



TERMS AND CONDITIONS

(effective 6 November 2023)

These Terms and Conditions must be read having regard to the provisions of the *Australian Consumer Law* (set out in Schedule 2 of the *Competition and Consumer Act 2010*) to the extent that those provisions are applicable to consumers as defined under Section 3 of that Schedule 2. These Terms and Conditions do not have the effect of excluding, restricting or modifying rights under the Australian Consumer Law which cannot be excluded, restricted or modified by agreement.

1) Definitions

- a) "Australian Consumer Law" means Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- b) "Client" means the party entering into the contract for services with the Service Provider being the shipper, consigner, receiver, consignee, the owner of the Goods or their authorised agent;
- c) "Client's Goods" means the cargo accepted by the by the Service Provider together with any container, packaging, pallet(s) or any other storing devise in or on which the goods are to be carried and/or stored whether or not supplied by or on behalf of the Client;
- d) "Dangerous Goods" includes Goods which are or may become of a dangerous, inflammable, radio-active or offensive, Goods likely to harbour or encourage vermin or other pests, or Goods which may become liable to damage, or injure any person or property in any manner whatsoever;
- e) "Heavy Vehicle National Law" means the Heavy Vehicle National Law Act 2012 (Qld) as enacted in the Queensland Parliament and adopted by the States and Territories, including any Regulations made under that Act and any other legislation enacted by the Commonwealth, a State or a Territory for the purpose of giving effect to the Heavy Vehicle National Law or the Council of Australian Governments' Intergovernmental Agreement on Heavy Vehicle Regulatory Reform dated 25 February 2010;
- f) "Rates" means the rates the Service Provider charges the Client for the services it has provided to it from time to time;
- g) "Service Level Schedule" means the document detailing the whole of the services provided by the Service Provider to the Client and all incidental matters to the provision of services including but not limited to packing, unpacking, de-stuffing and deconsolidation, road, rail, sea and air carriage, storage, logistics, warehousing and handling of Client's Goods and Containers on behalf of the Client, and any other services provided by the Service provider;
- h) "Service Provider" means Motus Transport Pty Ltd ACN 611 377 747 its servants and agents; and
- i) "Subcontractor" means any person, their servants or agents who, pursuant to a contract or arrangement with any other person (whether or not the Services Provider), provides or agrees to provide the services or any part of the services and includes subcontractors of the subcontractor;

2) Acceptance

- a) After the Client has been provided with a copy of these Terms and Conditions, any instructions received by the Service Provider from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Service Provider shall constitute acceptance of the Terms and Conditions contained herein.
- b) Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Rates.
- c) After the Client has been provided with a copy of these Terms and Conditions, upon acceptance of these Terms and Conditions by the Client, the Terms and Conditions are binding and can only be amended with the written consent of the Service Provider and agreement of the Client.
- d) The Client undertakes to give the Service Provider at least fourteen (14) day's notice of any change in the Client's name, address and/or any other change in the Client's details.

3) Services

The services being provided to the Client are as per the Services set out in the Service Level Schedule (**Services**).

4) Service Provider's Obligations

- a) The Service Provider at its own cost shall engage and maintain workforce and material handling equipment (MHE) satisfactory in size and ability to effectively and efficiently carry out the Client's warehousing and distribution.
- b) All Client's Goods will be stored according to the agreement between the Service Provider and the Client i.e cold or ambient.
- c) The Services Provider will undertake a stock rotation of the Client's Goods.

5) Exclusion of Liability

- a) The Service Provider is not a Common Carrier and will accept no liability as such.
- b) All Client's Goods, and articles are carried or transported, and all storage and other services, are performed by the Service Provider subject only to these Terms and Conditions, and the Service Provider reserves the right to refuse the carriage or transport of Client's Goods, articles for any person, corporation or body, and the carriage or transport of any class of articles or Client's Goods which are not in accordance with these Terms and Conditions.
- c) The Client's Goods shall at all times be at the risk of the Client and the Service Provider shall not be liable in tort (including negligence), contract, bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery or misdelivery of the Client's Goods or documentation whatsoever howsoever caused, unless such loss or damage is due to the wilful neglect of the Service Provider or its own servants, agents or subcontractors.
- d) The Service provider shall not be liable in tort (including negligence), contract, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage or injury to any person, property or thing damaged arising from the Service Provider providing the services under this agreement.
- e) The Service Provider is not liable for any loss suffered by the Client in connection with the Client's Goods or the services that is consequential or indirect loss including:
 - i) losses that are purely financial or economic losses;
 - ii) loss of opportunity;
 - iii) losses in connection with contracts, agreements or understandings the Customer has with third parties;
 - iv) loss of market;
 - v) any other losses whatsoever that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.
- f) The exclusion of liability in clauses 5(c) and (d), shall not apply where the loss or damage is caused by the gross negligence, fraud, criminal conduct or wilful misconduct of the Service Provider, its servants, agents or subcontractors.
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- h) Any spoiled or expired / out of date products are the responsibility of the Client.

6) Limit of Liability
Notwithstanding any other provision in these Terms and Conditions and subject always to clause 5, if any liability whatsoever, howsoever arising is found to attach to the Service Provider, the liability of the Service Provider shall not exceed the following:

- a) In respect of all claims except any claims under the Australian Consumer Law, whichever is the lesser of:
 - (i) the value of the Client's Goods,
 - (ii) the equivalent of AUD\$2.00 per gross kilogram of the Client's Goods lost or damaged.
- b) In respect of all claims under the Australian Consumer Law, whichever is the lesser of:
 - (i) In the case of services supplied under this agreement:
 - a. the supplying of the services again; or
 - b. the payment of the cost of supplying the services again.
 - (ii) In the case of supply of goods under this contract:
 - a. the replacement of the goods or the supply of equivalent goods;
 - b. the repair of the goods;
 - c. the payment of the cost of replacing the goods or of acquiring equivalent goods; or
 - d. the payment of the cost of having the goods repaired.
- c) The Client acknowledges and agrees that a rolling ullage allowance of up to 1% of stock over a 12-month period is deemed acceptable and may be attributed to normal operational loss, wastage, or damage. Any such loss or damage within this allowance shall not give rise to a claim against the Service Provider.

6) Insurance

It is the responsibility of the Client to insure and keep insured the Client's Goods in the name of the Client for the full insurable value of the Client's Goods whilst they are in the warehouse and whilst they are in transit to the warehouse. The insurance must be against all risks of loss or damage to the Client's Goods including the risks of loss or damage by fire, flood, storm damage, explosion, burglary, theft and such other risks as are normally insured against by prudent persons carrying on businesses similar to those carried on by the Client and the Service Provider and the insurer must waive any rights of subrogation against the Service Provider.

7) Statutory Requirement and Client Warranties

- a) The Service Provider and the Client shall at all times comply with and observe all laws regulations and directions of all statutory authorities governing the conduct and operation of the Service Provider's and Client's responsibilities undertaken pursuant to this agreement including those under the Heavy Vehicle National Law, and in relation to the Client's Goods.
- b) It is the responsibility of the Client to hold a copy of a liquor licence as per any States' regulation for each location.
- c) The Client warrants the accuracy of all descriptions, values, dimensions, weights and other particulars furnished to the Client in relation to the Client's Goods for the purposes of road transport, storage, and other purposes.
- d) The Client warrants that it has as complied with all applicable laws and regulations relating to the nature, condition, packaging or carriage and storage of the Client's Goods, and that the Client's Goods are packed in a manner, having regard to their nature which is adequate to withstand the ordinary risks of handling, storage or carriage, the Client's Goods are accurately described in writing, and the container(s) packaging are fit and proper condition for the services.
- e) The Client warrants that the information it provides to the Service Provider in relation to the Client's Goods including the nature, number of packages and weight of the contents of the container, lifting, lashing and gravitational specifications, and all such matters required for the receipt, loading carriage, unloading, road transport and customs clearance of the Client's Goods is accurate, complete and sufficient.

8) Payment, Revision of Rates & Invoice Queries

- a) The provision of credit to the Client by the Service Provider for the Services, is and at all times remains at the absolute discretion of the Service Provider. Any provision of credit is subject to acceptance by the Service Provider of a credit application by the Client including trade references and these Terms and Conditions.
- b) The Service Provider will raise invoices weekly for Services provided to the Client. These invoices are to be paid in accordance with the payment term set out in the invoice or will be due 14 days from the date of invoice.
- c) All Service Provider invoices are to be paid in full and no amount queried or claimed from the Service Provider will be set off against any invoice of the Service Provider to the Client.
- d) If the Client fails to make any payment by the due date, the Service Provider will serve the client a reminder notice that payment is due and clause 10(a) will apply.
- e) All invoice queries/claims should be addressed in writing to the Service Provider within 7 days from date of invoice or within 7 days from the date of the operational event leading to the claim. The Service Provider undertakes to investigate all claims from a Client within 7 days of receipt of said claim in writing. The outcome of the Service Provider's investigation will be notified to the Client in writing as soon as is practicable following the investigation.
- f) Where the Service Provider investigates and the claim is accepted by the Service Provider in whole or in part, payment of the claim amount (or that part of the claim amount that is accepted) will be made within 14 days of notification of the outcome of investigation.

9) Default

- a) If the default is the failure by the Client to pay an invoice of the Service Provider, and the Client does not remedy the default within 7 days of receipt of the notice issued by the Service Provider in accordance with clause 9(d), then, the Service Provider may: (a) charge interest on all overdue payments at two per cent (2%) per month from the due date until the date of payment (or otherwise as allowed under the law), and either (b) suspend all Services provided and executed as defined in the services agreement or Service Level Schedule; or terminate this agreement with 7 days' notice in writing to the Client.

10) Unpaid Service Provider's Rights

- a) Where the Client has left any Client's Goods with the Service Provider to perform any service in relation to the Client's Goods and the Service Provider has not received or been tendered the whole of the price, or the payment has been dishonoured, the Service Provider shall have:
 - i) a particular and general lien on the Client's Goods in respect of all monies due to the Service Provider; and
 - ii) If any monies due to the Service Provider are not paid within one calendar month after notice has been given to the person from whom the monies are due that the Client's Goods are detained, they may be sold by auction or otherwise at the sole discretion of the Service Provider and at the expense of such person and the proceeds applied in or towards satisfaction of such particular and general lien. ,
- b) The lien of the Service Provider shall continue despite the commencement of proceedings, or judgement for the price having been obtained.

11) Force Majeure

The parties shall not be liable for any failure to perform or observe any terms of this agreement if performance or observance has been delayed, hindered, restricted or prevented by any circumstance not within the reasonable control of the parties including without limiting the generality of the foregoing acts of God, strikes, lock-outs or other industrial disturbances, war, hostilities or the threat or apprehension thereof, or any interruption to the supply of materials or information, or any accident or breakdown of machinery, or the making of emergency or essential repairs thereto, or compliance with any valid order of any governmental or public authority and the time or times

for performances of the obligations on the respective parties parts too be performed herein shall be extended by a period equal to such period of delay provided that such party shall forthwith give notice to the other party in accordance with the provisions of this agreement and shall endeavor to remove or remedy the cause thereof with all due diligence and expedition.

12) Special Conditions

If any special conditions are set out in this agreement and are inconsistent with these standard terms and conditions, the standard terms and conditions will be read subject to the special conditions.

13) Right of Entry

The Client's personnel and other authorized persons will be allowed entry to the Service Provider's operating area by the Service Provider, to deal with their goods, provided that prior approval has been given by the Service Provider and such entry does not interfere with normal operations and that such inspection is undertaken at the Client's own risk. The Client needs to comply with the Service Provider's WH&S policy as set out in the Service Level Schedule. Such entry will also be subject to the Service Provider's security measures in force at the time. Approval will not be unreasonably refused and the Service Provider will make every effort to allow entry at a convenient time in a safe environment.

14) Security

The Service Provider will provide a security system sufficient to provide reasonable security for the warehouse. The monitoring of such security arrangements will be the responsibility of the Service Provider, and the Client acknowledges that such security exists.

15) Good Housekeeping

The Service Provider will ensure that at all times the warehouse is operated and maintained to WH&S standards.

16) Rates

The commencing rates payable by the Client to the Service Provider will be as set out in a Service Level Schedule or sent to the Client on commencement of services. Notification of any variation of the rates in writing will be provided at 12 month intervals with first adjustment on either 1st January if agreement commenced between the period 1st July and 31st December or 1st July if the agreement commenced between the period 1st January and 30th June unless agreed otherwise. The Rates will be increased on an annual basis by the greater of CPI or the annual increase in the underlying activity cost in providing the services.

17) Confidentiality

The Parties agree to hold information regarding this agreement, the parties trading relationship and any commercial terms and pricing (**Confidential Information**) as confidential and exercise all due care to ensure; (i) not to disclose or use the confidential information for any other purpose except as necessary for the purposes of and consistent with the terms of this agreement such as without limitation if required to be disclosed under any law, governmental rule or regulation or court order (ii) to limit access to confidential information only to its employees on a need to know/use basis, and (iii) not to sell, transfer, publish, disclose or otherwise make available the whole or any part of the confidential information to any third party or persons not permitted by the terms of and pursuant to the terms contained in this agreement without the disclosing Party's prior written consent.

The Client acknowledges that: (i) personal information (as defined in the Privacy Act 1988 (Cth)) including credit-related personal information may form part of the Confidential Information.

The Service Provider ensures all personal information held by it is accessed, used and handled strictly in accordance with the applicable requirements of the Australian Privacy Principles set out in the Privacy Act 1988 (Cth) and of any applicable State or Territory legislation concerning privacy and in accordance with the Service Provider's privacy policy.

18) Dangerous goods and Temperature controlled goods

- a) Unless agreed in writing, following the Client providing to the Service provider a document signed by or on behalf of the Client, disclosing the type of Dangerous Goods, their UN number and their class, the Client shall not deliver to the Service Provider or cause the Service Provider to deal with or handle, Dangerous Goods.
 - b) If the Client is in breach of Clause 19 (a):
 - i. the Client shall be liable for any death, injury, loss and/or damage of any nature whatsoever and howsoever arising by the provision of services in respect of the Dangerous Goods (whether or not resulting from or arising out of the negligence, breach of contract, whether fundamental or otherwise, breach of bailment, contravention of any statute, or breach of statutory duty or wilful act or default of the Company);
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- ii. further, the Client shall defend, indemnify and hold harmless the Service Provider for any liability of the Service Provider, expenses, fines, charges, losses or costs including legal costs sustained; and
- iii. the Client (or any other person in whose custody the Goods may be in at the relevant time) may, at the Service Provider's sole discretion, have the Client's Goods destroyed or otherwise dealt with at the expense of the Client;
- iv. If the Service Provider agrees to accept Dangerous Goods and then at any time, it (or any other person) reasonably forms the view that those Client's Goods constitute a risk to other goods, property, life or health, it may (without notice and without liability) have the Client's Goods destroyed, disposed of, abandoned or otherwise dealt at the Service Provider's sole discretion and without compensation to the Client or owner of the Dangerous Goods.
- v. The Client undertakes not to request transportation or storage of any Client's Goods which require temperature control without previously giving written notice to the Service Provider of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled container stuffed by or on behalf of the Client, the Client further undertakes that:-
 - (a) the container has been properly pre-cooled or pre-heated as appropriate;
 - (b) the Client's Goods have been properly stuffed and stowed in the container; and
 - (c) the container's thermostatic controls have been properly set by the Client.

19) Client-Packed Containers

- a) If a Container has not been packed or stuffed by the Company, the Service provider shall not be liable for loss of or damage to the contents if caused by:
 - i) the manner in which the container has been packed or stuffed,
 - ii) the unsuitability of the contents for carriage in containers, unless the Service Provider has approved the suitability,
 - iii) the unsuitability or defective condition of the container, provided that where the container has been supplied by or on behalf of the service provided this paragraph shall only apply if the unsuitability or defective condition arose:
 - without any negligence on the part of the Service Provider; or
 - would have been apparent upon reasonable inspection by the Client, owner or person acting on behalf of either of them;
 - the fact that the container is not sealed at the commencement of the carriage, except where the Service Provider has agreed to seal the container.

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20) Nomination of Sub-Contractor

- a) The Client authorises the Service Provider (if it should think fit to do so) to subcontract on any terms the whole or any part of the Services. Such authorisation extends to any Subcontractor and sub-subcontractor.
- b) Every servant, Subcontractor, sub-subcontractor or agent of the Service Provider shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Service Provider, does so not only on its behalf, but as agent and trustee for such servants, Subcontractors, sub-subcontractor and agents and each of them shall to this extent be or be deemed to be parties to the contract.

21) General

- a) If any provision of these Terms and Conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - b) The failure by a party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the party's right to subsequently enforce that provision.
 - c) The Client authorises any deviation from the usual manner in which the services are provided which may in the absolute discretion of the Service Provider be deemed reasonable or necessary in the circumstances.
 - d) If the Client expressly or impliedly instructs the Service Provider to use or it is expressly or impliedly agreed that the Service Provider will use a particular method of providing the services, the Service Provider will give priority to that method.
 - e) These Terms and Conditions shall be subject to the Law of New South Wales and the Courts of the State of New South Wales shall have non-exclusive jurisdiction in connection with these Terms and Conditions, the agreement and the provision of the services.
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