

IMPORTANT NOTICE – Conditions that apply to ‘Non-Business Customers’

These conditions apply to the services we provide if you are a ‘Non-Business Customer’. A Non-Business Customer is a customer who is **not** acquiring our services for, or in relation to, the transport of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by that customer.

Please read all the following conditions carefully and in their entirety. You will be bound by these conditions if we carry goods for you. Please note that:

- By accepting these conditions, you warrant that **you** are **not** acquiring our services for, or in relation to, the transport of goods for the purposes of a business, trade, profession or occupation carried on or engaged in by you (see clause 4.2(g)).
- We do not agree to transport any consignment where the total value of the goods in that consignment exceeds \$2,000, and you warrant that the total value of goods in any consignment does not exceed \$2,000 (see clause 4.2(h)).
- Our services are priced based on the exclusions and limitations set out in these conditions.
- There are some goods – defined as ‘Excluded Goods’ in clause 1.1 – that we do not agree to carry, and accordingly, we do not accept any liability for loss of or damage to these sorts of goods (see clause 6.2(b)). You must not, under any circumstances, include any ‘Excluded Goods’ in a consignment.
- You have the benefit of the consumer guarantees set out in the Australian Consumer Law, which cannot be excluded by agreement. Under the Australian Consumer Law:
 - If a defect or failure in our services constitutes a ‘major’ failure to comply with a consumer guarantee, you are entitled to:
 - (a) cancel your agreement with us; and
 - (b) a refund of any unused portion of the services, or to compensation for the reduced value of the services.
 - You may also be entitled to compensation from us for any other reasonably foreseeable loss or damage.
 - Alternatively, if a defect or failure in our services is a ‘non-major’ failure to comply with a consumer guarantee, you are entitled to have those failures rectified in a reasonable time and, if this is not done, to cancel your agreement and obtain a refund for the unused portion of the services.

CONDITIONS OF CARRIAGE – NON-BUSINESS CUSTOMERS

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Authority includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

Carriage means the whole of the operations and services undertaken by the Carrier or any person on behalf of the Carrier in respect of the Goods (whether gratuitously or not), including transporting, loading, unloading, packing, handling, unpacking and Storage of the Goods and the provision of any advice.

Carrier means Shaw's Darwin Transport Pty Ltd (A.C.N. 074 573 087) trading under its own name or under any other business name.

Chain of Responsibility Law means the Heavy Vehicle National Law as enacted in any Australian state, the *Road Traffic (Administration) Act 2008 (WA)* and the *Road Traffic (Vehicles) Act 2012 (WA)* and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

Consequential Loss means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; wasted expenditure; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of the Carriage and whether or not foreseeable at the time of entering into any agreement incorporating these conditions.

Consignment means the consignment of Goods at any one time from the Consignor in a single load from one address in Australia to another address in Australia.

Consignor means the person engaging the Carrier.

Container includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods.

Damage means physical damage and includes deterioration, evaporation and contamination.

Dangerous Goods means Goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property whatsoever.

Excluded Goods means Dangerous Goods, alcohol, cigarettes, tobacco and tobacco products; pharmaceuticals; cash, securities and negotiable instruments; bullion, gold and other precious metals, precious stones, precious gemstones, precious jewellery and works of art; firearms and ammunition; refrigerated or perishable goods; bicycles; motorcycles; canoes; kayaks; boats; golf carts; animals and livestock; human tissue or blood; antiques; solar panels; furniture; white goods that are not in their original packaging; regulated waste; trees, plants or flowers; household and personal effects; items containing glass, porcelain or pottery; musical instruments.

Force Majeure Event means any event beyond the reasonable control of the Carrier including acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any road closure or congestion of roads, any quarantine or customs restriction, epidemic or pandemic, cyber warfare, cyberattacks, ransomware attacks, cyber sabotage, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, crane, machinery or equipment.

Goods means the property accepted by the Carrier from, or at the request of, the Consignor for Carriage and includes any Container or packaging supplied by or on behalf of the Consignor.

Interest means an amount calculated on any Outstanding Amount at the rate of 1.5% per month.

Law means applicable statutes and any associated regulations, proclamations, rules, bylaws, requirements and approvals.

Outstanding Amount means any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Consignor is otherwise liable, pursuant to these conditions, to the Carrier.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Store or Storage means receiving Goods into a storage location including confirmation of quantities and batch numbers, storing Goods and handling inbound and outbound Goods at the storage location.

Subcontractor includes any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) performs or agrees to perform the Carriage or any part of it.

1.2 In these conditions:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of these conditions;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)'; and
- (f) all indemnities survive the termination or expiration of any agreement incorporating these conditions.

2. NEGATION OF LIABILITY AS A COMMON CARRIER

The Carrier is not a common carrier and will accept no liability as such. All Goods are carried and all Carriage is performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage of goods for any person and the Carriage of any class of goods at its discretion.

3. CARRIER'S OBLIGATIONS

3.1 The Carrier will:

- (a) take reasonable care to protect and safeguard the Goods and to follow any special handling requirements notified to the Carrier by the Consignor;
- (b) provide the Carriage exercising the degree of skill, care and efficiency that would be expected from a competent provider of services of Carriage;
- (c) at its own expense, hold all licences as may be required by Law in connection with the Carriage;
- (d) use reasonable endeavours to deliver the Goods to the address nominated by the Consignor and to effect delivery at the date and time requested by the Consignor (subject to compliance with all Law, including Chain of Responsibility Law);
- (e) to the extent that the Carrier Stores the Goods, account for all Goods received and use modes of Storage appropriate to the nature of the Goods; and

- (f) use reasonable endeavours to comply with the Consignor's reasonable and lawful directions.
- 3.2 The Carrier does not warrant or guarantee particular collection or delivery times for Goods.
- 3.3 The Carrier does not operate pallet accounts. Pallets remain the responsibility of the Consignor and will not be exchanged.
- 3.4 To the extent permitted by law, subject to clause 17, all conditions, guarantees, terms and warranties which would otherwise be imposed or implied into these conditions are excluded. Without limitation, this exclusion applies to any conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Carriage.

4. CONSIGNOR'S WARRANTIES, OBLIGATIONS AND INDEMNITIES

4.1 The Consignor must:

- (a) ensure that the loading of the Goods onto the Carrier's vehicle will not cause the vehicle to exceed any dimension or mass limits under Chain of Responsibility Law;
- (b) where the Goods require special treatment or handling, provide written notice to the Carrier of the special treatment required;
- (c) notify the Carrier of any claim for loss of or damage to Goods as soon as possible and within a reasonable time after the date of delivery. The Carrier will have the best chance of locating any misplaced items, or ascertaining the cause of Damage, if that notification is given within three business days of the date of delivery or the date on which, in the ordinary course, the Goods should have been delivered; and
- (d) provide all documents, information and assistance necessary to allow the Carrier to comply with Law or the requirements of any Authority.

4.2 The Consignor warrants that:

- (a) the Goods are fit for Carriage and are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature;
- (b) it is authorised by all persons owning or having any interest in the Goods to accept these conditions on their behalf;
- (c) the Goods do not include or contain any Excluded Goods (which the Carrier does not agree to carry);
- (d) all details supplied by the Consignor or any other party with respect to the Goods, including the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements, are correct;
- (e) there is a suitable and safe road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (f) safe and adequate loading facilities and equipment will be available at any place from which any Goods are to be collected and to which any Goods are to be delivered;
- (g) the Carriage is **not** supplied for, or in relation to, the purposes of a business, trade, profession or occupation carried on or engaged in by the Consignor; and

- (h) the total value of Goods in any one Consignment is not greater than \$2,000.
- 4.3 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor but does not admit their accuracy.
- 4.4 The Consignor will indemnify the Carrier in respect of all losses, damages, expenses, claims, actions and proceedings or any other liability suffered or incurred by, or made or instituted against the Carrier arising from:
 - (a) the breach of a warranty given by the Consignor in clause 4.2(b), 4.2(c), 4.2(g) or 4.2(h); and
 - (b) any incorrect or wrongful declaration made by the Consignor as to:
 - (i) the purpose for which the Consignor requires the Carriage; or
 - (ii) the value of the Goods in a Consignment.

5. SUBCONTRACTING

- 5.1 The Carrier, at its discretion, may subcontract on any terms the whole or any part of the Carriage.
- 5.2 If the Carrier subcontracts any Carriage, the Carrier:
 - (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these conditions; and
 - (b) will be liable to the Consignor for any act or omission of the Subcontractor as if such act or omission were the act or omission of the Carrier.
- 5.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available to and will extend to protect:
 - (a) all Subcontractors;
 - (b) every employee or agent of the Carrier or of a Subcontractor; and
 - (c) all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within clauses 5.3(a) or 5.3(b).
- 5.4 For the purposes of clause 5.3, the Carrier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and all such persons will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

6. LIABILITY OF CARRIER

- 6.1 These conditions include the guarantees set out in sections 60, 61 and 62 of the Australian Consumer Law, including a guarantee that the Carriage will be performed with due care and skill.
- 6.2 To the extent permitted by Law, the Carrier will not be liable for any:

- (a) loss of or Damage to Goods, or misdelivery, delay in delivery or non-delivery of Goods during the provision of the Carriage, except to the extent caused by the Carrier's breach of these conditions, negligence or wilful misconduct; or
 - (b) loss of or Damage to Excluded Goods.
- 6.3 The Carrier will not be liable for loss of or Damage to the Goods to the extent that the loss or Damage is caused by the Consignor or someone else that the Carrier is not responsible for at law.
- 6.4 Subject to clause 17.1 and to the extent permitted by Law, the Carrier excludes its liability for Consequential Loss associated with loss of, damage to, misdelivery or delay in delivery of Goods.

7. ROUTE AND DEVIATION

- 7.1 The Consignor authorises any deviation from the usual route or manner of Carriage of Goods that may, in the opinion of the Carrier, acting reasonably, be considered desirable or necessary in the circumstances.
- 7.2 If the Consignor expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods, or a particular method of Carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Consignor authorises the Carrier, acting reasonably, to handle, Store or carry or to have the Goods handled, Stored or carried by another method or methods.

8. INSPECTION

- 8.1 The Carrier:
- (a) is not obliged to carry out any inspection of the Goods; and
 - (b) may inspect the Goods (including opening any Container) to determine the nature or condition of the Goods or for any other purpose which the Carrier considers reasonably necessary.
- 8.2 If, under Law, a Container must be opened to allow the Goods to be inspected, the Carrier will not be liable for any loss, Damage or delay incurred as a result of any opening, unpacking, inspection or repacking and the Consignor agrees to pay the Carrier's charge for the cost of any such opening, unpacking, inspection or repacking.
- 8.3 If the Consignor makes a claim that Goods have been Damaged or destroyed while in the custody of the Carrier, the Consignor must, on request, permit the Carrier to inspect those Goods.

9. DELIVERY

- 9.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier for that purpose. The Carrier will be deemed to have delivered the Goods if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.
- 9.2 If, without advance notice to the Carrier, the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Carrier or the consignee otherwise fails to take delivery of the Goods, the Carrier must attempt to contact the Consignor to obtain alternative

instructions for delivery. The Carrier may make an additional charge for following the alternative instructions.

9.3 If the Carrier is unable to obtain alternative instructions that the Carrier can reasonably and practicably carry out, the Carrier may, at its option:

- (a) deposit the Goods at the nominated place of delivery (which will be conclusively presumed to be due delivery under these conditions); or
- (b) Store the Goods.

9.4 If the Goods are stored by the Carrier pursuant to clause 9.3:

- (a) the Consignor will pay or indemnify the Carrier for all costs and expenses incurred with respect to such Storage; and
- (b) the Carrier may, at any time, redeliver the Goods to the Consignor at the Consignor's expense.

10. STORAGE

10.1 Where Goods are Stored by the Carrier at the request of the Consignor, the Consignor will provide:

- (a) an address to which notices will be sent;
- (b) samples of the signatures of persons entitled to collect the Goods; and
- (c) an inventory of the Goods to be Stored.

10.2 The Carrier may remove the Goods from a place of Storage to another place of Storage in the same city at its discretion and will provide notice to the Consignor of any such removal.

10.3 Storage charges do not include removing, packing, unpacking, inspecting, stowing, restoring or delivering.

10.4 The Consignor must give 48 hours' notice to the Carrier of its intention to remove Goods from Storage.

10.5 The Carrier will not be obliged to allow an inspection of the Goods or to deliver up any Goods in Storage:

- (a) to any person other than the Consignor or a person authorised in writing by the Consignor; or
- (b) in circumstances where any amount is due by the Consignor to the Carrier on any account whatsoever.

10.6 The Consignor will remove its Goods from Storage within seven days of receipt of written notice from the Carrier.

11. INSURANCE

If the Carrier Stores Goods pursuant to clause 10, the Consignor must:

- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods whilst the Carrier is storing those Goods, with that insurance policy to include a waiver of subrogation with respect to the Carrier; and
- (b) provide a certificate of currency in respect of the policy referred to in clause 11(a), within seven days of receiving a request from the Carrier.

12. DEFAULT AND CONSEQUENCES OF DEFAULT

Without prejudice to any other remedies the Carrier may have, if at any time the Consignor is in material breach of any obligation under any agreement incorporating these conditions (including those relating to payment), the Carrier may suspend or terminate the supply of Carriage to the Consignor.

13. LIEN

- 13.1 The Goods are accepted subject to a general lien for all charges due or that may become due to the Carrier by the Consignor on any account whatsoever, whether in respect of the Goods or in respect of any other goods for which the Carrier provides or has provided services of Carriage.
- 13.2 Without prejudice to any other rights the Carrier may have under Law, if charges remain unpaid for more than fourteen (14) days after they become due, or the Goods are not collected when required or designated, the Carrier may:
 - (a) remove all or any of the Goods and Store them as the Carrier, acting reasonably, thinks fit at the Consignor's risk and expense; or
 - (b) without notice and immediately in the case of perishable Goods, or otherwise on the provision of fourteen (14) days' notice, open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge the lien and costs of sale and pay any balance to the Consignor.
- 13.3 The parties agree that the lien arising under these conditions:
 - (a) attaches to the Goods when the Goods are accepted by the Carrier for Carriage; and
 - (b) is a security interest.
- 13.4 On request by the Carrier, the Consignor must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including perfection by registration), maintained and is otherwise effective.
- 13.5 The parties agree that, to the extent permitted by the PPSA:
 - (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Carrier); and
 - (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.
- 13.6 Terms used in this clause have the same meaning as under the PPSA.

14. CARRIER'S CHARGES

- 14.1 The Consignor agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 14.2 The Carrier's charges are due within the credit terms agreed in writing between the Consignor and the Carrier. If the Carrier has not agreed to any credit terms, the charges are payable in advance, prior to collection of the Goods. If the Consignor defaults in making any payment in accordance with these conditions, then all amounts owed to the Carrier will immediately become due and payable.
- 14.3 In addition to any other charges contemplated under these conditions, the Consignor is liable to pay:
- (a) Interest on any Outstanding Amount;
 - (b) all Storage charges and any costs associated with loading or unloading Goods;
 - (c) any fuel levy imposed, which may be adjusted by the Carrier at any time on reasonable grounds to reflect fuel price movements;
 - (d) any additional costs arising from heavy or over-dimensional transport including costs associated with permits, escorts, equipment, bridge/road works and detours and fees imposed by any Authority; and
 - (e) all charges under Law including customs charges and excises in relation to the Carriage.
- 14.4 The Carrier may charge the Consignor, in accordance with its schedule of rates, in respect of any delay occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading. Labour to load or unload is the responsibility and expense of the Consignor or consignee.
- 14.5 If the services the Consignor ultimately requires the Carrier to undertake vary from the services for which a quotation was given, as a result of information provided being incorrect or incomplete, or due to the Consignor varying its requirements for Carriage, the Carrier will be entitled to make an additional charge in accordance with its schedule of rates.
- 14.6 If the Consignor instructs the Carrier that the Carrier's charges will be paid by the consignee or any other third party and the consignee or third party does not pay the Carrier's charges within seven days of the date of delivery or attempted delivery of the Goods, the Consignor must pay such charges.
- 14.7 Where the Carrier Stores Goods for the Consignor, the Consignor must:
- (a) pay the Carrier's expenses and charges to comply with any Law including any customs, excise or warehouse charges;
 - (b) supply or pay for labour or machinery, or both, to load or unload the Goods; and
 - (c) if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.

15. DANGEROUS GOODS

If, in the opinion of the Carrier, acting reasonably, the Goods are or are liable to become of a dangerous or flammable or damaging nature and pose a threat of property damage or personal injury, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless

without compensation to the Consignor and without prejudice to the Carrier's right to charge for the Carriage of the Goods.

16. FORCE MAJEURE

- 16.1 The Carrier will not be liable for any failure or delay in performance of the Carriage to the extent that such failure or delay is due to a Force Majeure Event affecting the Carrier.
- 16.2 If a Force Majeure Event causes the delay or non-performance of the Carrier's obligations for 30 days or more, either party may, by notice in writing, immediately terminate any agreement incorporating these conditions.

17. APPLICABLE LEGISLATION

- 17.1 Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any terms, conditions, guarantees or warranties imposed or implied by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 17.2 The Carrier, Consignor and consignee must comply with all Law, including Chain of Responsibility Law.
- 17.3 The Consignor must not impose any requirement on the Carrier that would directly or indirectly encourage or require the Carrier or any person on behalf of the Carrier to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner or in breach of Law.

18. ENTIRE AGREEMENT

- 18.1 The entire agreement between the parties is contained in these conditions and there are no other understandings, representations or agreements between the parties that are not set out in these conditions.
- 18.2 The Consignor acknowledges and agrees that these conditions set out the sole basis upon which the Carrier will provide Carriage to the Consignor. The supply or provision by the Consignor of any document setting out other, or alternative, terms will be of no legal effect and will not constitute a variation of these conditions or amount to a new contract or be part of these conditions.
- 18.3 The Carrier will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

19. GENERAL

- 19.1 This agreement will be construed in accordance with the law in force in New South Wales and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of New South Wales and courts entitled to hear appeals from those courts.
- 19.2 The failure of a party to take action to enforce its rights under any agreement incorporating these conditions or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these conditions.

- 19.3 Where the Consignor comprises two or more persons, an agreement or obligation to be performed or observed by the Consignor binds those persons jointly and severally.
- 19.4 If any provision of these conditions is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

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