

CNC Cartage Transport Solutions Pty Ltd – Terms & Conditions of Cartage

1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"CNC"** means CNC Cartage Transport Solutions Pty Ltd ACN 158 957 521 As Trustee For The Brown Family Trust Trading As CNC Cartage Transport Solutions Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of CNC Cartage Transport Solutions Pty Ltd.
- 1.3 **"Sub-Contractor"** means and includes:
- (a) any other person or entity with whom CNC may arrange for the carriage or storage of any Goods the subject of the Contract; or
- (b) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the person referred to in sub-clauses (a).
- 1.4 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting CNC to provide the Carriage as specified in any proposal, quotation, order, invoice or other documentation.
- 1.5 **"Consignee"** means the person to whom the Goods are to be delivered by way of the Carriage.
- 1.6 **"Carriage"** means all the services supplied by CNC to the Client to facilitate the movement of Goods from one place to another by CNC as may be requested by the Client from time to time (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as the carriage, storage, stowing, packing or handling of the Goods, or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, of fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations).
- 1.7 **"Goods"** shall mean cargo together with any container, trailer, tilt, wagon, tank, frame(s), packaging, or pallet(s) to be moved from one place to another by way of Carriage by CNC.
- 1.8 **"Dangerous Goods"** means Goods which are, or may become, noxious, dangerous, hazardous, inflammable, explosive or offensive including but not limited to, waste or contaminated or radioactive materials, or may become liable to cause death, injury or damage to any person or property whatsoever and includes goods likely to cause damage, such as goods likely to harbour or encourage vermin or other pests, and all such goods as falling within the definition of hazardous and dangerous goods in the legislation governing carriage by road, rail, sea or air in the states and territories of Australia, whether prescribed by legislation or otherwise.
- 1.9 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, pricing details, client information including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, contact details, credit applications and credit history.
- 1.10 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer.
- 1.11 **"Price"** means the Price payable for the Carriage (plus any GST where applicable) as agreed between CNC and the Client in accordance with clause 5 below.
- 1.12 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Carriage provided by CNC.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 These terms and conditions are to be read in conjunction with CNC's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by CNC to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions Act (Queensland) 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that CNC shall, without prejudice and to the extent permitted by law, accept no liability, in respect of any alleged or actual error(s) and/or omission(s) resulting from an inadvertent mistake or omission made by CNC.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of CNC; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Client shall give CNC not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change in trustees, or business practice).
- 4.2 The Client agrees that a failure to comply with clause 4.1 may result in the Client being in default of this Contract and CNC may exercise their rights under clause 18.

5. Price and Payment

- 5.1 As noted on the quote provided by CNC, CNC reserves the right to change the Price:
- (a) if a variation to CNC's quotation is requested or required including but not limited to, the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of CNC, delivery times or date or otherwise;
- (b) to reflect any increases to CNC in the cost of undertaking the Carriage of the Goods which are beyond the reasonable control of CNC including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in fuel, fuel levies, taxes or customs duties or insurance premiums or warehousing costs;
- (c) for any delay over thirty (30) minutes in either loading and/or unloading from when CNC reports for such loading or unloading, or any overnight or extended storage of the Goods, occurring other than from CNC's default;
- (d) where the Price is calculated by weight, measurement or value, CNC may at any time re-weight, or re-value or re-measure or require the Goods to be re-weighted, or re-valued or re-measured and charge proportional additional freight accordingly.
- 5.2 At CNC's sole discretion the Price shall be either;
- (a) Where clause 5.1 applies, as indicated on invoices provided by CNC to the Client in respect of Carriage undertaken; or
- (b) CNC's quoted Price (subject to clauses 5.2) which shall be binding upon CNC provided that the Client shall accept in writing CNC's quotation within thirty (30) days.
- 5.3 Time for payment for the Carriage being of the essence, the Price will be payable by the Client on the date/s determined by CNC, which may be:
- (a) on, or before, delivery of the Goods;
- (b) the date specified on any invoice or other form as being the date for payment; or
- (c) failing any notice to the contrary, the date of any invoice(s) and/or statement furnished to the Client by CNC.
- 5.4 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by CNC nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.5 Payment may be made by electronic on-line banking or credit card – excluding Amex (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and CNC.
- 5.6 CNC may in its discretion allocate any payment received from the Client towards any invoice that CNC determines and may do so at the time of receipt or at any time afterwards. On any default by the Client CNC may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CNC, payment will be deemed to be allocated in such manner as preserves the maximum value of CNC's Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 5.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to CNC an amount equal to any GST CNC must pay for any provision of Carriage by CNC under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 5.8 Receipt by CNC of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then CNC's ownership or rights in respect of the Carriage shall continue.
6. **Carriage of Goods**
- 6.1 CNC is not a "Common Carrier" and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by CNC subject only to these conditions and CNC reserves the right to refuse the Carriage or transport of articles for any person, corporation or body, and the Carriage or transport of any class of articles at its discretion.
- 6.2 The Client authorises CNC in its absolute discretion at any time without notice to the Client to:
- (a) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arranges with any third party to perform or undertake the Carriage of the Goods or any part thereof. In so engaging such third parties, CNC has or will represent to such third parties that the terms of this Contract, including the benefit of any terms conferred upon CNC, shall extend to such third parties in providing their goods and/or services;
- (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary, to proceed to or stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever) or method of carriage of the Goods that may be deemed reasonable or necessary in the circumstances, including, but not limited to, using the services of any third party to ensure the safety of other road users and property and/or compliance with lawful authority requirements and/or Police or private escorts, road closures and/or transport control, using specialist equipment such as special cooling;
- (c) comply with any order, direction, recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.
- 6.3 CNC's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.
- 6.4 CNC may open, at the Client's risk and expense, any document or any packaging, or container in which the Goods are placed or carried, to inspect the Goods to determine their nature or condition, or to determine their ownership or destination, where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced, or otherwise.
- 6.5 Any time specified by CNC for Carriage of the Goods is an estimate only and CNC will not be liable for any loss or damage

incurred by the Client as a result of any delay including where arising from any action under clause 6.2.

- 6.6 Subject to clause 16, but without prejudice to any other provision hereof, this Contract and any agreement CNC makes under its authority and any contract made by any person to whom CNC has delegated such authority, shall be made by the Client or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage including storage thereof by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit. All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 5.3.

7. Client-Packed Containers

- 7.1 Subject to any written special instructions to the contrary:
- (a) the Client is solely responsible for the safe and proper packaging of the Goods including but not limited to, the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging and for any loss suffered or incurred by any person including the Client, through any such failure.
- 7.2 Goods requiring special appliances for loading and unloading are accepted for carriage only on condition that such appliances are made available by the Client at the collection and/or delivery address. If CNC is, without prior arrangement, called upon to load or unload such Goods, CNC shall not be liable to the Client for any loss whatever, however caused, arising out of such loading or unloading and the Client shall indemnify CNC against all claims and demands whatever which could not have been made if such assistance had not been given.
- 7.3 Any handling, installation, removal, assembly or erection of any kind included in the Carriage of the Goods is undertaken on the basis that CNC accepts no liability for any loss, damage or injury of any kind whatsoever, howsoever arising (including, but not limited to, any negligence or breach of contract by CNC) caused or incurred or occurring during any part of such activity including loss, damage or injury to any person, property or thing or any Goods.

8. Client's Responsibility

- 8.1 The Client expressly warrants, represents, confirms and/or acknowledges that:
- (a) when the Goods are received by CNC title in the Goods remains with the Client.
- (b) CNC has relied upon the Client in its description of the Goods including but not limited to, weight, measure, standard, strength, quantity, quality, figures, dimensions and values. Accordingly, CNC accepts no liability for any discrepancy that may arise with the description;
- (c) unless specified otherwise in writing, CNC has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations including but not limited to, those relating to the any applicable dangerous goods codes and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (d) the Client is either the owner, or the authorised agent of the owner, of any Goods or property that is the subject matter of this Contract, and:
- (i) the Client is authorised by all persons owning or interested in the Goods to enter into this Contract; and
- (ii) by entering into this Contract, the Client accepts these terms and conditions for the Consignee or any owner or party with interest in the Goods, as well as for all other persons on whose behalf the Client is acting.
- (e) the person handing over the Goods to CNC is authorised to sign and accept these terms and conditions;
- (f) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- (g) It is the Client's sole responsibility to ensure that the delivery location suitable to accept delivery of the Goods including assessing the location for manoeuvrability of the truck.

9. Insurance

- 9.1 The Goods are carried and stored at all times at the Client's sole risk, and not at the risk of CNC. CNC is under no obligation whatsoever to effect insurance on any Goods, nor arrange for any Sub-Contractor or agent engaged in the course of undertaking the Carriage of the Goods to affect such insurance, without the Client's written instruction. Any such insurance is at the Client's expense. Where the Client's instruction does not specify the class of insurance to be effected, CNC may, in its sole discretion, effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resulting from:
- (a) wear, tear, moths, vermin, damp, mildew or loss of market;
- (b) loss, damage or expense proximately caused by delay;
- (c) any Force Majeure event or malicious damage of the Goods insured;
- (d) gradual deterioration, rust or oxidation, unless due to or consequent upon fire, collision, overturning or other accident;
- (e) any exclusion common to that class of insurance;
- (f) delay due to any regulatory obstruction, permit required for travel or other delay caused by regulation including but not limited to COVID-19 delays; and
- (g) any other exclusion advised by the Client to CNC, and detailed in the special instructions.

10. Dangerous Goods

- 10.1 Unless otherwise agreed in writing, CNC will not accept Dangerous Goods for carriage, nor anything which may encourage vermin or pests. The Client shall be liable for and shall indemnify CNC against, all loss and damage and additional charges and expenses incurred or sustained by CNC arising out of:

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- (a) any false or misleading or inaccurate information or description of such Dangerous Goods; or
- (b) any default or failure to declare the Goods as dangerous Goods and to provide full particulars thereof.
- 10.2 When Dangerous Goods are accepted for Carriage, the Client warrants that:
- (a) the Carriage requested by the Client is not prohibited;
- (b) the Client has fully disclosed in writing to CNC before CNC took possession of the Goods:
- (i) full particulars and description of the Dangerous Goods;
- (ii) all requirements of local authorities for such Carriage;
- (iii) the name, nature and value of the Dangerous Goods; and
- (iv) all other relevant information.
- 10.3 The Client is liable for any loss or damage suffered by CNC or any Sub-Contractor or other person through the Carriage of Dangerous Goods whether declared or not.
- 10.4 CNC may, at its sole discretion, at the Client's expense and without compensation to the Client or to any other person interested in the Goods, and without prejudice to its charges or any other rights hereunder:
- (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Client or any other person interested in the Goods; and
- (b) dispose or destroy or abandon or render harmless:
- (i) any Goods which CNC believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination; and
- (ii) any undeclared Dangerous Goods which are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature.
- 11. Delivery of the Goods**
- 11.1 CNC shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Client in writing, or at any other location directed by the Client orally.
- 11.2 CNC is contracted to deliver goods to the kerbside and accepts no responsibility or liability for any damages caused, directly or indirectly, to any property when instructed by the Client or the Recipient, including but not limited to any other person(s) responsible for the management of the site, to enter and effect delivery on private property.
- 11.3 The Client acknowledges that CNC provides no warranty that the delivery truck is fit for purpose of delivery on to private property or is appropriate to access tight or small areas.
- 11.4 The Client agrees that any person providing instruction to CNC regarding the location or manner of the delivery is deemed to have authority to provide that instruction and that CNC may rely on this representation.
- 11.5 The Client acknowledges that in the event that CNC are instructed to enter private property to effect the delivery, CNC will require piloting and/or instructions from the Client representative and the Client hereby indemnifies CNC as to any damage caused during the delivery process, including exiting the site, and any such damage or loss is not caused by CNC.
- 11.6 The Client indemnifies CNC against all loss, damages, claims, liability, expenses, payments or outgoings incurred by or awarded against CNC arising directly or indirectly from:
- (a) Any breach by the Client of this Contract;
- (b) Any act or omission of the Client (including any negligence, unlawful conduct or unlawful conduct) by the Client relating to this Contract or arising as a consequence of the performance or non-performance of the services.
- 11.7 The Client holds CNC harmless from any actions, claims, liability or loss in respect of damages and the performance or non-performance of the services.
- 12. Loss or Damage**
- 12.1 Subject to clause 16, and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Goods shall be and remain at the Client's sole risk, and CNC shall not be under any liability for:
- (a) any loss or damage suffered by the Client (or any third party) as a result of the Client contravening clause 8;
- (b) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or compliance with the directions of any person or lawful authority entitled to give them;
- (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non-delivery of the Goods due to circumstances beyond the control of CNC (and whether the Goods are or have been in the possession of CNC or not) or any injury or loss incurred by the Client in these circumstances;
- (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (e) any act or omission whether wilful, reckless, negligent or otherwise of CNC, or its servants or agents or Sub-Contractors;
- (f) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
- (g) any act, omission or neglect of the Client, including any breach of its obligations under this Contract, insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.
- 13. Conditions of Storage**
- 13.1 CNC is authorised to remove the Goods from one warehouse to another without cost to the Client. CNC will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 13.2 The Client is entitled, upon giving CNC reasonable notice, to inspect the Goods in store but a reasonable charge may be made by CNC for this service.
- 13.3 Subject to payment for the balance of any fixed or minimum period of storage agreed, the Client may require the Goods to be removed from the store at any time on giving CNC not less than five (5) working days' notice. If the Client gives CNC less than the required notice, CNC will still use its best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 13.4 The Client agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from CNC to do so. If the Client is in default, CNC may, after fourteen (14) days' notice to the Client, SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty, and apply the net proceeds in satisfaction of any amount owing by the Client to CNC.
- 14. Lien**
- 14.1 In addition to its rights under the Storage Liens Act 1973 (Qld), CNC shall have and retain a general lien on any Goods owned by the Client and in the possession or control of CNC and any documents relating to those Goods, for pecuniary obligations owing from time to time by the Client on any account whatsoever to CNC including, but not limited to, payment of the Price, and CNC shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. CNC shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect CNC's right to recover from the Client any charges due or payable in respect of the carriage or such detention and sale.
- 15. Claims**
- 15.1 Notwithstanding clauses 9 and 12, in the event that the Client believes that they have any claim against CNC then they must lodge the notice of claim for consideration and determination by CNC within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 15.2 The failure to notify a claim within the time limits under clause 15.1 is evidence of satisfactory performance by CNC of its obligations hereunder.
- 15.3 The Client undertakes that no claim or allegation shall be made against any Sub-Contractor, servant or agent of CNC which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify CNC and any such servant or agent against all consequences thereof.
- 16. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")**
- 16.1 Under applicable State, Territory and Commonwealth Law including, without limitation the CCA, certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 16.2 CNC acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, CNC makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Carriage of the Goods. CNC's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.4 If the Client is a consumer within the meaning of the CCA, CNC's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.5 If CNC is required to rectify, re-provide, or pay the cost of the Carriage of the Goods under this clause or the CCA, but is unable to do so, then CNC may refund any money the Client has paid for the Carriage of the Goods but only to the extent that such refund shall take into account the value of any portion of the Carriage of Goods undertaken by CNC for the Client which were not defective.
- 16.6 If the Client is not a consumer within the meaning of the CCA, CNC's liability for any defect in the Carriage of the Goods is:
- (a) limited to the value of any express warranty provided to the Client by CNC at CNC's sole discretion;
- (b) otherwise negated absolutely.
- 17. Cancellation**
- 17.1 Without prejudice to any other remedies CNC may have, if at any time the Client is in breach of any obligation including those relating to payment, CNC may suspend or terminate the provision of Carriage to the Client and any of its other obligations under the terms and conditions. CNC will not be liable to the Client for any loss or damage the Client suffers because CNC exercised its rights under this clause.
- 17.2 CNC may cancel any contract to which these terms and conditions apply, or cancel delivery of Goods at any time before the Goods are delivered, by giving notice to the Client. On giving such notice CNC shall repay to the Client any sums paid in respect of the Price. CNC shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.3 In the event that the Client cancels the delivery of Goods, or the provision of any Carriage, then the Client shall be liable for any loss incurred by CNC including, but not limited to, any loss of profits, up to the time of cancellation, or as a direct result of the cancellation.
- 17.4 CNC may in its sole discretion charge / invoice the Client for the provision of any Carriage services, if the Client cancels such Carriage services within twenty-four hours of the start time of the booked Carriage services.
- 18. Default and Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and at CNC's sole discretion such interest shall compound monthly at such a rate, after as well as before any judgment.
- 18.2 If the Client owes CNC any money the Client shall indemnify CNC from and against all costs and disbursements incurred by
- CNC in recovering the debt including but not limited to internal administration fees, legal costs on a solicitor and own client basis, CNC's contract default fees, and bank dishonour fees.
- 18.3 Further to any other rights or remedies CNC may have under this Contract, if the Client has made payment to CNC, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by CNC under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 18.4 Without prejudice to CNC's other remedies at law CNC shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to CNC shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to CNC becomes overdue, or in CNC's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client has exceeded any applicable credit limit provided by CNC;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Limitation of Liability**
- 19.1 The Client shall indemnify CNC against any loss including but not limited to, any fine, levy, charge or other monetary imposition to which CNC may become liable incidental to the Carriage of the Goods, damage, death or injury including loss or damage to CNC's containers and/or equipment, arising out of the Client's contravention of clause 8, or the Client's unreasonable detention of any vehicle, container or other equipment of CNC.
- 19.2 Nothing whatsoever done or omitted to be done or other conduct by CNC in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under no circumstances constitute either a breach going to the root of this Contract, or a deviation or departure therefrom or a repudiation thereof such as to have the effect of disentitling CNC from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other like protections herein which shall continue to have full force and effect in any event whatsoever. Subject to clause 16, CNC shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense including loss of profit suffered by the Client arising out of a breach by CNC of these terms and conditions, alternatively CNC's liability shall be limited to damages which under no circumstances shall exceed the Price.
- 20. Personal Property Securities Act 2009 ("PPSA")**
- 20.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 20.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by CNC, over which CNC invokes a lien; and
- (b) all Carriage that will be supplied in the future by CNC to the Client; and
- (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to CNC for Carriage – that have previously been provided and that will be provided in the future by CNC to the Client.
- 20.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which CNC may reasonably require to:
- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
- (ii) register any other document required to be registered by the PPSA; or
- (iii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
- (b) indemnify, and upon demand reimburse, CNC for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of CNC;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of CNC.
- 20.4 CNC and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 20.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 20.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 20.7 Unless otherwise agreed to in writing by CNC, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 20.8 The Client shall unconditionally ratify any actions taken by CNC under clauses 20.3 to 20.5.
- 20.9 Subject to any express provisions to the contrary (including those contained in this clause 20), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

CNC Cartage Transport Solutions Pty Ltd – Terms & Conditions of Cartage

21. Security and Charge

- 21.1 In consideration of CNC agreeing to supply Carriage, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these Terms and Conditions including, but not limited to the payment of any money.
- 21.2 The Client indemnifies CNC from and against all CNC's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising CNC's rights under this clause.
- 21.3 The Client irrevocably appoints CNC and each director of CNC as the Client's true and lawful attorneys to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on the Client's behalf.

22. Privacy Policy

- 22.1 All emails, documents, images or other recorded information held or used by CNC containing Personal Information, is considered Confidential Information. CNC acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements.
- 22.2 CNC acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by CNC that may result in serious harm to the Client, CNC will notify the Client in accordance with the Act.
- 22.3 Any release of Personal Information by CNC will be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 22.4 Notwithstanding clause 22.1, privacy limitations will extend to CNC in respect of Cookies where the Client utilises CNC's website to make enquiries. CNC agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to CNC when CNC sends an email to the Client, so CNC may collect and review that information ("collectively Personal Information")
- If the Client consents to CNC's use of Cookies on CNC's website and later wishes to withdraw that consent, the Client may manage and control CNC's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 22.5 The Client agrees for CNC to obtain from a credit reporting body (CRB) a credit report containing personal credit information, previous credit applications and/or credit history about the Client in relation to credit provided by CNC.
- 22.6 The Client agrees that CNC may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 22.7 The Client consents to CNC being given a consumer credit report in the event that CNC is required to collect overdue payment on their credit.
- 22.8 The Client agrees that personal credit information provided may be used and retained by CNC for the following purposes and for other agreed purposes or required by law:
- (a) the provision of Services / Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services / Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services / Goods.
- 22.9 CNC may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 22.10 The information given to the CRB may include:
- (a) Personal Information;
 - (b) name of the credit provider and that CNC is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit;
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and CNC has been paid or otherwise discharged and all details surrounding that discharge;
 - (g) that, in the opinion of CNC, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 22.11 The Client shall have the right to request by e-mail from CNC:
- (a) a copy of the Personal Information about the Client retained by CNC and the right to request that CNC correct any incorrect Personal Information; and
 - (b) that CNC does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 22.12 CNC will destroy Personal Information upon the Client's request by e-mail or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is

required to be maintained and/or stored in accordance with the law.

- 22.13 The Client can make a privacy complaint by contacting CNC via e-mail. CNC will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
23. **Building Industry Fairness (Security of Payment) Act 2017**
- 23.1 At CNC's sole discretion, if there are any disputes or claims for unpaid Carriage of Goods then the provisions of the Building Industry Fairness (Security of Payment) Act 2017 may apply.
- 23.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Building Industry Fairness (Security of Payment) Act 2017 of Queensland, except to the extent permitted by the Act where applicable.
24. **Service of Notices**
- 24.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by sending it by registered post to the address of the other party as stated in this Contract;
 - (c) if sent by email to the other party's last known email address.
- 24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
25. **Trusts**
- 25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not CNC may have notice of the Trust, the Client covenants with CNC as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not without consent in writing of CNC (CNC will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
26. **General**
- 26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. 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.
- 26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which CNC has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 26.3 The Client cannot license or assign without the written approval of CNC.
- 26.4 CNC may elect to subcontract out any part of the Carriage but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of CNC's Sub-Contractors without the authority of CNC.
- 26.5 The Client agrees that CNC may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for CNC to provide Services / Goods to the Client.
- 26.6 Where CNC is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of CNC, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this Contract and CNC gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of CNC.
- 26.7 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 26.8 The defences and exclusions of liability in these terms and conditions, including clause 12, apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against CNC even if it is resulted from an act or omission of CNC. .

27. Crane Services

- 27.1 Where CNC provides Crane Services at the request of the Client, the Client warrants, confirms and accepts that:

- (a) the Crane Services provided by CNC are subject to the Work Health and Safety Act 2011, the Work Health and Safety Regulation 2011 and Codes of Practice (WHS);
 - (b) the collection / delivery site(s) have been inspected by the Client and the Client confirms that such site(s) are deemed to be safe and in accordance with WHS;
 - (c) the Client accepts that the execution of the required services is subject to the CNC Site Risk Assessment and the applicable CNC Safe Work Method Statement (SWMS);
 - (d) the surface at the site where the Crane will be used is adequate to support the Crane;
 - (e) the surface giving access to the site is stable and firm;
 - (f) the site surface gradient allows the Crane to be operated safely;
 - (g) sufficient clearance is afforded in respect of all overhead wires;
 - (h) the specifications and size of the Crane is suitable for the site where the Crane will be used and for the purpose required by the Client; and;
 - (i) the road surface, access and egress to the site is clear of obstacles at all times and will allow safe movement of the Crane.
- 27.2 Subject to the information supplied to CNC by all concerned parties, CNC will supply a selection of slings, lugs and chains but accepts no responsibility for loss or delay if any slings, lugs or chains are found to be unsuitable for the purpose required by the Client.
- 27.3 The Client warrants that the weight of the object(s) to be lifted in any one lift and the radius of the proposed lift, measured from the radial point of the Crane, will not exceed the limits of the Crane.

28. CNC's Obligations

CNC will:

- (a) take reasonable care to protect and safeguard the Goods;
- (b) provide the Carriage exercising the degree of skill, care and efficiency that would be expected from a competent service provider experienced in providing Carriage;
- (c) obtain and maintain at its own expense all proper and necessary licences as may be required by Law in connection with the provision of the Carriage;
- (d) to the extent that the Carrier provides Storage, account for all Goods received and use modes of Storage appropriate to the nature of those Goods;
- (e) use reasonable endeavours to deliver the Goods to the address nominated by the Client and to effect delivery at the date and time requested by the Client, Subject to Clause 26.6 hereof.
- (f) use reasonable endeavours to comply with the Client's reasonable and lawful directions.

29. Entire Agreement

- 29.1 These conditions represent the entire agreement between the parties and supersede all prior representations, agreements, statements and understanding between them.
- 29.2 CNC will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of CNC by an authorised officer of CNC.
- 29.3 CNC may vary these conditions by providing the Client with reasonable notice in writing of any changes, either by emailing the amended conditions to the Client or by advising the Client as a notation on invoices sent to the Client.