

## CONDITIONS OF CARRIAGE

**Please read the following conditions carefully and in their entirety. You will be bound by these conditions if we carry or store goods for you. This means:**

- You should take out your own insurance cover for the goods.
- If you are operating a business:
  - The goods will be at your sole risk and our services are priced on this basis; and
  - We will not be liable for any loss of or damage to the goods, or any other losses you suffer, regardless of the cause of such loss or damage.

The Carrier is not a common Carrier and will accept no liability as such. The Carrier accepts Goods for Carriage subject only to this Agreement. The Carrier reserves the right to refuse the Carriage of any Goods at its discretion.

### 1. DEFINITIONS AND

#### INTERPRETATION 1.1. "Agreement"

means this document.

"Carriage" means the whole of the operations and services undertaken by the Carrier with respect to the Goods (whether gratuitously or not), including but without limiting the generality hereof, packing, loading, unloading and storage of the Goods. The term includes the towing of a trailer.

"Carrier" means G.P.I. (General) Pty Ltd A.C.N. 010 761 136 carrying on business under the business name

PFM CORP or under any other business name and its officers, servants, agents and Subcontractors; "Charges" means the Carrier's quoted charges for Carriage calculated under its rates schedule or other agreed rates, the charges in clauses 10 and 11 and any tax, including a goods and services tax ("GST") levied directly on a transaction or supply under this Agreement;

"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; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of this Agreement and whether or not foreseeable at the time of entering into this Agreement;

"Consignee" means the person to whom the Goods are to be delivered;

"Consignor" means the person who engages the Carrier to provide services of Carriage;

"Container" includes any container, trailer, igloo, wagon, transportable tank, pallet, frame or any other unit or device used to consolidate, package or store Goods;

"Dangerous Goods" means Goods that are or could become dangerous, inflammable, noxious or damaging (including radioactive material) or which are or may become liable to damage any property whatsoever;

"Goods" means the property accepted from time to time by the Carrier from the Consignor for Carriage;

"Person" includes a corporation, company, partnership or any other entity;

"Place of Delivery" means Consignee's address specified on the Consignment Note;

"Place of Receipt" means the Consignor's address specified on the Consignment Note;

"PPSA" means the Personal Property Securities Act 2009 (Cth). Terms used in this Agreement have the same meaning as under the PPSA.

"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 thereof.

1.2. This Agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation (express or implied) in any way defining, extending or otherwise relating to the matter to which this Agreement relates.

1.3. Each party shall do everything necessary or desirable to give full effect to this Agreement, and shall refrain from doing anything which might prevent full effect being given to this Agreement.

1.4. This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.

- 1.5. Any discretion of the Carrier shall be absolute and unfettered and may be unreasonable or arbitrary.
  - 1.6. Notwithstanding any other provision of this Agreement, the Carrier shall continue to be subject to any condition, guarantee or warranty implied by the Competition and Consumer Act 2010 (Cth) or the Fair-Trading Act 1989 (Qld) if and to the extent that the said Acts are applicable to this Agreement and prevent the exclusion, restriction or modification or any such condition, guarantee or warranty.
  - 1.7. A reference to any Act of Parliament or Code shall be read as if the words “or any statutory modification or re-enactment thereof or substitution thereof” were added to the reference and includes all statutory instruments issued under the Act or Code.
  - 1.8. Where the Consignor or Consignee comprises two or more persons, an Agreement or obligation to be performed or observed by the Consignor or Consignee binds those persons jointly and severally.
  - 1.9. A reference to a party to this Agreement or any other document or agreement includes its successors and permitted assigns.
  - 1.10. Words importing the singular include the plural and vice versa and words importing a gender include other genders.
  - 1.11. Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives the end of or termination of this Agreement.
2. PACKING/LOADING AND UNLOADING
- 2.1. Unless requested in writing by the Consignor, the Carrier shall not be responsible for packing of the Goods.
  - 2.2. The Consignor shall ensure that it or some other person on its behalf is present during the packing (if any), loading and unloading of Goods except where the Carrier agrees otherwise in writing.
  - 2.3. The Consignor warrants that it will, prior to Carriage, give notice to the Carrier of any Goods which are of a fragile or brittle nature, or include items or pieces having a value in excess of \$500.00.
  - 2.4. The Consignor shall use its best endeavours to ensure that all Goods are removed or stored by the Carrier and that none is left behind or taken by the Carrier in error.
  - 2.5. Consignor shall indemnify the Carrier against any claim arising or expense incurred as a result of breach of this clause.
3. TRANSPORT AND DELIVERY
- 3.1. The Carrier at its discretion may subcontract on any terms all or any part of the Carriage.
  - 3.2. The Consignor shall take delivery of the Goods as soon as the Carrier is ready to deliver the Goods. The Carrier shall be deemed to have delivered the Goods in accordance with this Agreement if at the Place of Delivery it obtains from any person a receipt or signed delivery docket for the Goods.
  - 3.3. If there is no one present to accept delivery of the Goods on behalf of the Consignor at the Place of Delivery or if the Consignee fails to take delivery of the Goods, the Carrier may without notice unload the Goods and/or store the same in the open or undercover, and with or without refrigeration. If the Goods are stored by the Carrier, the Consignor shall pay or indemnify the Carrier for all costs incurred in or about such storage. Such unloading of Goods or such storage shall be deemed to constitute delivery and thereupon all liability whatsoever of the Carrier in respect of the Goods shall cease however there is no obligation on the Carrier to store the Goods. The Carrier shall not be responsible for the care or protection (from theft, weather, damage, deterioration or any other thing) of the Goods after delivery irrespective of whether or not there was any person present at the time of delivery and irrespective of whether or not there is adequate cover or other facilities upon delivery.
4. CONSIGNOR'S WARRANTIES, ACKNOWLEDGEMENT AND INDEMNITIES
- 4.1. The Consignor warrants that:
    - 4.1.1. The Goods are fit for Carriage and have been suitably packaged for those purposes and in compliance with all applicable laws and regulations and that they are not Dangerous Goods;
    - 4.1.2. The details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor are correct;
    - 4.1.3. The Consignor has the authority of all Persons owning or interested in the Goods to enter into this Agreement on their behalf; and

- 4.1.4. where required by law, it has accurately completed and supplied a container weight declaration form.
- 4.2. The Consignor acknowledges that:
  - 4.1.1. No agent or employee of the Carrier can alter or vary this Agreement;
  - 4.1.2. No representations have been made by any employee or agent of the Carrier to the Consignor; and
  - 4.1.3. The Carrier may inspect the Goods and for such purpose may open or remove any packaging.
- 4.3. The Consignor shall indemnify the Carrier against:
  - 4.3.1. All costs, demands, claims or expenses whatsoever and by whomsoever made arising as a result of the Consignor making an incorrect description or advising an incorrect weight of the Goods;
  - 4.3.2. Any loss of or damage to the Carrier's Containers or to other equipment which occurs due to the nature or the condition of the Goods;
  - 4.3.3. Any loss or damage including loss suffered by the Carrier resulting from the Consignor's detention of any Containers or any other equipment; and
  - 4.3.4. Any loss which may be suffered by the Carrier as a result of any breach by the Consignor of any of the warranties and acknowledgements in this Agreement.
- 4.4. the purpose of this clause "loss" expressly includes:
  - 4.4.1. Consequential Loss; and
  - 4.4.2. Any fine, levy, charge or any other monetary imposition to which the Carrier may become liable resulting from any breach by the Consignor of this Agreement.
- 5. HIMALAYA CLAUSE/SUBCONTRACTING
  - 5.1. The Consignor acknowledges that the Carrier enters into this Agreement on its own behalf and on behalf of its servants, agents and Subcontractors, and undertakes that no claim or allegation shall be made against any servant, agent or Subcontractor 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 or omission on the part of any of them, and if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof.
  - 5.2. Every exemption, limitation, condition and liberty herein contained and every right, defence or immunity applicable to the Carrier or to which the Carrier is entitled shall also be available and extend to protect all Subcontractors and for the purposes 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 such Persons and each of them, and all such Persons and each of them shall to this extent be or be deemed to be parties to this Agreement.
- 6. ROUTES AND DEVIATION
  - 6.1. The Consignor authorises any deviation from the Carrier's usual route or manner of Carriage which may in the Carrier's discretion be necessary. Carriage commences when the Goods are delivered to the Carrier at the Place of Receipt and Carriage ceases when the Goods are tendered at the Place of Delivery.
  - 6.2. The Consignor authorizes the Carrier at its discretion and at any time without notice to the Consignor to:
    - 6.2.1. Use any means of Carriage whatsoever;
    - 6.2.2. Proceed by any route whether or not it is the nearest or most direct or customary route;
    - 6.2.3. Proceed to or stay at any place whatsoever (although in contrary direction to, or out of or beyond the customary or intended or advised routes) and to store the Goods at any such place whatsoever; and
    - 6.2.4. Comply with any order, direction or recommendation as to loading, unloading, departure, routes, place of call, stoppages, destination, arrival, discharge or delivery given by any Government or authority or any Person acting or purporting to act with the authority of such Government or authority.
  - 6.3. Any action taken by the Carrier under this clause and any delay resulting therefrom shall be deemed to be included within the contractual route and shall not be a deviation.
  - 6.4. If the Carrier effects arrangements for storage or preservation of the Goods after delivery or attempted delivery, it does so as agent of the Consignor and solely at the Consignor's risk and expense.

## 7. LIABILITY

- 7.1. At all times and in all circumstances and for all purposes the Goods shall be and remain at the sole risk of the Consignor. The Consignor acknowledges and agrees that neither the Carrier nor any Subcontractor of the Carrier nor any other Person who undertakes the Carriage of the Goods at any time pursuant to this Agreement shall in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:
  - 7.1.1. any loss of or damage to, deterioration, evaporation or contamination of the Goods; or
  - 7.1.2. misdelivery, delay in delivery or non delivery of the Goods or any of them whether in the course of Carriage or otherwise including where such loss, damage, deterioration, evaporation, contamination or misdelivery, delay in delivery, non delivery or consequential loss or injury is caused or alleged to have been caused by the negligence of the Carrier or its Subcontractors.
- 7.2. The Carrier shall be entitled to the benefit of the exclusion of liability provided for herein 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 or with knowledge that damage would probably result.
- 7.3. Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of this Agreement or otherwise howsoever lawfully or unlawfully, shall under any circumstances constitute a breach going to the root of this Agreement, or a deviation or departure therefrom or repudiation thereof such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities or limitations of liability and other like protections contained in this Agreement and all such rights, defences, exceptions, immunities, limitations of liability and like protection shall continue to have full force and effect in any event whatsoever.
- 7.4. Notwithstanding any other provision of this Agreement, the Carrier will under no circumstances be liable for any claim for Consequential Loss.
- 7.5. Where clauses 7.1, 7.2, 7.3 or 7.4 cannot legally operate and to the extent permitted by law, the Carrier's liability for breach of any warranty, guarantee or any term implied by law in to this Agreement is limited to:
  - 7.5.1. In the case of Carriage, the cost of having those services supplied again;
  - 7.5.2. In the case of the supply by the Carrier of Goods, the lowest of the cost of replacing the Goods, acquiring equivalent Goods or having the Goods repaired.

## 8. GENERAL LIEN

- 8.1. The Goods are accepted subject to a general lien for all Charges now due or which may hereafter become due to the Carrier by the Consignor on any account whatsoever, whether in respect of the Goods comprised herein, or in respect of any other goods for which the Carrier provides or has provided services of Carriage.
- 8.2. Charges are not paid when due, or the Goods are not collected when so required or designated, the Carrier may, without notice, and immediately:
  - 8.2.1. remove all or any of the Goods and store them as the Carrier thinks fit at the Consignor's risk and expense; and
  - 8.2.2. open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.
- 8.3. The Parties agree that the lien attaches to the Goods when the Goods are accepted by the Carrier for Carriage.
- 8.4. The Consignor agrees that the lien arising under this Agreement of Carriage is a security interest.
- 8.5. If the Carrier requests, then the Consignor must promptly upon receipt of a request from the Carrier do anything for the purposes of ensuring that any security interest created under, or provided for by, this Agreement is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Consignor to be done under this clause will be done by the Consignor at its own expense. The Consignor agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.
- 8.6. The parties agree that, to the extent permitted by the PPSA:
  - 8.6.1. sections 125, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Carrier);

- 8.6.2. any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived; and
- 8.6.3. any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing charge statement relating to any security interest under or provided for by this Agreement is waived.

## 9. DANGEROUS GOODS

- 9.1. If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed in accordance with statutory obligations applicable to the Carriage of those Goods.
- 9.2. The Consignor shall indemnify the Carrier against all loss, (including Consequential Loss), damage or injury however caused arising out of the Carriage of any Dangerous Goods, whether declared as such or not and whether or not the Consignor was aware of the nature of the Goods.
- 9.3. Where Dangerous Goods are delivered to the Carrier without written consent or where they are not distinctly marked to indicate the nature and character of the Goods or if in the opinion of the Carrier the articles are or are liable to become of a dangerous and flammable or damaging nature, the same 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 any Charges.
- 9.4. The Carrier may at the expense of the Consignor dispose of or destroy any Goods which the Carrier believes have deteriorated or become objectionable, unwholesome, or a source of danger or contamination.

## 10. STORAGE

- 10.1. Where Goods are stored by the Carrier at the request of the Consignor, the Consignor shall furnish an address to which notices shall be sent, and shall provide samples of the signatures of persons entitled to collect the Goods.
- 10.2. The Carrier shall be entitled to remove the Goods from a place of storage to another place of storage at its discretion.
- 10.3. Storage Charges are payable in advance and Charges must be paid within 21 days from the date of invoice. Storage Charges do not include removing, packing, unpacking, stowing, restoring or delivering, all of which attract extra Charges
- 10.4. The Consignor shall give 48 hours notice to the Carrier of its intention to remove Goods from storage.
- 10.5. The Carrier shall not be obliged to deliver any Goods except to the Consignor or to a person authorised in writing by the Consignor to receive the Goods without:
  - 10.5.1. a direction in writing from the Consignor; and
  - 10.5.2. payment of all amounts due by the Consignor to the Carrier on any account whatsoever.
- 10.6. The Consignor shall remove its Goods from storage within seven (7) days of receipt of written notice from the Carrier.
- 10.7. The Carrier may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition, or to determine their ownership.

## 11. CHARGES AND PAYMENTS

- 11.1. All transport charges are to be paid on delivery of the Goods to the Place of Delivery but in any event not later than seven (7) days after delivery. The charges will be deemed to be earned on acceptance of the Goods for Carriage.
- 11.2. Any special instruction given by the Consignor to the effect that charges shall be paid by the Consignee or any other third party shall be deemed to include a stipulation that if the Consignee or third party does not pay the charges within seven (7) days of the date of delivery or attempted delivery of the Goods, the Consignor shall pay such charges.
- 11.3. Where the work required by the Consignor to be undertaken varies from the work for which a quotation or estimate is given (for example, as to the nature of the quantity of the Goods, nature and location of the premises, to which Goods are to be carried, facilities available for packing, loading or unloading times or dates), the Carrier shall be entitled to make a reasonable additional charge
- 11.4. In addition, the Consignor must pay on demand any expenses or other charges reasonably incurred by the Carrier in relation to the provision of the Carriage including without limitation the

expenses incurred for any packaging or for any road, rail, air, or sea travel by the Goods or to staff for any accommodation.

11.5. Unless otherwise agreed in writing, the Consignor is responsible for:

- 11.5.1. the cost of any services of third parties or of specialist Carriage; and
- 11.5.2. a reasonable amount for any unusual or reasonably unexpected aspects of the provision of the Carriage.

11.6. Where the Carrier stores Goods for the Consignor, the Consignor must:

- 11.6.1. pay the Carrier's expenses and Charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other Person;
- 11.6.2. if any Goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) which the Carrier becomes liable to pay or pays;
- 11.6.3. supply or pay for labour or machinery or both to load or unload the Goods
- 11.6.4. compensate the Carrier for any cost, expense or loss incurred by the Carrier or any Person caused by the Goods; and
- 11.6.5. if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional Charges.

## 12. QUEENSLAND COURTS

12.1. Each party to this Agreement consents to any dispute arising under or out of this Agreement being subject to the non-exclusive jurisdiction of the courts of the State of Queensland.

## 13. NOTIFICATION OF CLAIM

13.1. Notwithstanding any other provision hereof (other than clause 1.6), the Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier:

- 13.1.1. In the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within fourteen (14) days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; and
- 13.1.2. in the case of Goods allegedly lost or damaged during storage, within fourteen (14) days of the date of removal of the Goods from storage.

13.2. The Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is brought:

- 13.2.1. in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within six (6) months of their delivery or of the date on which they should have been delivered;
- 13.2.2. In the case of Goods allegedly lost or damaged during storage, within six (6) months of the date of removal of the Goods from storage.

## 14. FORCE MAJEURE

14.1. The Carrier will not be liable for any failure or delay in performance of the Carriage if such failure or delay is due, in whole or in part to any cause whatsoever beyond its control.

## 15. NOTICES

15.1. Notices under this Agreement may be given or served by facsimile, prepaid post or by hand to that party at its address and facsimile number as the party may have notified in writing to the other party.