

## MB LOGISTICS PTY LTD – TERMS AND CONDITIONS

To the fullest extent legally possible, all contracts and dealings between MB Logistics Pty Ltd (ABN: 55085380090) (and each subsidiary, affiliate, associated company, related entities, successors or assigns) and any owner of goods or any party requesting MB Logistics Pty Ltd 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 MB Logistics Pty Ltd

1. **Definitions:** In these Terms, unless the context otherwise requires:

**Contract** means a contract between MB Logistics Pty Ltd and the Owner for the supply by MB Logistics Pty Ltd, 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd of the Goods.

**Sub-contractor** includes (without limitation):

- (a) each Company which is at any time, or from time to time, a subsidiary of MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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:** MB Logistics Pty Ltd 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 MB Logistics Pty Ltd on any account whether in respect of the Goods comprised herein or in respect of any other goods for which MB Logistics Pty Ltd provides any service.

#### 4. Quotation

MB Logistics Pty Ltd may, in its absolute discretion, provide to the Owner a quotation (**Quotation**) specifying:

- (a) the Services to be carried out by MB Logistics Pty Ltd; 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 MB Logistics Pty Ltd in respect of any delay in excess of one hour (commencing at the time MB Logistics Pty Ltd reports for loading or unloading) in loading or unloading occurring otherwise than by default of MB Logistics Pty Ltd, and that charge will constitute the extra costs to MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd only if express written agreement is made between the Owner and MB Logistics Pty Ltd in relation to the carriage thereof.
  - (b) The Owner warrants that except as specified in the Contract the Goods which are tendered to MB Logistics Pty Ltd 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 MB Logistics Pty Ltd in respect of any liability for death, bodily injury, loss and/or damage incurred by MB Logistics Pty Ltd 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 MB Logistics Pty Ltd relies or has relied on that declaration then the Owner shall be responsible for all extra costs and risks incurred MB Logistics Pty Ltd and shall be liable to MB Logistics Pty Ltd for any loss or damage occasioned either directly or indirectly to MB Logistics Pty Ltd by reason of MB Logistics Pty Ltd 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 MB Logistics Pty Ltd
10. **Invoice and payments**
- (a) MB Logistics Pty Ltd will issue an invoice to the Owner for the Fee.
  - (b) Payment must be made to MB Logistics Pty Ltd by the Owner in cleared funds and in full without any deductions whatsoever strictly within seven (7) days of the date of the invoice.
11. **MB Logistics Pty Ltd acceptance of liability:** If, by express and written agreement between MB Logistics Pty Ltd and the Owner, MB Logistics Pty Ltd accepts responsibility for damage to, loss of, or deterioration of Goods, no claim for that damage, loss or deterioration will be binding on MB Logistics Pty Ltd unless lodged in writing at the office of MB Logistics Pty Ltd in the State in which delivery is made (or where there is no such office, then at the office of MB Logistics Pty Ltd in the State from which the Goods were dispatched) within 72 hours after delivery of the Goods was completed.
12. **Carriage**
- (a) MB Logistics Pty Ltd 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 MB Logistics Pty Ltd, and insofar as it may be necessary to ensure that the Sub-Contractor shall be so entitled, MB Logistics Pty Ltd 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 MB Logistics Pty Ltd to the Sub-Contractor.
  - (b) Where the Owner expressly or by implication instructs MB Logistics Pty Ltd to use, or if it is agreed by MB Logistics Pty Ltd and the Owner that MB Logistics Pty Ltd will use a specific method of carriage (whether by road, sea, rail or air) MB Logistics Pty Ltd shall endeavour to give priority to that specified method. However, if, in MB Logistics Pty Ltd reasonable opinion, carriage by the specified method cannot be conveniently undertaken, the Owner authorises MB Logistics Pty Ltd to carry or arrange for the carriage of the Goods by any other method(s) to be determined by MB Logistics Pty Ltd in its absolute discretion.
  - (c) Any deviation from the usual route or manner of carriage of Goods which may, in the absolute discretion of MB Logistics Pty Ltd, 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) MB Logistics Pty Ltd 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 MB Logistics Pty Ltd, a Sub-Contractor or any other person), in any of the following circumstances:
    - (A) in the course of performance by MB Logistics Pty Ltd of the Contract;
    - (B) in events which are in the contemplation of MB Logistics Pty Ltd 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:** MB Logistics Pty Ltd 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 MB Logistics Pty Ltd by the Owner, and MB Logistics Pty Ltd shall be deemed to have delivered the Goods in accordance with the Contract if MB Logistics Pty Ltd 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 MB Logistics Pty Ltd or is delayed as a result of MB Logistics Pty Ltd following instructions of the Owner, the Owner shall be liable for any extra costs incurred by MB Logistics Pty Ltd as a consequence of the delay.
- (b) If a vehicle is bogged whilst MB Logistics Pty Ltd is following instructions of the Owner, the Owner shall be liable for the costs incurred by MB Logistics Pty Ltd 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 MB Logistics Pty Ltd, the Owner shall be liable to pay to MB Logistics Pty Ltd in addition to the Quotation an amount equal to the increase in MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd all and any costs, expenses or losses incurred by MB Logistics Pty Ltd as a result of the Owner's failure to pay to MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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:** MB Logistics Pty Ltd 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 MB Logistics Pty Ltd.
- 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd for the Services) fails to make payment to MB Logistics Pty Ltd in accordance with clause 10, MB Logistics Pty Ltd 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 MB Logistics Pty Ltd appears to be entitled thereto, and any sale by MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd, or any other supply made under or pursuant to these Terms, is a "taxable supply" as defined in the GST Act, MB Logistics Pty Ltd 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 MB Logistics Pty Ltd 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 MB Logistics Pty Ltd. The Owner agrees that MB Logistics Pty Ltd may disclose any information in its possession concerning the Owner's creditworthiness to the Sources.

- 31. Statement by MB Logistics Pty Ltd:** A statement by any officer of MB Logistics Pty Ltd is conclusive evidence of any fact, matter or thing.

I have read and understood above conditions

Signature\_\_\_\_\_

Name\_\_\_\_\_