

TERMS AND CONDITIONS OF CARTAGE

1. In these Terms and Conditions -

“Carrier” shall mean Cappington Pty. Ltd. Trading as Bohaul Express.

“Carriage” shall mean and include the whole of the operations and services undertaken by the carrier in respect of the goods.

“Goods” shall mean the cargo accepted from the consignor together with any container, packaging or pallets supplied by or on behalf of the consignor.

“Subcontractor” shall include 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.

2. The carrier is not a common carrier and shall accept no liability as such. All goods carried or transported and all storage and other services are performed by the carrier subject only to these terms and conditions and the carrier reserves the right to refuse the carriage or transport of goods for any person, corporation or company and the carriage or transport of any class of goods at its sole discretion.

3. (i) It is agreed that the person delivering the goods to the carrier for carriage or forwarding is authorised to sign the consignment note for the consignor.

(ii) The consignor warrants that in agreeing to the terms hereof is or has the authority of the person or persons owning or having an interest in the goods or any part thereof.

(iii) Without prejudice to the generality of the foregoing, the consignor undertakes to indemnify the carrier in respect of any liability whatsoever in respect of the goods to any person (other than the consignor) who claims to have, who has or who may hereafter have any interest in the goods or any part thereof.

4. (i) The carrier and any subcontractor shall be entitled to subcontract on any terms the whole or any part of the carriage.

(ii) The consignor undertakes that no claim or allegation shall be made, whether by the consignor of any other person who is or may hereafter be interested in the goods against any person (other than the carrier) by whom (whether as subcontractor, principal, employer, servant agent or otherwise) the carriage or any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the goods whether or not arising out of negligence on the part of such person and if such claim or allegation should nevertheless be made to indemnify the carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose 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 shall to this extent be or be deemed to be parties to this contract.

5. Every exemption, limitation, condition and liberty herein contained and every right, exemption and liability and immunity of whatsoever nature applicable to the carrier or to which the carrier is entitled hereunder shall also be available and shall extend to protect- (a) all subcontracts: (b) every servant or agent of the carrier or of a subcontractor: (c) every other person (other than the carrier) by whom the carriage or any part thereof is performed or undertaken, and (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within (a), (b) or (c) hereof and for the purpose 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 shall to this extent be deemed to be parties to this contract.

6. The Goods are at the risk of the Consignor and not the Carrier and the Carrier shall not be responsible in tort or contract or otherwise for any loss of or damage to or deterioration of goods or misdelivery or failure to deliver or delay in delivery of Goods including, chilled, frozen, refrigerated or perishable Goods either in transit or in storage for any reason whatsoever including without limiting the foregoing, the negligence or breach of contract or wilful act or default of the Carrier or others and this clause shall apply to all such loss of or damage to or deterioration of Goods or misdelivery or failure to deliver or delay of delivery of Goods, whether or not the same occurs in the course of performance by or on behalf of the Carrier of the contract, or in events which are in the contemplation of the Carrier or the Consignor, or in events which are foreseeable by them, or in events which could constitute a fundamental breach of the contract or a breach of a fundamental term thereof.

7. If the consignor expressly or impliedly instruct the carrier to use or it is expressly or impliedly agreed that the carrier shall use a particular method of handling or storing the goods or a particular method of carriage whether by road, rail, sea or air the carrier shall give priority to that method but in any event the method or methods of handling, storing and or carriage adopted by the carrier shall remain at the sole discretion of the carrier and the consignor hereby authorises the carrier to adopt any method or methods other than the method instructed or agreed.

8. The consignor hereby authorises any deviation from the usual route or manner of carriage of goods which may in the absolute discretion of the carrier be deemed desirable or necessary in the circumstances.

9. (i) The carrier is authorised to deliver the goods at the address nominated to the carrier by the consignor for that purpose and without prejudice to the foregoing it is expressly agreed that the carrier shall be conclusively presumed to have delivered the goods in accordance with this contract if at that address he obtains from any person a receipt or signed delivery docket for the goods.

(ii) If the nominated place of delivery should be unattended or if delivery cannot otherwise be affected by the carrier the carrier at its option deposit the goods at that place (which shall be conclusively presumed to be due delivery hereunder) or store the goods and if the goods are stored by the carrier the consignor shall pay or indemnify the carrier for all costs and expenses incurred in or about such storage in the event that the goods are stored by the carrier shall be at liberty to redeliver them to the consignor from the place of storage at the consignor's expense.

10. Where the goods are accepted for forwarding by rail or other carrier to an address in a town or other place where the carrier has no receiving depot the goods shall be deemed duly delivered according to this contract if they are delivered to the nearest railhead/carrier depot.

11. The consignor shall be and remain responsible to the carrier for all its proper charges incurred for any reason. A change may be made by the carrier in respect of any delay in excess of thirty minutes in loading or unloading occurring other than from the default of the carrier. Such permissible delay period shall commence upon the carrier reporting for loading. Labour to load or unload goods shall be the responsibility and expense of the consignor or consignee.

12. The carrier's charges shall be deemed fully earned as soon as the goods are loaded and dispatched from the consignor's premises and shall be payable and non-refundable in any event.

13. The carrier shall have a lien on the goods and any documents relating thereto and on any other goods of the consignor in the possession of the carrier or any documents relating thereto for all sums payable by the consignor to the carrier and for that purpose shall have the right to sell any such goods by public auction or private treaty without notice to the consignor.

14. (i) The consignor shall not tender for carriage any volatile spirits or explosive goods or goods which are or may become dangerous inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the carrier the goods are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed or abandoned or rendered harmless by the carrier without compensation to the consignor and without prejudice to the carrier's right to any changes hereunder.

(ii) The consignor warrants that it has complied with all laws and regulations to the nature, packaging, labelling or carriage of the goods and that the goods are packed in a manner adequate to withstand the ordinary risks of carriage having regard to their nature and hereby indemnifies the carrier for any liability whatsoever as a result of or using out the consignor's failure to comply with each of these warranties.

15. It is agreed that the consignor shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the consignee and for any expense incurred by the carrier arising from any failure to so conform.

16. It is agreed that no servant or agent of the carrier nor any other person has any power to waive or vary any of the terms hereof unless such waiver or variation is in writing by an executive officer of the carrier.

17. If the carrier is liable for damage to or loss of the goods or any part thereof no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing at an office of the carrier in the State of which delivery was or ought to have been effected within seven (7) days after delivery was effected or would in the ordinary course of business have been effected.

18. Notwithstanding any other provision hereof other than clauses 22 and 23 hereof the carrier shall in any event be discharged from all liability whatsoever in respect of the goods unless suit is brought within six months from their delivery or from the date on which in the ordinary course of business delivery would have been effected.

19. All goods received by the carrier for carriage, forwarding or storage are accepted subject to the condition that the carrier shall accept no responsibility for the collection of cash on delivery or any other payments on behalf of the consignor or any other person. When goods are tendered by any person for the carrier to collect any such payments the carrier shall not be bound by such instructions notwithstanding that the carrier may accept the goods as tendered and perform other services of carriage, forwarding or storage in relation to those goods.

20. All rights, immunities and limitations of liability in the above terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any of these terms and conditions, hereof by the carrier or any other person entitled to the benefit of such provisions.

21. It is hereby agreed that if any provision of the contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.

22. In respect of contracts made in Queensland and in any other case where the carriage or any part thereof is subject to the Carriage of Goods by Land (carriers Liability) Act 1967 of that State, these terms and conditions shall continue at full force and effect except to the extent that they are or any part thereof is void by operation of that Act.

23. Notwithstanding anything herein contained the carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act, 1974 (as amended) if and to the extent that the said Act is applicable to this contract and prevents the exclusion restriction or modification of any such warranty.

SPECIAL CONDITIONS

1. Terms:

We reserve the right to withdraw these rates and will be subject to re-negotiation where unauthorised extended trading terms are taken.

2. Cranage & Pallets:

Cranage is not included unless otherwise specified. Pallets will be considered an integral part of the consignment and assessed at 50kg each if not included in the overall weight. We do not exchange pallets.

2B. THIS DOCUMENT IS TO BE READ IN CONJUNCTION WITH THE CONSIGNMENT NOTE AND FORMS PART OF THE TERMS AND CONDITIONS OF CONTRACT FOR THE CARRYING OF THE GOODS.