



## TERMS & CONDITIONS OF TRADE

To the fullest extent legally possible, all contracts and dealings between State Transport and the Consignor are subject to the Terms & Conditions of Trade set out herein (clauses 1 to 32 inclusive, or any variation thereto as may be advised by State Transport from time to time to the Consignor or the Principal Consignor on behalf of the Consignor) ("these Terms"). These Terms are binding on that Consignor and each of its subsidiaries, affiliates, associated companies, related entities, successors, or assigns, unless otherwise expressly agreed in writing by State Transport.

By acceptance of provision of services (which includes but is not limited to part of any service that have been supplied by State Transport, including any product supplied as a part of the service) the Consignor agrees to these Terms, including as follows:

**1. Definitions:** Unless, repugnant to the particular context, the following definitions have and include the respective meanings set out below:

**"after hours"** is defined as before 6:00am & after 6:00pm, Weekends and Public Holidays.

**country & outer Melbourne** is defined as further than 40km from Melbourne CBD.

**"Consignor"** means a party (including its subsidiaries, affiliates, associated companies, related company successors or assigns) to whom the services or goods, as defined below, are provided by State Transport (including but not limited to an owner of the goods or a corporation or a sub-contractor of the Consignor, for example a packer) and any person or entity seeking to use goods and services rendered by State Transport.

**"delivery or delivered"** means the time when the goods are transported from the agreed premises by whatever means or when State Transport advised the Consignor the goods were available for collection/had been delivered.

**"goods"** means the freight/goods (including but not limited to finished product, raw materials, inners and outers, various packaged products, cartons, bags and boxes) accepted by State Transport from the Consignor or on the Consignor's behalf (including from any manufacturer or contractor of the Consignor), together with and including any container, packaging, stillages and pallets.

**"GST"** means any tax or imposition on the supply of goods and services covered by A New Tax System (Goods and Services Tax) Act 1999 Commonwealth (the GST Act) as amended from time to time.

**"monies owed"** means any amount due and payable by the Consignor to State Transport for the supply of service.

**"Principal Consignor"** means the Consignor named as a party in any invoice or contractual document or in these Terms.

**"services"** means and includes the whole of the operations and services to be undertaken by or on behalf of State Transport in connection with the goods including but not limited to the carriage, transport and/or storage of the goods.

**"storage"** or **"stored"** means and includes when the goods have been deposited by the Consignor with State Transport for keeping and held by State Transport until collected by the Consignor or delivered by State Transport to the Consignor. This definition includes when the goods have been deposited by the Consignor with sub-contractor and held by sub-contractor on behalf of the State Transport until collected by the Consignor or delivered by sub-contractor on behalf of the State Transport.

**"sub-contractor"** shall include any person/corporation (whether or not State Transport) that performs/agrees to perform the services, including any sub-contractor appointed by the Consignor or any of the Consignor's subsidiaries, affiliates, associated companies, related entities, successors or assigns.

**"State Transport"** means State Transport Logistics Pty Ltd (ABN 58 123 269 929) and/or where the context requires, State Management Solutions Pty Ltd (ABN 26 096 709 492) and each of their respective subsidiaries, affiliates, associated companies, related entities, successors or assigns.

**"written agreement"** means an agreement signed by a director of State Transport and a director of the Principal Consignor or by a duly authorized representative of the Principal Consignor.

### 2. Not a Common Carrier:

a) State Transport is not a common carrier and shall accept no liability as such. All goods are carried, transported, delivered and/or stored, and all services are provided by, State Transport subject to these Terms.

b) State Transport may forward goods by any form of transport determined by State Transport, which may include the use of sub-contractors.

c) State Transport reserves the right to refuse the carriage, transport, delivery and storage of goods or to perform or complete any services whatsoever to any person/corporation at the sole discretion of State Transport if there are reasonable and/or justifiable basis for doing so.

**3. General Lien:** All goods are accepted subject to a general lien of State Transport for all the charges due to State Transport on any account whether in respect of the goods and/or services comprised herein.

**4. Payments:** The Consignor agrees and acknowledges that:

a) subject to (c) below, unless otherwise agreed in writing to the contrary by State Transport, all payments shall be made by the Consignor without deduction or any right to set-off, and all payments must be made by the Consignor within 7 days from the invoice date;

b) subject to (c) below, unless otherwise agreed in writing to the contrary by State Transport, final invoice must be paid in full prior to the goods being moved out from the storage, transported or delivered to the Consignor or the end user, as the case may be;

and

c) State Transport has a right to require upfront payment prior to acceptance of delivery or making a delivery at the discretion of State Transport if State Transport notifies Consignor of this requirement.

**5. Interest:** Interest will be charged on overdue accounts at the rate of 15% per annum compounding quarterly in arrears on any outstanding amount.

**6. Limitation of liability:** The Consignor agrees and warrants that:

a) the Consignor warrants that it is or has the authority of the person/corporation owning or having an interest in the goods or any part thereof;

b) the Consignor undertakes to indemnify State Transport in respect of any liability whatsoever and howsoever arising (including but not limited to liability in negligence and/or breach of contract) in connection with the goods/services or any person (irrespective of whether that person is the Consignor or not) who claims to have or has or who may hereafter have any interest in the goods or any part thereof;

c) the Consignor warrants that the goods held by State Transport comply with the requirement of any applicable law relating to the nature, condition and packaging of the goods and that the expenses and charges acquired by State Transport in complying with the provisions of any such law or with any order or requirement of any harbour, dock, railway, shipping, warehouse or any authority/person/corporation shall be paid by the Consignor;

d) the Consignor warrants that it has fully disclosed in writing the composition of any goods held/to be held by State Transport, detailing in particular whether and which goods are actually or potentially noxious, dangerous, hazardous, flammable or capable of causing damage or injury or vulnerability to other goods or any persons or animals or that might endanger any mode of conveyance or storage in which the goods may be loaded, carried, packed or stored;

e) the Consignor agrees that all goods stored and delivered by State Transport are delivered and stored by State Transport completely at the risk of the Consignor;

f) the Consignor agrees to limit any and each claim in law or equity it may have against State Transport, to the cost of replacement of the subject goods and under no circumstances will State Transport be in any way liable to the Consignor for any further amount whether for loss of profits or for any other direct or consequential loss howsoever arising;

g) the Consignor agrees that State Transport shall not be liable for any loss or expense arising after 7 days from delivery (or prior to 7 days once goods have been unpacked) after which there shall be deemed to be unqualified acceptance by the Consignor or the recipient receiving the goods of the Consignor from State Transport;

h) the Consignor agrees to accept full responsibility for the actions and omissions of any persons or entities which are authorized by the Consignor to deal with the State Transport on behalf of the Consignor in connection with either the goods, the dealings and/or the services provided by State Transport to or on behalf of the Consignor;

i) the Consignor agrees that to the fullest extent legally possible State Transport will not be liable for any contingent, consequential, direct, indirect, special or punitive damages, personal injury or death whether due to negligence or otherwise in relation to the goods or provision of services by State Transport to the Consignor;

j) the Consignor agrees that State Transport shall not be liable for any customs or other government charges levied in relation to the storage or carriage of the goods;

k) the Consignor hereby authorizes State Transport (without imposing any obligation on State Transport) to act in accordance with such authority and to perform such test, examination or analysis as State Transport in its discretion considers necessary for the purposes of examination of the goods;

- l) the Consignor hereby authorizes State Transport to reject any goods not considered fit for storage or transport by State Transport and the Consignor agrees that State Transport shall not be liable for any costs whatsoever of such rejection;
- m) the Consignor agrees to comply with any reasonable requests from State Transport to remove any goods not considered to be fit for storage or transportation by State Transport from State Transport's services or storage and the Consignor agrees do so at its own cost;
- n) the Consignor agrees to comply with any reasonable requests by State Transport to make the goods suitable for State Transport's services and, if requested by State Transport, to provide State Transport with checked, audited and certified certificate (the certificate) testifying as to the fitness of goods for State Transport's services. The certificate to be provided by the entity nominated by State Transport;
- o) the Consignor agrees to reimburse State Transport for all reasonable expenses, loss and damage (including but not limited to the costs of fumigation, labour and off-site temporary storage) acquired by State Transport as a result of contamination or infestation of any of its facilities (including but not limited to storage, transport and any product supplied by State Transport to the Consignor) and non-Consignor goods by the Consignor's goods or as a result of provision of goods and services to the Consignor;
- p) the Consignor agrees to reimburse State Transport for all reasonable expenses, loss and damage to any products or goods that are not owned by the Consignor and which suffered damage or deterioration or injury as a consequence of contamination or infestation of the Consignor's goods;
- q) the Consignor undertakes to indemnify State Transport in respect of any liability whatsoever and howsoever arising in connection with the services provided by the sub-contractors and not to join State Transport as a party to any legal action instituted by the Consignor against any of the sub-contractors; and
- r) to the fullest extent legally possible the Consignor undertakes to indemnify State Transport in respect of any liability whatsoever and howsoever arising claimed against the State Transport and/or the Consignor by the recipient or end-user of the goods and not to join State Transport as a party to any legal proceedings instituted against the Consignor by any recipient or end user of goods stored or transported by State Transport on behalf of the Consignor.

## **7. Services**

The Consignor agrees and acknowledges that:

- a) no dealing between State Transport and the Consignor shall be or be deemed to be a sale by State Transport;
- b) each request for services the Consignor places shall be deemed to include a representation that the Consignor is solvent and able to pay all of its debts as and when they fall due;
- c) when any request for services is placed, the Consignor shall inform State Transport of any facts which might reasonably affect any decision to accept the goods and/or request for services and/or grant credit. Any failure to do so shall be deemed to create an inequality of bargaining position, the taking of an unfair advantage of State Transport and to be unconscionable, misleading and deceptive and, at State Transport's discretion, render the contract of service between State Transport and the Consignor invalid;
- d) from the time of requesting the services, the Consignor is obliged to accept and pay for the services in accordance with these Terms & Conditions and a cancellation of the request for services or change in mind on the part of the Consignor as to the services shall not discharge this obligation to accept the goods and make payment for the services;
- e) State Transport shall use reasonable endeavours to ensure that the services are provided to the Consignor within the time frame requested by the Consignor, but shall not be liable for any loss or damage caused by any delay. The Consignor shall not be entitled to reject the goods or services due to any such delay; and
- f) The Consignor will be responsible for arranging storage of any goods to be collected and/or delivered at the Consignor's premises and/or State Transport's premises where temporary storage is required in order for State Transport to effectively carry out the carriage services.

## **8. Service Price**

The Consignor agrees and acknowledges that:

- a) all services performed by State Transport are at its ruling price at the time of delivery;
- b) prices maybe subject to change without notice;
- c) official price quotations made by State Transport are valid for thirty (30) days from quotation date, after which they maybe subject to change without notice;

d) general storage charges shall be levied on a daily basis as agreed between the Consignor and State Transport (other charges being as notified); and

e) country & outer Melbourne and after hours & weekend jobs will attract a surcharge.

## **9. Delivery**

The Consignor agrees and acknowledges that:

a) State Transport has no responsibility or duty to deliver but may elect to arrange the timing of any delivery at its discretion and without liability and at the Consignor's cost and risk in all things;

b) State Transport reserves the right to deliver by instalments and each instalment shall be deemed to be delivered under a separate contract;

c) failure by State Transport to deliver any instalment shall not entitle the Consignor to cancel the balance of the request for services;

d) in the event of the Consignor failing to take delivery of any instalment, State Transport may elect to cancel the balance of the request for services;

e) State Transport will not be liable for delay, failure or inability to deliver;

f) goods shall be deemed delivered as soon as they are ready for delivery;

g) a charge will be made for frustrated delivery to cover State Transport's costs of attempts and after 6:00pm, Week-ends and Public Holidays;

## **10. Storage and/or stored**

The Consignor agrees and acknowledges that:

a) State Transport has no responsibility for the safety or otherwise of the goods in State Transport possession and/or storage;

b) State Transport takes possession and/or accepts or stores goods at the Consignor's risk in all things;

c) State Transport reserves the right to refuse possession and/or to store goods at its sole discretion.

## **11. Ullage**

The Consignor agrees and acknowledges that:

a) unless State Transport and the Consignor agree in writing to the contrary, the acceptable ullage shall be 1.75% of the whole of the goods to which these Terms pertain; and

b) State Transport accepts no responsibility for any faults with the goods whatsoever or any shortfalls in the quantity of goods provided to State Transport by sub-contractors and stored and/or delivered by State Transport to the end-user or the Consignor.

## **12. Insurance**

The Consignor shall be responsible for obtaining its own insurance for the goods/services whilst they are in transit/ storage and any expense for any such insurance shall be born by the Consignor.

## **13. Storage Notice**

The Consignor agrees and acknowledges that:

a) upon notice in writing given by State Transport to the Consignor requiring the Consignor to remove stored goods or any part thereof, the Consignor must within 7 days from the date of the notice in writing remove the stored goods or such part thereof;

b) the notice in writing shall detail any costs, charges or damages payable by the Consignor to which the general lien of State Transport extends; and

c) upon the expiration of 7 days, if the Consignor fails to pay the outstanding amounts and remove the goods, State Transport may dispose of the goods in any manner it chooses and at the cost and risk of the Consignor.

## **14. Other Terms and Conditions**

No terms and conditions or warranties sought to be imposed by the Consignor upon State Transport shall apply.

## **15. Recovery Costs**

The Consignor shall pay all costs and expenses (including legal fees and mercantile agents fees) incurred by State Transport in respect of proceedings commenced or being considered against the Consignor, whether for debt, possession of any goods or otherwise.

## **16. Consignor Restructure**

The Consignor shall notify State Transport in writing of any change in its structure or management including any change in director, shareholder, or management of change in partnership or trusteeship within 14 days of the date of any such change.

## **17. Jurisdiction**

The Consignor agrees that all contracts made with State Transport shall be deemed to be made in the State of Victoria. All contracts will be governed by the laws of the State of Victoria.

## **18. Credit Limit**

The grant of any credit facility and/or the nomination of any credit limit is an indication only of State Transport's intention at that time and State Transport may vary or withdraw any credit facility at any time at its discretion and without any liability to the Consignor or any other person or entity. The Consignor agrees to pay on demand all sums owing in connection with this credit facility in the event the credit facility is withdrawn.

## **19. Security For Payment**

The Consignor agrees upon request to charge with payment of all monies owed and/or owing to State Transport from time to time in favour of State Transport:

- a) by way of a fixed charge all its books of account, financial records, goodwill, documents of title and current and later acquired real property and intellectual property; and
- b) by way of a floating charge, the whole of its other undertakings, property and assets.

## **20. Forward Orders**

The Consignor agrees and acknowledges that:

- a) to pay for so much of any services as is from time to time invoiced by State Transport;
- b) that no delay or failure to fulfil part of such services will entitle any cancellation or variation of that request for services or reduce any payment; and
- c) to pay any demurrage and/or other costs and expenses of State Transport in handling and/or holding any goods once ready for delivery.

## **21. Force Majeure**

State Transport will not be or deemed to be in default or breach of any contract as a result of the effects of Force Majeure. Force Majeure will include any cause beyond the reasonable control of State Transport, including but not limited to strikes, lock-outs, labour disputes, acts of God, acts of terrorism, acts of nature, acts of Government or their agencies, power shortages or power failure.

## **22. Attornment**

For the purpose of giving effect to the Consignor's obligations pursuant to these Terms (and in particular anything arising in Clause 15), the Consignor hereby irrevocably appoints the public officer of State Transport its attorney in all things. Notwithstanding such authority as attorney the Consignor shall remain liable as the principle and shall indemnify State Transport as its attorney and agent.

## **23. Disputes**

The Consignor agrees to pay into a trust account (earning market interest) in the joint names of State Transport and the Consignor any amount claimed by State Transport as a condition precedent to disputing any such claim on the basis that upon resolution of the dispute the trust funds and any interest shall be disbursed according to the resolution. This clause shall operate as a bar to any defence and/or counterclaim by the Consignor until complied with. All claims shall be submitted in writing.

## **24. Defaults**

Upon any default or breach hereof by the Consignor, State Transport may (inter alia) retain all monies paid and/or cease further deliveries without prejudice to any other of its rights and without being liable in any way to any party.

## **25. Severability**

In the event that a provision or word in these Terms is judged by any court or regulatory agency of competent jurisdiction to breach any law or statutory provisions, the infringing word or provision shall firstly be read down to allow these Terms to have a reasonable operational effect. However if the offending word or the provision cannot be read down it shall be considered severable and the remainder of these Terms shall continue to operate with the full force and legal effect. Any part of these Terms being a whole part of a clause shall be capable of severance without affecting any other part of these Terms.

## **26. GST**

To the extent that a supply of services provided by State Transport, or any other supply, made under or pursuant to this agreement, is a "taxable supply" as defined in the GST Act, State Transport will increase its price in respect of that supply it makes by the amount of GST applicable to the supply.

## **27. Statement by State Transport**

A statement by any officer of State Transport is conclusive evidence of any fact, matter or thing.

## **28. Privacy Act**

The Consignor agrees that State Transport may make any inquiries it deems necessary to investigate the Consignor's creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers ("the Sources"). The Consignor authorises the Sources to disclose any information concerning its creditworthiness in their possession to State Transport, pursuant to section 18E(1) of the Privacy Act. The Consignor agrees that State Transport may disclose any information in its possession concerning the Consignor's creditworthiness to the Sources.

## **29. Solicitation of State Transport Agents**

a) The Consignor must not, for a period of 12 month after an agent, contractor or vehicle supplier of State Transport ceases its engagement with State Transport, procure or otherwise engage the agent, contractor or vehicle supplier of State Transport, either directly or indirectly, to provide the same or similar services to the Consignor without the prior written consent of State Transport.

b) If the Consignor engages an agent, contractor or vehicle supplier of State Transport in breach of clause 29 (a) then clause 30 will apply.

## **30. Liquidated Damages:**

a) In the event the Consignor breaches clause 29 (a), the Consignor will pay to State Transport the following liquidated damages if the agent contractor or vehicle supplier is engaged by the Consignor, an associated entity of the Consignor, or someone providing similar services to the Consignor:

I. on a full time basis - \$8500.00; or

II. on a part time basis - \$6500.00.

b) The liquidated damages payable under clause 30 (a) are payable within 7 days of:

I. termination of the contract between State Transport and the agent, contractor or vehicle supplier; and

II. the procurement or engagement by the Consignor of the agent, contractor or vehicle supplier, either directly or indirectly.

If the events under clauses 30 (b) (I) and (II) occur on different dates, the liquidated damages are payable within 7 days of whichever date is the later.

c) The Consignor agrees that the liquidated damages in this clause 30 constitute a fair and a reasonable pre-estimate of the loss that will be suffered by State Transport should a breach of clause 29 (a) occur.

## **31. Trade Practices Act liabilities**

Nothing in these Terms shall be construed to exclude any statutory warranties or mandatory statutory obligations required in either case where under the Trade Practices Act or other law the same cannot be lawfully excluded.

## **32. Variation of these Terms**

These Terms can only be varied by express written agreement between the Principal Consignor and State Transport.