

Please read all the following conditions carefully. You will be bound by these conditions if we provide services at your request or on your behalf. Please note that:

- Our services are priced based on the exclusions and limitations set out in these conditions;
- To the extent permitted by law, we will not be liable for any loss of or damage to goods, unless the loss or damage was caused by our proven negligence or wilful misconduct;
- The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to goods. These exclusions and limits are set out in clause 6;
- The effect of these provisions is that, even if we have been negligent, our liability is limited to \$50,000 per incident and therefore you may not be able to recover the full value of any lost or damaged goods. If you want to negotiate for us to have a higher limit of liability with respect to your goods, you should contact us; and
- Because of these considerations, we recommend that any goods are covered by an appropriate insurance policy taken out by you, or by the owner of the goods.

CONDITIONS OF CARRIAGE

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

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, storing, loading, unloading, packing, handling and unpacking of the Goods, towing a trailer and the provision of any advice.

Carrier means OD Transport (WA) Pty Ltd (A.B.N. 89 053 751 312) trading under its own name, the business name OD Transport Esperance or under any other business name.

Chain of Responsibility Law means the *Road Traffic (Administration) Act 2008 (WA)* and the *Road Traffic (Vehicles) Act 2012 (WA)*, the Heavy Vehicle National Law as enacted in any other Australian state, 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.

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.

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.

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

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

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

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); and
 - (e) use reasonable endeavours to comply with the Consignor's reasonable and lawful directions.
- 3.2 To the extent permitted by law, 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. WARRANTIES AND INDEMNITIES

4.1 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) all details supplied by the Consignor or any other party with respect to the Goods, including the details of description, items, quantity, weight, volume, quality, value and measurements, are correct;
- (d) 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;
- (e) 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; and
- (f) the Goods are not Dangerous Goods.

4.2 The Carrier relies on the details of description, items, quantity, weight, quality, value and measurements supplied by the Consignor but does not admit their accuracy.

4.3 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.

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 To the extent permitted by Law, the Carrier will not, under any circumstances, be liable (whether in contract, tort, bailment or otherwise), for any:
- (a) loss of the Goods;
 - (b) Damage to the Goods; or
 - (c) misdelivery, delay in delivery or non-delivery of the Goods,
- whether in the course of Carriage or otherwise, unless the loss, Damage, misdelivery, delay in delivery or nondelivery was caused by the proven negligence of the Carrier.
- 6.2 Any liability of the Carrier under clause 6.1 will be reduced proportionately to represent the extent to which the Consignor or any other person's negligent or wrongful acts or omissions caused the loss, Damage, mis-delivery, delay in delivery or non-delivery of the Goods.
- 6.3 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable for any loss of or Damage to Goods:
- (a) caused by a Force Majeure Event;
 - (b) caused by the Carrier following the Consignor's instructions;
 - (c) caused by the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
 - (d) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including stone, rain, hail or storm Damage;
 - (e) caused by the Goods being inherently defective or in such a condition that the Carriage cannot be performed without Damage;
 - (f) caused by the inherent vice or the nature of the Goods; or
 - (g) caused by insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary incidents of Carriage.
- 6.4 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the Carrier will not be liable, under any circumstances, for Consequential Loss.
- 6.5 Notwithstanding any other provision of these conditions, to the extent permitted by Law, the maximum aggregate financial liability of the Carrier in relation to or in any way connected with any loss of Goods or Damage to Goods, or misdelivery, delay in delivery or non-delivery of Goods is limited to \$50,000 for each incident. For the purposes of this subclause, 'incident' means any event which results in loss of, or Damage to Goods or misdelivery, delay in delivery or non-delivery of

Goods, and all claims that result from the one original cause will be considered, for the purpose of this subclause, to have arisen from the same incident.

- 6.6 The limitation of liability set out in clause 6.5 does not apply to the extent that any loss of or Damage to Goods is caused by the Carrier engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.

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 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, 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. 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.

11. LIEN

- 11.1 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.
- 11.2 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.
- 11.3 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.
- 11.4 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.
- 11.5 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.
- 11.6 Terms used in this clause have the same meaning as under the PPSA.

12. CARRIER'S CHARGES

- 12.1 The Consignor agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.

- 12.2 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 on delivery 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.
- 12.3 In addition to any other charges contemplated under these conditions, the Consignor is liable to pay:
- (a) any costs associated with loading or unloading Goods;
 - (b) any fuel levy imposed, which may be adjusted by the Carrier at any time on reasonable grounds to reflect fuel price movements; and
 - (c) all charges due under Law in relation to the Carriage.
- 12.4 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.
- 12.5 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.

13. 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.

14. FORCE MAJEURE

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.

15. NOTIFICATION OF CLAIM

- 15.1 Notwithstanding any other provision of these conditions (other than clause 16), to the extent permitted by Law, the Carrier will 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 within 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.
- 15.2 The Consignor acknowledges that the purpose of clause 15.1 is to allow the Carrier an opportunity to promptly investigate the cause of any loss or Damage. Clause 15.1 will not apply if the Consignor has a reasonable excuse for its failure to give written notice.

16. APPLICABLE LEGISLATION

- 16.1 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.

- 16.2 The Carrier, Consignor and consignee must comply with all Law, including Chain of Responsibility Law.
- 16.3 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.

17. ENTIRE AGREEMENT

- 17.1 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.
- 17.2 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.

18. GENERAL

- 18.1 This agreement will be construed in accordance with the law in force in Western Australia and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Western Australia and courts entitled to hear appeals from those courts.
- 18.2 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.
- 18.3 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.
- 18.4 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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