

Conditions of Carriage - March 2004

DEFINITIONS

In these conditions:

singular words include the plural and vice versa;

words importing the masculine gender include the feminine and neuter genders;

"person" means and includes a person, firm, company, corporation, government instrumentality or public authority and "it" is deemed to include the masculine and feminine as may be appropriate;

"Carrier" means Sadleirs Transport Co. (N.S.W.) Pty Ltd trading as Sadleirs Transport, its servants, agents and contractors;

"Consignor" means any person delivering or tendering Goods for carriage and/or storage by the Carrier or on whose behalf the Goods are being delivered or tendered for carriage and/or storage by the Carrier;

"Consignee" means any person to whom the Carrier delivers or is intending to deliver Goods;

"this contract" means the contract between the Customer and the Carrier constituted by the consignment note and these conditions;

"Customer" means the person requesting the Carrier to provide the Service and making payment to the Carrier, whether the Consignor, the Consignee or any other person.

"Goods" means any goods, substance or thing delivered or tendered to the Carrier for carriage and/or storage under this contract and includes containers and packaging;

"Service" or "Services", means the service to be provided by the Carrier, or its Sub-Contractor, to the Customer pursuant to this contract;

"Sub-Contractor" means any person with whom the Carrier may arrange for the carriage and/or storage of any Goods the subject of this contract and any servant, agent, employee or sub-contractor of such person.

1. The Carrier IS NOT A COMMON CARRIER and will accept no liability as such. The Carrier reserves the right to refuse the carriage or transport of Goods of any person and the carriage or transport of any class of Goods at its discretion.

2. The Customer;

(a) hereby warrants that the Goods comply with every applicable law relating to the nature, condition and packaging of the Goods and the Customer shall pay to the Carrier any expense incurred by the Carrier in complying with any such law or with the requirements of any harbour, dock, railway, shipping, customs, warehouse or other authority;

(b) agrees that any customs duty, excise duty or other amount which the Carrier becomes liable to pay in respect of the Goods pursuant to any law relating to customs or excise shall be paid by the Customer;

(c) agrees to comply with all laws and regulations which apply to the nature, packaging, labelling, storage or carriage of the Goods, including but not limited to legislation in relation to dangerous goods.

3. The Customer hereby warrants that the Goods are properly packaged, labelled, utilised, scheduled and identified to the Carrier and without limiting the foregoing, warrants that;

(a) the Goods are specifically declared and fully described in the space provided on the consignment note;

(b) Except as specifically declared and fully described in the space provided on the consignment note the Goods do not include (i) Goods which are liquid or partly liquid, explosive, inflammable, radioactive, corrosive, poisonous, infectious or otherwise of a dangerous hazardous or noxious nature which are capable of causing damage or injury to any person or property or to any animal, store, vessel, vehicle, wagon, van, aircraft or other conveyance in which or with which such goods may be loaded, carried packed or stored; (ii) Goods the carriage or storage of which would be illegal or prohibited by any law or regulation relating to the nature, condition, packaging or labelling of such goods or (iii) Goods of a kind which are subject to special rates of carriage;

(c) that it has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of storage and/or carriage having regard their nature.

(d) it has disclosed in writing to the Carrier prior to this contract any matter relating to the nature of the goods or any particular care and attention which should be applied to the Goods and which could affect the likelihood of them being damaged or causing loss damage or injury to any persons or property.

4. In the case of Goods of a kind referred to in Sub-Clause 3(b) or 3 (d) hereof the Customer shall pay any additional freight charges in respect of such Goods as may be deemed necessary by the Carrier.

5. The Carrier shall not be bound by any agreement purporting to vary the conditions contained herein unless such agreement shall be in writing and signed on behalf of the Carrier by duly authorized officer of the Carrier.

6. Notwithstanding anything herein contained purporting to limit or exclude the liability of the Carrier; the Carrier shall be subject to any condition, warranty or guarantee implied by or arising under the Trade Practices Act, 1974 or any other Commonwealth, State or Territory Legislation in so far as the same is applicable and to the extent that it is not able to be excluded or modified although the Carrier's liability in respect of any claim under contract or in tort or otherwise will be limited to the extent permitted by s.68A(1) of the Trade Practices Act, 1974, s.35 of the Fair Trading Act (WA) and other equivalent state

legislation (as applicable). In this regard the liability of the Carrier for claims arising under contract, in tort or otherwise (including arising out of its exercise of its rights under this contract) in relation to the Customer, the Consignor or the Consignee shall be limited to any one of the following, at the option of the Carrier:

- (a) supplying the Service again;
- (b) paying the cost of having the Service supplied again; or
- (c) the charges payable by the Customer to the Carrier.

7. Subject to Clause 6 hereof, the Goods are at the risk of the Customer and the Carrier SHALL NOT BE LIABLE in tort or contract or otherwise for any loss of or damage to the Goods howsoever caused whether by breach of this contract, the negligence or act or default of the Carrier or otherwise and without limiting the foregoing the Carrier SHALL NOT BE LIABLE for:

- (a) any concealed damage to inherent defect in or deterioration, contamination or evaporation of the Goods;
- (b) any misdelivery, delay in delivery or non-delivery of the Goods;
- (c) any loss or damage to the Goods caused by, occurring during or arising directly or indirectly out of any packing, loading, unloading, handling, installation, removal assembly, erection or storage of the Goods; or
- (d) breach by the Customer of any of the warranties in clause 3 of this Contract.

8. The Customer hereby indemnifies the Carrier in respect of the Carrier's liability for any loss of or damage or injury to any person, property or thing caused by, occurring during or arising out of any packing, loading, unloading, removal, assembly, erection or storage of the Goods, and of any breach of any warranty or obligation in this contract by the Customer, and costs in connection with such claims, or otherwise performing any of the Services under this contract or exercising any of its rights under this contract.

9. Subject to Clause 6 hereof, the Carrier reserves the right to unpack unitized freight and SHALL NOT BE LIABLE for any loss or damage to the Goods caused by or arising directly or indirectly of such unpacking.

10. Subject to Clause 6 hereof it is expressly agreed that all the rights, immunity exemptions from and limitations of liability granted to the Carrier by the provisions of hereof shall have and continue to have their full force and effect in all circumstances notwithstanding any breach of the contract or of the terms and conditions contained herein or any act or omission by the Carrier or the Sub-Contractor and whether or not the same occurs in the course of the performance by the Carrier or the Sub-contractor or was in the contemplation of the Carrier and/or the Customer or was foreseeable by them or either of them or would constitute a fundamental breach of the contract or a breach of a fundamental term thereof.

11. PAYMENT

(a) The Carrier's charges shall be considered earned as soon as the Goods are received by the Carrier for carriage and/or storage and subject to Clause 6 hereof under no circumstances will any charges paid to the Carrier be refunded;

(b) Should the Consignee not be in attendance at the place described hereon as the Consignee's address when delivery is attempted during the normal trading hours an additional charge may be made at ruling rates for each subsequent attempt to deliver the Goods;

(c) The Carrier's charges will be payable in full in 21 days of statement date (hereinafter referred to as "the due date"). Accounts not paid by the due date shall be subject to a charge calculated on a daily basis at the rate of 19.2% per annum commencing from the due date until the Carrier's charges are paid in full:

(d) Every special instruction to the effect that the Carrier's charges shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the charges within seven (7) days of the date set for payment, or, if no date is set for payment, within seven days of delivery or attempted delivery of the Goods the Consignor shall pay the Carrier's charges including charges for any attempt to effect delivery.

12. The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, re-measure, re-value or require the Goods to be re-weighed, re-valued or re-measured and in the event of any increase being disclosed in the weight, value or measurement of any of the said Goods then the Carrier may make an additional charge (i) proportional to such increase so disclosed and (ii) on account of any penalty incurred by it as a result of any such incorrect weight.

Any claims for overcharges for whatever reason (other than by reason of mathematical error apparent on the face of any invoice) are hereby waived by the Customer to the extent that such claim is not made within twenty-one (21) days of the date of the invoice in respect to carriage of such Goods. Such claim shall be made in writing to the Carrier.

13. The Carrier will not be required to deliver Goods at intermediate points except by special arrangements and only then provided that facilities are available for delivery at the arranged intermediate point at all hours.

14. (a) The Carrier may carry or onforward or have carried or onforwarded the Goods by any method or route which the Carrier in its absolute discretion deems fit notwithstanding any instructions verbal or otherwise from the Customer that the Goods are to be carried or onforwarded by a different method or route.

(b) The Carrier shall be at liberty to offload and deliver the Goods by whatever method it thinks fit at its absolute discretion.

(c) The Carrier may charge in accordance with the method of carriage indicated on the face hereof regardless of the method used to carry or onforward the Goods.

15. The Customer hereby authorizes the Carrier (if it should think fit to do so) to arrange with Sub-Contractors for the carriage and/or storage of the Goods. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the Goods to the Sub-Contractor who shall thereupon be entitled to the full benefit of the terms and conditions contained herein to the same extent as the Carrier. In so far as it may be necessary to ensure that Sub-Contractor shall be so entitled, the Carrier shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

16. The Goods are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier on any account if the lien is not satisfied and/or the Goods are not collected the Carrier may at its option and without any notice in the case of perishable Goods forthwith and in any other case upon the expiration of one month either;

(i) remove any such Goods and store them in such a place and manner as the Carrier shall think proper at the risk and expense of the Customer or,

(ii) open any package and sell any such Goods upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale and the Carrier shall not be liable to any person for any loss or damage caused thereby.

17. The Customer must make its own arrangements for insurance of the Goods. At the request of the Carrier the Customer will make the Carrier and the Carrier's Sub-Contractor a co-insured under the relevant policy. The Customer shall provide the Carrier with a copy of the insurance policy, all endorsements and a certificate of currency at the request of the Carrier. The Carrier reserves the right not to undertake any performance of this contract until and unless it is satisfied as to the level of insurance taken out by the Customer. The Customer warrants that any information provided by it in relation to insurance pursuant to this clause is complete and accurate and this warranty will be deemed to have been repeated.

18. LIMITED WAIVER OPTION

18.1 In order to minimize the potential for disputes with Customers on matters arising under this contract, subject to payment of the Additional Charge by the Customer the Carrier is prepared to pay without dispute, but without making any admission, the Relevant Amount in relation to Goods which are damaged or lost during the course of the Contractor providing Services under this contract, which the Customer claims is due to the fault of the Carrier or its Sub-Contractor, subject as provided in this clause. The payment by the Carrier of the Relevant Amount does not constitute an admission of liability in relation to any claim for breach of contract arising out of this contract or breach of duty of care by the Carrier, the Sub-Contractor, its or their agents or employees or any other party.

18.2 "Additional Charge" means \$ 6.00 "Relevant Amount " means the lesser of (a) the damage to the Goods (b) the cost of the replacement of the Goods (c) the cost of repair to the Goods (d) the cost of the Services under this contract (e) \$375 for Goods which the Carrier deems to be fragile goods or \$750 for Goods other than those deemed to be fragile goods. The decision of the Carrier as to whether the Goods are deemed to be fragile shall be final.

18.3 The Customer must supply any information requested by the Carrier to establish the Relevant Amount.

18.4 The Customer must give written notice to the Carrier within 48 hours of completion of the Carrier's obligations under this contract. The Carrier shall not be liable to make payment under this condition where notice is not given in accordance with this provision.

18.5 The Carrier will not be liable to make payment under this clause where it has reasonable cause to suspect that the Goods were damaged prior to being delivered to the Carrier, or where Customer has breached any provision or warranty in this contract.

18.6 The Carrier shall not be required to make any payment to the Customer under this clause where any monies are owed by the Customer, or its Related Body Corporate (as defined in the Corporations Act 2001) to the Carrier and the Carrier may at its discretion exercise any right of set-off in respect of monies payable under this clause and monies payable by the Customer or its Related Body Corporate to the Carrier.

18.7 The Customer will be deemed to have accepted the provisions in this clause 18 and will be responsible for payment of the Additional Charge unless it advises otherwise in writing on or before completing the consignment note.

19. The Customer expressly warrants that the Customer is the owner or the authorized agent in respect of the Goods and by entering into the contract the Customer accepts the terms and conditions contained herein for and on behalf of the Consignor, or Consignee (as appropriate), and all other persons on whose behalf the Customer may be acting.

20. The Customer expressly warrants that the person delivering the Goods to the Carrier has been given the express power right and authority to sign the consignment note and to accept the terms and conditions contained herein as agent for the Customer.

21. The Carrier's obligations under this contract shall be completed when the Goods are delivered to the address specified by the Customer in this contract ("Delivery Address"). The Carrier shall make delivery Monday to Friday between 7.30 am and 4.30 pm (public holidays excluded) ("Business Hours"). If there

is no person at the Delivery Address to receive the Goods the Carrier's obligations shall be deemed to have been completed when it arrived at the Delivery Address. Where there is no person at the Delivery Address the Carrier may at its discretion either leave the Goods at the Delivery Address or retain them at its storage depot or such other location as it considers appropriate for collection by the Consignee or the person to whom the Goods were to be delivered. Where there is no person at the Delivery Address to receive the Goods, any action taken by the Carrier whether leaving the Goods at the Delivery Address or keeping them in storage shall be at the risk of and at the cost of the Customer and the Carrier shall not be liable for any loss or damage to the Goods and the Customer indemnifies the Carrier from and against all loss, damages, expenses and costs in connection with any action taken by the Carrier pursuant to this clause.

22. The Customer acknowledges that the Carrier is not an insurer and that its business is the transport of Goods. The Customer has satisfied itself that the ordinary services of the Carrier are adequate for its purposes. Where any special care and attention is required in relation to the carriage of the Goods the Customer has made full written disclosure to the Carrier prior to the contract being entered into as required by clause 3(d) of this contract and elsewhere.

23. Subject to Clause 6 hereof the terms and conditions contained herein shall be governed and construed in accordance with the laws of Western Australia and any proceedings against the Carrier shall be brought in that State and not elsewhere within twelve (12) months from the date of the contract.