

## RICHMOND VALLEY COUNCIL - TERMS AND CONDITIONS OF CARRIAGE

### 1 Definitions

'Agreement' means this document.

'Carriage' means the whole of the operations and services undertaken by the Carrier as specified in this Agreement including packaging, handling, loading, unloading, storage or other related services.

'Carrier' means Richmond Valley Council on whose behalf this Agreement has been made.

'Customer' includes the sender, shipper, consignor, consignee, receiver of the Goods, any person owning or entitled to the possession of the Goods and anyone acting on behalf of such persons.

"Dangerous Goods" means cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.

'Freight' includes all charges payable to the Carrier.

"Goods" means the cargo accepted by the Carrier together with any container, packaging or pallet(s) supplied by or on the Customer's behalf.

'Place of Receipt' means the place nominated by the Customer for receiving the Goods.

'Place of Delivery' means the place nominated by the Customer for delivering the Goods.

'Sub-contractor' means any sub-contractor of the Carrier and the sub-contractor's servants, agents or sub-contractors, indirect and direct sub-contractors. The term includes railways operated by the Commonwealth, any State or private railway operator, any airline or sea carrier.

### 2 Severability, Entire Understanding and Governing Law

#### 2.1 The parties acknowledge and agree that:

2.1.1 All the provisions of this Agreement are reasonable in all the circumstances and that each provision is and will be deemed to be severable and independent.

2.1.2 Regardless of any other term of this Agreement, the Carrier will continue to be subject to any condition or warranty implied by the *Competition and Consumer Act 2010 (Cth)* and if applicable that Act will prevent the exclusion, restriction or modification of any such condition or warranty.

2.1.3 This Agreement contains the entire understanding of the parties as to its subject matter.

2.2 This Agreement is governed by and is to be construed in accordance with the laws of the State of New South Wales.

### 3 Carriage and Demise

3.1 The Carrier is not a common carrier and will accept Goods for carriage only on these conditions.

3.2 The Carrier undertakes to procure the Carriage of the Goods from the Place of Receipt to the Place of Delivery. The Carrier will use reasonable endeavour to follow any instructions

the Customer has given. However, The Carrier is entitled to depart from those instructions if it thinks it necessary in the circumstances.

3.3 The Carrier at its discretion may sub-contract on any terms all or any part of its obligations contained within this Agreement.

#### 4 Customer's Warranties and Indemnities

4.1 The Customer warrants that:

4.1.1 The Goods are suitable for Carriage and have been packed and prepared by the Customer so as to withstand the rigours of Carriage.

4.1.2 The Customer has the authority of all persons owning or interested in the Goods to enter into this Agreement on their behalf and where the Customer is not the owner of some or all of the Goods the Customer will be deemed for all purposes to be the agent of the owner of the Goods.

4.1.3 The person delivering any Goods to the Carrier for Carriage is authorised to enter into this Agreement for and on behalf of the Customer.

4.2 The Customer will indemnify the Carrier against:

4.2.1 All claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury however caused, whether or not by the negligence, breach of contract or wilful act of the Carrier, its servants, agents or sub-contractors arising out of or in any way connected with the Carriage of the Goods.

4.2.2 Any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of this Agreement.

4.2.3 All demands, claims, fines or expenses whatsoever and by whomsoever made arising as a result of the Customer making an incorrect description or advising of incorrect weight of the Goods.

#### 5 Himalaya Clause

5.1 Every servant, agent, and sub-contractor of the Carrier will have the benefit of all provisions of this Agreement benefiting the Carrier as if such provisions were expressly for their benefit.

5.2 The Customer undertakes that no claim or allegation will be made against any servant, agent or sub-contractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence or a wilful act of them and if any such claim or allegation should nevertheless be made the Customer agrees to indemnify the Carrier against all claims made.

#### 6 Route Deviation and Delay

6.1 The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be necessary.

6.2 The consignee will take delivery of the Goods as soon as the Carrier is ready to deliver them. If the consignee fails to take delivery of the Goods, the Carrier will be deemed to have delivered the Goods in accordance with this Agreement if the Goods are delivered to the person, entity, place or address specified for delivery by the Customer. The Carrier may without notice unload the Goods and/or store them in the open or under cover.

- 6.3 If the Carrier is for any reason unable to deliver the Goods, the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods at any place and such return or storage of Goods will be deemed to constitute delivery and any responsibility that the Carrier has in respect of the Goods will cease. The Customer will be liable to reimburse the Carrier for any additional carriage and/or storage costs incurred.
- 6.4 The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to:
- 6.4.1 Use any means of transport or storage whatsoever. The Customer authorises the Carrier to adopt such specialist Carriage which may require the use of the services of other organisations or bodies necessary to ensure the safety of others (such as other road users) and to comply with all government requirements.
- 6.4.2 Proceed by any route whether or not it is the nearest or most direct or customary route.
- 6.5 If the Carrier effects arrangements for storage or preservation of the Goods after delivery it does so as agent of the Customer and solely at the Customer's risk and expense.

## 7 Dangerous goods

- 7.1 The Customer shall not tender for the provision of Carriage by the Carrier any Dangerous Goods without presenting to the Carrier a full description disclosing their nature and in any event The Customer shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify the Carrier for such liability.
- 7.2 If, in the Carrier's opinion, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or a damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless without compensation to the Customer and at the Customer's cost.

## 8 Liability

- 8.1 At all times and in all circumstances and for all purposes the Goods will be and remain at the sole risk of the Customer and the Carrier will be under no liability whatsoever for any delay, misdelivery, damage to Goods or consequential loss arising out of or in any way connected with the Carriage howsoever caused, including without limiting the foregoing, any negligence, breach of contract or wilful act of the Carrier, its servants, agents or subcontractors.
- 8.2 The defences and exclusions of liability provided for in this Agreement will apply in any action against the Carrier for loss arising from the Carriage of the Goods whether the action is founded in tort contract or otherwise.
- 8.3 The Carrier will be entitled to the benefit of the exclusions of liability provided for in this Agreement even if it is proved that the loss or damage resulted from an act or omission of the Carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.
- 8.4 No conduct by the Carrier in breach of this Agreement whether lawful or unlawful, will under any circumstances constitute a breach going to the root of this Agreement, or a repudiation so as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities, limitations of liability and other like protections of the Carrier contained in this Agreement and all such rights, defences, exceptions, immunities, limitations of liability and like protections will continue to have full force and effect in any event.

## 9 Australian Consumer Law Liability

- 9.1 If the Carrier is liable for a breach of a guarantee implied by the *Competition and Consumer Act (Cth)* or *The Australian Consumer Law* in respect of any carriage of Goods, the Carrier's liability to the Customer will be limited to:
- (i) the resupplying of the service of carriage of Goods; or
  - (ii) the costs of having the service of carriage of Goods resupplied.
- 9.2 This clause applies only insofar as the service to be provided by the Carrier under this Agreement is a service not acquired for personal, domestic or household use.

## 10 Carrier's charges

- 10.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person. Responsibility for payment of Goods sent 'freight on delivery' will remain with the Customer at all times whether or not the Customer is consignor or consignee. Where the consignee fails to pay within 30 days the freight will be paid by the consignor.
- 10.2 Freight will be deemed fully earned on receipt of the Goods by the Carrier and is non-refundable in any event.
- 10.3 Freight is due and payable by the Customer 14 days after receipt of the Carrier's invoice unless otherwise agreed by the Carrier. The Carrier will be entitled to claim interest from the Customer at the weighted average interest rate on credit outstanding as published by the Reserve Bank of Australia from time to time in respect of unpaid Freight or any other charge incurred by the Carrier pursuant to this Agreement.
- 10.4 The Customer will be liable for and will pay for:
- 10.4.1 any storage charges associated with the Carriage of the Goods;
  - 10.4.2 any fuel levy imposed by the Carrier;
  - 10.4.3 any fee imposed by a governing road authority for the provision of escorts, pilots or supervisors for heavy or over-dimensional transport;
  - 10.4.4 any additional costs arising from heavy or over-dimensional transport including those associated with permits, escorts, equipment, bridge/road works, detours and/or otherwise complying with legal requirements.
  - 10.4.5 all other charges in relation to the Carriage of the Goods whether payable to the Carrier and/or third parties including excise and customs duties, shipping, customs, railway, port fees and any other like charges;
  - 10.4.6 all taxes including sales tax and any tax in the nature of goods and services tax levied on all or any part of the Goods and/or the Carriage of any other services.
  - 10.4.7 Charges, fees and rates for such works are set by Council from time to time and generally contained within Council's Revenue Policy, and Estimating and Costing Guide. Costs will include overhead charges on wages, survey design and supervision costs, overtime costs and the like; including Goods and Services Tax (GST) as applicable.
  - 10.4.8 Estimates only are provided for all works and the customer will be responsible to the Council for the final cost of the work as determined by the Council on completion of the carriage.

#### 10.4.9 Payment

##### (a) Repayment of Work

- § All work estimated at \$300.00 or less Council will require payment before commencement
- § Any person/company or organisation requesting private works totalling more than \$300.00 and not wishing to pre-pay first must make an application to the Finance Manager or his/her nominee for credit approval
- § Councils/Public Authorities (and companies who have gained credit approval) must supply and order number for formal acceptance of a price for work to be done.

##### (b) By Account

- § Other Local Government or Government bodies
  - § Approved organisations or institutions
- Will be required to pay within thirty (30) days of the service of an account.

10.4.10 Any licence, permit or other permission required from any Government Department, Council or any other authority for the carrying out the work or service will be the responsibility of the applicant.

10.5 Unless otherwise specified, sales tax, goods and services tax and any other applicable tax, duties or charges imposed by any government or statutory authority are additional to the price quoted and invoiced. Where sales tax or goods and services tax (including any other tax, duties or charges) are included in a quote, it is based on the rate applicable at the time of the quote and any subsequent variation is to the Customer's account.

#### 11 Claims

11.1 Any claim against the Carrier or a Subcontractor must be presented to it in writing within 90 days after the delivery of the Goods or the date the Goods should have been delivered.

11.2 The Carrier will be discharged from all liability whatsoever in connection with the provision of the Carriage unless suit is brought within six (6) months of the delivery of the Goods or the date the Goods should have been delivered.

#### 12 Insurance

12.1 The Carrier will not effect any insurance of the Goods for the benefit of the Customer or otherwise.

#### 13 Miscellaneous

13.1 These conditions have effect, whether or not the Customer has signed an acknowledgment of their application.

13.2 If the Customer commences or continue to engage in any dealings with the Carrier, these conditions will be deemed to apply to the dealings, whether or not the Customer has signed an acknowledgment of their application.

13.3 If a clause or part of a clause of these conditions can be read in a way that makes it illegal, unenforceable or invalid, but can also be read in a way that makes it legal, enforceable and valid, it must be read in the latter way. If any clause or part of a clause is illegal,

unenforceable or invalid, that clause or part is to be treated as removed from these conditions, but the rest of this agreement is not affected.

- 13.4 In these conditions, a reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision
- 13.5 To the extent and as required by law, the Parties will comply with the *Privacy Act* 1988 (Cth). Any personal information obtained or supplied in connection with the Services will be collected, used, stored, disclosed, transferred and destroyed in accordance with the National Privacy Principles and the law.
- 13.6 As provided in the Local Government Act 1993 – Division 3 – Private Works, Council may by agreement with the owner or occupier of any private land carry out on that land any kind of work that may be lawfully carried out on that land. Council may also carry out works on behalf of others.