

Conditions of Carriage

1. Definitions

Unless the context requires otherwise, in this Contract:

Agent includes any Person who under a contract or arrangement with any other Person (whether the Carrier or not) performs or agrees to perform any part of the Carriage and includes that Person's servants;

Carriage means the services undertaken by the Carrier, whether in whole or in part or directly or indirectly and including without limitation, procuring transportation, transportation of goods, storage, packing, unpacking, loading and unloading in connection with any Goods and shall include, when applicable, International Carriage as defined by the terms of the Montreal Convention;

Carrier means Qantas Road Express Pty Limited (ACN 130 392 111), whether carrying on business in its own name, as "Jets Transport Express" or any other business name;

Consignee means the Person to whom the Goods are to be delivered identified as "receiver" on the front page of this Contract and includes any Person acting on their behalf and any Person who, in connection with the Consignee, is or may become interested in the Goods;

Consignor means the Person from whom the Goods are sent identified as "sender" on the front page of this Contract and includes any Person acting on their behalf and any Person who, in connection with the Consignor, is or may become interested in the Goods;

Contract encompasses the particulars recorded on the front of this document and these terms and conditions;

Cost includes all legal costs and expenses incurred by the party on the higher of a solicitor and own client basis and a full indemnity basis;

Goods means the goods accepted from the Consignor as identified on the front page of this Contract and shall include any container, packaging, pallets or other equipment or material supplied with or in connection with those goods;

Person means a legal entity and includes without limitation a firm, partnership, a body corporate, an unincorporated association and an authority and includes their executors, administrators, successors and permitted assigns; and

Montreal Convention means the Convention for the Unification of Certain Rules for International Carriage by Air, Montreal 28 May 1999 and shall include where applicable the Convention for the Unification of certain Rules relating to International Carriage by Air, signed at Warsaw, 12 October 1929, or that Convention as amended at The Hague, 28 September 1955, or that Amended Convention as further amended by the Montreal Protocol No. 4.

All obligations, agreements, representations and warranties under this Contract by two or more Persons (excluding the Carrier) binds them jointly and each of them individually.

Words importing the singular include the plural, and words importing one or more genders include all genders.

2. Services

- (1) The submission of Goods is deemed acceptance that all Carriage is on and subject to this Contract and the Consignor acknowledges and agrees that this Contract:
 - (a) applies notwithstanding any terms appearing in documentation provided by or on behalf of the Consignor or in connection with the Goods to the Carrier or otherwise, in which case such terms are hereby expressly negated; and
 - (b) shall not be amended or varied other than by agreement in writing signed on behalf of the Carrier.
- (2) The Carrier is not a common carrier and accepts no liability as such and may refuse, in its absolute discretion, to perform the Carriage, whether or not the performance has commenced.
- (3) The Consignor acknowledges and agrees that in arranging Carriage the Consignor is agreeing, on its behalf and on behalf of the Consignee and any other Person with an interest in the Goods, that this Contract applies to the Carriage.
- (4) The Consignor authorises the Carrier to, at its discretion, arrange either as principal or as agent for the Consignor with any Agent to undertake the Carriage and the Consignor agrees that any such arrangement shall be deemed to be ratified by the Consignor upon delivery of the Goods to the Agent who will be entitled to the full benefit of this Contract to the same extent as the Carrier.
- (5) If the Consignor does not complete all of the documents required for the provision of the Carriage, the Carrier is authorised by the Consignor to complete, correct, or replace the documents for the Consignor at the Consignor's expense.
- (6) The Carrier is entitled, but not obliged, to open and inspect any document and to open any container (of whatever description) in which the Goods are placed or carried to

inspect the Goods to determine their nature, ownership or destination.

- (7) If, in the Carrier's opinion, the Goods are or liable to become of noxious, dangerous, hazardous or inflammable or capable of causing damage or injury, the Carrier may at any time destroy, dispose of, abandon or render harmless such Goods without liability whatsoever to the Consignor, Consignee or any other Person and without affecting in any way the Carrier's right to any charges under this Contract.
- (8) The Carrier may, in its absolute discretion, adopt any means, mode, route or procedure (or combination of them) for the Carriage, without any requirement to notify the Consignor or Consignee.
- (9) If determined necessary by the Carrier, the Carrier is authorised to store the Goods in any place, store or warehouse and to remove the Goods from one place, store or warehouse to another and all storage and other charges shall be at the Consignor's sole expense.
- (10) In the event that the Consignee refuses to take delivery, or is not able to take delivery of the Goods, or the Goods are unable to be delivered for any other reason, the Carrier is authorised, at its absolute discretion and at the Consignor's sole expense and risk and without liability on the Carrier's part, to deal with the Goods as it thinks fit including storing or disposing of the Goods or returning them to the Consignor or the Person entitled to collect the Goods.

3. Cost of Carriage

3.1 Charges

- (1) The Consignor agrees to pay for Carriage calculated in accordance with the Carrier's current schedule of charges. The charges shall be deemed earned on delivery of the Goods to the Carrier whether the Goods are delivered to the Consignee or not, and whether damaged or otherwise. If any changes occur in the rates of duty, tax, freight, insurance premiums, currency exchange rates, or other charges applicable to the Carriage or the Goods, the Carrier's quotations and charges shall be subject to revision accordingly whether with or without notice unless otherwise agreed in writing and irrespective of whether the Carrier has acted in a particular transaction as principal or agent.
- (2) The Carrier may charge for the Carriage of the Goods in whole or in part by weight or measurement as may be agreed with the Consignor and may at any time re-weigh or re-measure the Goods and charge proportional additional freight if they prove to be wrongly described.
- (3) The Carrier's charges must be paid by the Consignor within 28 days from the date of the Carrier's invoice. If there is any delay in payment, Consignor shall pay late interest to the Carrier for the period from the due date until the date of payment. Late interest is to be calculated daily and compounded monthly and is payable at five percent (5%) per annum above the Commonwealth Bank of Australia Corporate Overdraft Reference Rate as set from time to time calculated on the basis of the number of days elapsed in each 365 day year.
- (4) The Consignor shall indemnify the Carrier against any duties, taxes, payments, Costs, expenses or penalties relating to the Carriage or the Goods for which the Carrier may become liable or agree to pay.

3.2 No Set-Off, Counter-claim or Deduction

No set-off, deduction or counter-claim may be made from any moneys due to the Carrier on any account.

3.3 Lien

- (1) The Carrier is entitled to claim a general or specific lien over the Goods for any or all charges due or which may become due to the Carrier by the Consignor on any account whatsoever.
- (2) If on demand the Consignor fails to pay charges due to the Carrier in respect of any Carriage, the Carrier may detain and sell all or any of the Goods which is in its possession and, out of the moneys arising from the sale pay the Carrier's charges (including all charges and expenses of the retention and sale), and shall render the surplus, if any, of the moneys arising by the sale and such of the Goods as remain unsold to the party entitled to that surplus. If the moneys do not completely discharge the Carrier's charges, the Carrier retains the right of recovery against the Consignor in respect of the balance.

4. Representations and Warranties

- (1) Subject to clause 6.4, the Carrier makes no representations or warranties, express or implied.
- (2) The Consignor represents and warrants to the Carrier:

- (a) the Consignor has provided all information necessary for the Carriage of the Goods and all information provided by the Consignor to the Carrier is complete and accurate and the Goods are fully and adequately described in writing on this Contract;
- (b) the Goods do not include any explosive, inflammable or otherwise dangerous goods or goods which are or may be liable to damage other goods or property whatsoever other than as are specifically and fully described and disclosed as such by the Consignor in writing to the Carrier (including on this Contract and in any other consignment note relating to the Carriage) in which case the Consignor represents and warrants that it has complied and will comply with the Australian Code for the Transport of Dangerous Goods by Road and Rail and any other law applicable to the carriage of dangerous goods;
- (c) the Goods are in all respects in good, proper and safe condition for, and sufficiently labelled and packed for, Carriage;
- (d) it has complied, and the Goods comply, with all international and national laws and codes that apply in connection with this Contract and the Carriage;
- (e) it is the owner of the Goods or is duly authorised by the owner of the Goods to enter into this Contract and in any event accepts the terms and conditions for itself, the Consignee and any Person having an interest in the Goods;
- (f) the sender's signature on this Contract is that of an authorised signatory of the Consignor;
- (g) in entering into this Contract the Consignor has not relied on any statements or representations by or on behalf of the Carrier; and
- (h) that this Contract is binding on and enforceable against the Consignor in accordance with its terms and it is able to pay its debts as and when they become due and payable.

5. Insurance

The Consignor is responsible for, and required to arrange, insurance of the Goods for all risks. Insurance will not be arranged by the Carrier except at its discretion upon the express instructions in writing of the Consignor and then only as Agent for and at the expense of the Consignor.

6. Risk and Limitation of Liability

6.1 Risk

The Goods shall at all times be at the risk of the Consignor and no responsibility whatsoever will be accepted by the Carrier for any loss of or damage to or deterioration of or failure to deliver or delay in the delivery or misdelivery of the Goods howsoever caused.

6.2 Limitation of Liability

- (1) To the extent permitted by law all liability on the part of the Carrier is excluded, and the Consignor, Consignee and any other Person with an interest in the Goods release and indemnify the Carrier for and against any liability in respect of or in connection with:
 - (a) the Goods, including any loss, damage, delay, destruction, non-delivery, mis-delivery, deterioration or theft (regardless of any deviation);
 - (b) the Carriage;
 - (c) any representation or warranty; and
 - (d) any breach of this Contract including any fundamental breach.
- (2) In any case where liability has not been effectively excluded or otherwise limited, whether by this Contract or by statute, Convention or otherwise, the total liability of the Carrier is, to the extent permitted by law, limited to A\$2.50 per gross kilogram of the Goods lost, damaged or delayed, or the value of those Goods as agreed by the Carrier at the time the Goods were received by it, whichever is the lesser.
- (3) The references to liability in this clause shall include but is not limited to liability for any loss, damages (including special, indirect or consequential), claims, Costs and expenses of any nature whatsoever and whether arising in contract, tort, at common law, in equity, pursuant to statute, or on any other basis.

6.3 Air Cargo

- (1) This Contract does not affect any rights the Consignor may have under the Montreal Convention which, if the Carriage involves international carriage of goods by air, may be applicable or, in the case of domestic carriage of goods by air, Commonwealth or State civil aviation carrier's liability legislation.
- (2) In respect of any Carriage involving international carriage or any part of such carriage to which the Montreal Convention does not apply, the provisions of clause 6.2 apply.

6.4 Non-excludable warranties or conditions

This Contract does not exclude warranties or conditions which, by law, cannot be excluded. If the Carrier becomes liable for any breach of any such condition or warranty, the Carrier's liability shall be limited at its option, to any one or more of the following:

- (1) in the case of goods: replacement of the goods or the supply of equivalent goods, or the repair of the goods, or the payment of the cost of replacing the goods or of acquiring equivalent goods, or the payment of the cost of having the goods repaired; and
- (2) in the case of services: to either the supplying of the services again, or the payment of the cost of having the services supplied again.

6.5 Liability of Servants and Agents

It is hereby expressly agreed that no servant or Agent of the Carrier shall in any circumstances whatsoever be under any liability whatsoever to the Consignor, Consignee or owner of the Goods or to any holder of this Contract for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every such servant or Agent of the Carrier as aforesaid and for the purpose of all the foregoing provisions of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or Agents from time to time and all such persons shall to this extent be or be deemed to be parties to this Contract.

6.6 No Claim against servants and Agent

The Consignor and Consignee undertake that no claim shall be made against any servant or Agent of the Carrier and, if any claim should nevertheless be made, to indemnify the Carrier against all consequences of such a claim.

7. Time Bar

Except where governed by the Montreal Convention and in the case of non-excludable warranties or conditions:

- (1) any claim for loss or damage must be notified in writing to the Carrier within 7 days of the Goods delivery or the date upon which it should have been delivered, whichever occurs first; and
- (2) the Carrier shall be discharged of all liability howsoever arising unless suit is brought and notice of it given to the Carrier within 3 months of the Goods delivery or the date upon which it should have been delivered, whichever occurs first.

8. General

8.1 Contra Proferentem

No rules of construction shall apply to the disadvantage of the Carrier on the basis that it was responsible for the preparation of this Contract or any part of it.

8.2 Assignment

This Contract is not assignable by the Consignor without the prior written consent of the Carrier.

8.3 Severance

If any provision of this Contract is invalid, illegal or unenforceable, it will be read down to the extent necessary to ensure that it is not invalid, illegal or unenforceable, but if that is not possible, it will be severed from the Contract and the other provisions will remain valid.

8.4 Moratorium

All legislation which varies, prevents or prejudicially affects the exercise by a party of any right, power or remedy conferred on it under this Contract to the extent permitted by law is excluded.

8.5 Remedies Cumulative

The rights provided in this Contract are cumulative and not exclusive of any other rights available in any other instrument or at law. This Contract is in addition to and is not prejudiced by or merged in any right a party now has or may have.

8.6 Waiver

Failure to exercise or delay in exercising, any right, power or remedy does not impair or operate as a waiver of any right, power or remedy. No single or partial exercise of any right, power or remedy precludes its further exercise or the exercise of any other rights, powers or remedies. Any waiver is effective only to the extent that it is in writing.

8.7 Jurisdiction

This Contract is governed by the laws of the State of New South Wales. Each party irrevocably submits to the exclusive jurisdiction of its courts and all courts which hear appeals from those courts.