to the Terms and Conditions set out herein (the **Terms**) unless otherwise expressly agreed in writing by Alltrans Heavy Haulage.

1. **Definitions:** In these Terms, unless the context otherwise requires:
  - Contract** means a contract between Alltrans Heavy Haulage and the Owner for the supply by Alltrans Heavy Haulage, and purchase by the Owner, of the Services pursuant to these Terms.
  - Goods** means the goods of the Owner the subject of the Services.
  - GST** means any tax or imposition on the supply of goods and services covered by the GST Act.
  - GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.
  - Owner** means the owner of the Goods the subject of the Services, and includes (without limitation):
    - (a) the sender or receiver of the Goods;
    - (b) a person having an interest in the Goods;
    - (c) any party requesting Alltrans Heavy Haulage to provide the Services;
    - (d) any agent, representative, employee or sub-contractor of the Owner; and
    - (e) any other person entitled to make a claim in respect of the Goods.
  - Services** means the carriage by Alltrans Heavy Haulage of the Goods.
  - Sub-contractor** includes (without limitation):
    - (a) each Company which is at any time, or from time to time, a subsidiary of Alltrans Heavy Haulage within the meaning of the *Corporations Act 2001* (Cth);
    - (b) a railway operated by the Commonwealth of Australia or a State or Territory within the Commonwealth of Australia;
    - (c) any person or body corporate with whom Alltrans Heavy Haulage may arrange for the carriage of any or all of the Goods; and
    - (d) any person who is at any time, or from time to time, a servant, agent, employee or Sub-Contractor of any of the persons referred to in paragraphs (a) to (c) above.
2. **Not a common Carrier:** Alltrans Heavy Haulage is not a common carrier and accepts no liability as such.
3. **General lien:** All Goods are accepted subject to a general lien for all charges due to Alltrans Heavy Haulage on any account whether in respect of the Goods comprised herein or in respect of any other goods for which Alltrans Heavy Haulage provides any service.
4. **Quotation**

Alltrans Heavy Haulage may, in its absolute discretion, provide to the Owner a quotation (**Quotation**) specifying:

  - (a) the Services to be carried out by Alltrans Heavy Haulage; and
  - (b) the fee for carrying out the Services (**Fee**).
5. **Basis of Quotation**
  - (a) Quotations make no allowance for waiting time and all extra costs arising from waiting time shall be an additional charge to the Owner.
  - (b) Quotations are based upon prompt availability of the Goods for loading and the ability to make prompt delivery, and a charge shall be made by Alltrans Heavy Haulage in respect of any delay in excess of one hour (commencing at the time Alltrans Heavy Haulage reports for loading or unloading) in loading or unloading occurring otherwise than by default of Alltrans Heavy Haulage, and that charge will constitute the extra costs to Alltrans Heavy Haulage incurred as a result of the excess delay.
  - (c) Quotations are subject to the vehicle, haulage equipment and equipment required for loading and unloading having clear access for manoeuvring into loading and unloading site positions and the ground surface being firm and consolidated to withstand wheel loadings of the vehicle, haulage equipment and the equipment for loading or unloading and Alltrans Heavy Haulage's costs involved in any site preparation shall be borne by the Owner.
  - (d) Quotations do not include the cost of obtaining or operating cranes to load or unload and those costs shall be borne by the Owner.
  - (e) The Quotation and the Contract are subject to all necessary permits being issued by all relevant authorities.
6. **Payment deemed to be earned:** The Fee shall be deemed earned by Alltrans Heavy Haulage as soon as the Goods are loaded and dispatched from the Owner's premises.
7. **Trading terms:** Trading terms are strictly 14 days from the date of the invoice.
8. **Hazardous, dangerous etc Goods**
  - (a) The Quotation is made on the basis that goods of a hazardous, dangerous, noxious, offensive, volatile, inflammable or explosive nature will not be tendered to Alltrans Heavy Haulage and if the Owner requires goods

of that nature to be carried, the Owner shall make full disclosure of the nature of the goods and the same will be carried by Alltrans Heavy Haulage only if express written agreement is made between the Owner and Alltrans Heavy Haulage in relation to the carriage thereof.

- (b) The Owner warrants that except as specified in the Contract the Goods which are tendered to Alltrans Heavy Haulage for carriage shall not be of a hazardous, dangerous, noxious, offensive, volatile, inflammable or explosive nature and will be goods the carriage of which is not illegal or prohibited by any law of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia by reason of their nature, packaging, labelling or otherwise.
- (c) The Owner hereby indemnifies Alltrans Heavy Haulage in respect of any liability for death, bodily injury, loss and/or damage incurred by Alltrans Heavy Haulage arising directly or indirectly as a result of the Owner's failure to comply with this warranty.

#### **9. Weight and dimensions of Goods**

- (a) Where the Owner has declared the weight of the Goods and Alltrans Heavy Haulage relies or has relied on that declaration then the Owner shall be responsible for all extra costs and risks incurred by Alltrans Heavy Haulage and shall be liable to Alltrans Heavy Haulage for any loss or damage occasioned either directly or indirectly to Alltrans Heavy Haulage by reason of Alltrans Heavy Haulage relying or having relied upon a declared weight.
- (b) If weights and dimensions of the Goods exceed those declared by the Owner and stipulated in the Contract, the Quotation and/or the Contract shall be null and void at the option of Alltrans Heavy Haulage.

#### **10. Invoice and payments**

- (a) Alltrans Heavy Haulage will issue an invoice to the Owner for the Fee.
- (b) Payment must be made to Alltrans Heavy Haulage by the Owner in cleared funds and in full without any deductions whatsoever strictly within fourteen (14) days of the date of the invoice.

- 11. Alltrans Heavy Haulage's acceptance of liability:** If, by express and written agreement between Alltrans Heavy Haulage and the Owner, Alltrans Heavy Haulage accepts responsibility for damage to, loss of, or deterioration of Goods, no claim for that damage, loss or deterioration will be binding on Alltrans Heavy Haulage unless lodged in writing at the office of Alltrans Heavy Haulage in the State in which delivery is made (or where there is no such office, then at the office of Alltrans Heavy Haulage in the State from which the Goods were dispatched) within 72 hours after delivery of the Goods was completed.

#### **12. Carriage**

- (a) Alltrans Heavy Haulage may, in its absolute discretion, arrange with any Sub-Contractor to undertake the carriage of the Goods, and the Sub-Contractor shall be entitled to the benefit of these Terms to the same extent as Alltrans Heavy Haulage, and insofar as it may be necessary to ensure that the Sub-Contractor shall be so entitled, Alltrans Heavy Haulage shall be deemed to enter into the Contract for its own behalf and as agent for the Sub-Contractor, and the Owner shall be deemed to have ratified the sub-contracting arrangement upon delivery of the Goods by Alltrans Heavy Haulage to the Sub-Contractor.
- (b) Where the Owner expressly or by implication instructs Alltrans Heavy Haulage to use, or if it is agreed by Alltrans Heavy Haulage and the Owner that Alltrans Heavy Haulage will use a specific method of carriage (whether by road, sea, rail or air) Alltrans Heavy Haulage shall endeavour to give priority to that specified method. However, if, in Alltrans Heavy Haulage's reasonable opinion, carriage by the specified method cannot be conveniently undertaken, the Owner authorises Alltrans Heavy Haulage to carry or arrange for the carriage of the Goods by any other method(s) to be determined by Alltrans Heavy Haulage in its absolute discretion.
- (c) Any deviation from the usual route or manner of carriage of Goods which may, in the absolute discretion of Alltrans Heavy Haulage, be deemed necessary, reasonable or desirable in the circumstances shall be deemed to have been authorised by the Owner.

#### **13. Risk**

- (a) All Goods are carried entirely at the Owner's risk.
- (b) Alltrans Heavy Haulage shall not be responsible:
  - (i) in tort, contract or otherwise;
  - (ii) for any loss of, damage to or deterioration of the Goods, the misdelivery or failure to deliver the Goods, or any delay in the delivery of the Goods for any reason whatsoever (including, but without limitation, the negligence or wilful act or default of Alltrans Heavy Haulage, a Sub-Contractor or any other person), in any of the following circumstances:
    - (A) in the course of performance by Alltrans Heavy Haulage of the Contract;
    - (B) in events which are in the contemplation of Alltrans Heavy Haulage or the Owner;
    - (C) in events which are foreseeable by them or either of them; or
    - (D) in events which would constitute a fundamental breach of the Contract or a breach of a fundamental term thereof.

- 14. Delivery:** Alltrans Heavy Haulage is authorised to deliver Goods to the address for delivery specified by the Owner in the Contract, or if no address is specified, then to the address subsequently notified to Alltrans Heavy Haulage by the Owner, and Alltrans Heavy Haulage shall be deemed to have delivered the Goods in accordance with the Contract if Alltrans Heavy Haulage obtains from any person at that subsequently specified address a receipt or signed docket for the Goods.

#### **15. Delay**

- (a) If a vehicle is delayed by any cause beyond the control of Alltrans Heavy Haulage or is delayed as a result of Alltrans Heavy Haulage following instructions of the Owner, the Owner shall be liable for any extra costs incurred by Alltrans Heavy Haulage as a consequence of the delay.

- (b) If a vehicle is bogged whilst Alltrans Heavy Haulage is following instructions of the Owner, the Owner shall be liable for the costs incurred by Alltrans Heavy Haulage in recovering the vehicle from the bog and shall be liable for any damage to the vehicle, equipment or plant so caused or the recovery thereof.
- (c) If the Goods have not been loaded within 60 days of the date of the Quotation or the Contract (as the case may be), and the delay in loading is due to any cause beyond the control of Alltrans Heavy Haulage, the Owner shall be liable to pay to Alltrans Heavy Haulage in addition to the Quotation an amount equal to the increase in Alltrans Heavy Haulage's costs of carrying out the Services.
- (d) For the avoidance of doubt, the Owner is not relieved of any obligation to accept or pay for the Services due to any delay in delivery.

**16. Insurance:**

- (a) The Owner shall be responsible for obtaining its own insurance for the Goods whilst they are in transit and any expense for any such insurance shall be borne by the Owner.
- (b) Insurance of the Goods will not be effected by Alltrans Heavy Haulage for the benefit of the Owner except upon the written instructions of the Owner and then only at the Owner's expense and upon receipt of a declaration of value a reasonable time prior to the loading of the Goods.

**17. Obligations of the Owner**

- (a) The Owner shall be solely responsible for the conformity of all containers, packaging and pallets with any requirements of the Goods in relation thereto and for any expenses incurred by Alltrans Heavy Haulage arising from any failure to so conform.
- (b) The Owner shall be responsible for all applicable laws, customs and other governmental regulations of the Commonwealth or of any state or territory of the Commonwealth including those relating to the packaging, carriage and delivery of the Goods and shall furnish information and attach such documents to the consignment note as may be necessary to comply with those laws and regulations and Alltrans Heavy Haulage shall not be liable to the Owner or any other person for loss or expense due to the Owner's failure to comply with this clause.

**18. Owner's authorised agents:** If the person who delivers the Goods or any of them to Alltrans Heavy Haulage for carriage is not the Owner, that person shall be deemed to be duly authorised by the Owner to execute all documents (including, without limitation, the acceptance of these Terms) for and on behalf of the Owner. Such documents that are executed by that person shall be binding on the Owner.

**19. Acceptance of these Terms:** The Owner expressly represents and warrants to Alltrans Heavy Haulage that it is either the Owner or the authorised agent of the Owner, and by entering into the Contract, accepts these Terms.

**20. Indemnity:** The Owner hereby indemnifies Alltrans Heavy Haulage from all actions, claims, demands, proceedings, costs, damages and expenses brought or recovered by any of those persons arising out of, or in connection with, these Terms, the Contract or the Services.

**21. Recovery costs:** The Owner must pay to Alltrans Heavy Haulage all and any costs, expenses or losses incurred by Alltrans Heavy Haulage as a result of the Owner's failure to pay to Alltrans Heavy Haulage all sums outstanding (including any debt collection and legal costs) on a full indemnity basis.

**22. Jurisdiction:** The Owner agrees that all Contracts made with Alltrans Heavy Haulage shall be deemed to be made in the State of South Australia and subject to the non-exclusive jurisdiction of the courts of South Australia.

**23. Force majeure:** Alltrans Heavy Haulage will not be or will not be deemed in default or breach of any Contract as a result of the effects of force majeure. Force majeure will include (but is not limited to) any fire, flood, strike, civil disturbance, theft, crime or other matter beyond the control of Alltrans Heavy Haulage.

**24. Attornment:** For the purpose of giving effect to the Owner's obligations pursuant to these Terms, the Owner hereby irrevocably appoints the public officer of Alltrans Heavy Haulage as its attorney in all things.

**25. Default in payment**

Notwithstanding any other provision of these Terms, if the Owner (or any other person liable to make payment to Alltrans Heavy Haulage for the Services) fails to make payment to Alltrans Heavy Haulage in accordance with clause 10, Alltrans Heavy Haulage may, in its absolute discretion:

- (a) retain and sell all or any of the Goods in its possession, and use the proceeds of such sale towards all expenses of the sale and shall render the surplus moneys from the sale, if any, and any of the Goods should they remain unsold, to the person to whom Alltrans Heavy Haulage appears to be entitled thereto, and any sale by Alltrans Heavy Haulage of the Goods, or any of them shall not prejudice or affect charges due or payable in respect of the Services or the sale of the Goods; and
- (b) charge interest on any overdue accounts at the rate provided for by the *Penalty Interest Rates Act 1983* (Vic) as amended from time to time plus 2%.

**26. Severability:** Any part hereof being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

**27. Waiver:** The waiver by Alltrans Heavy Haulage of any breach by the Owner of any of these Terms shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

**28. Limitation of Liability**

- (a) Subject to clause 28(b), any condition or warranty (including, but without limitation, any implied warranty of merchantability, satisfactory quality or fitness for a particular purpose) which would otherwise be implied in these Terms or in relation to any Goods and/or Services is hereby excluded.
- (b) Where legislation implies in these Terms any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in these Terms. However, the liability of the Company for any breach of such condition or warranty shall be limited to one or more of the following:
  - (i) supplying of the Services again; or
  - (ii) payment of the cost of having the Services supplied again.

**29. GST:** To the extent that a supply of Services provided by Alltrans Heavy Haulage, or any other supply made under or pursuant to these Terms, is a “taxable supply” as defined in the GST Act, Alltrans Heavy Haulage will increase its price in respect of that supply its makes by the amount of GST payable on the supply.

**30. Privacy Act:** The Owner agrees that Alltrans Heavy Haulage can make any inquiries it deems necessary to investigate the Owner’s creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers (the **Sources**). The Owner authorises the Sources to disclose any information concerning its creditworthiness in their possession to Alltrans Heavy Haulage. The Owner agrees that Alltrans Heavy Haulage may disclose any information in its possession concerning the Owner’s creditworthiness to the Sources.

**31. Statement by Alltrans Heavy Haulage:** A statement by any officer of Alltrans Heavy Haulage is conclusive evidence of any fact, matter or thing.