

STANDARD TERMS AND CONDITIONS

1. INTERPRETATION

In these terms and conditions:

"Courier" shall mean Action Logistics (WA) Pty Ltd trading as Action Couriers its servants, agents, and Sub-Contractors. "Customer" means the person or entity, or as servants or agents, entering into this contract with the Courier. "Sub-Contractor" means and includes:

- (a) Any person, firm or company with whom the Courier may arrange for the carriage of any goods the subject of this contract;
- (b) Railways, and tramways operated by the Commonwealth of Australia or any State or Territory thereof or any other person; and
- (c) Any person who is now or later a servant, agent, employee or Sub-Contractor of any other persons referred to in (a) and (b) above.

2. COURIER IS NOT A COMMON CARRIER

- 2.1 The Courier is not a common carrier and will accept no liability as such.
- 2.2 All goods or articles are carried or transported and all storage and other services are performed by the Courier subject to these conditions.
- 2.3 The Courier reserves the right to refuse to transport any goods for any person, firm or company at its discretion without being bound to give any reason for such refusal.

3. RIGHT TO SUB-CONTRACT

- 3.1 The Customer authorises the Courier to engage a Sub-Contractor for the carriage of any of the goods subject to this contract at its discretion.
- 3.2 The Sub-Contractor is deemed to be entitled to the full benefit of these terms and conditions to the same extent as the Courier. The Courier is deemed to have entered into this contract for its own benefit and also as agent for the Sub-Contractor.

4. METHOD OF CARRIAGE

- 4.1 If the Customer instructs the Courier to use a particular method of carriage, whether by road, rail, sea or air, the Courier will give priority to this method, provided that the method can reasonably and conveniently be adopted by the Courier. Where the Courier cannot reasonably and conveniently give priority to the method specified, the Courier may use any other method or methods to transport the goods at its absolute discretion, and the Customer is deemed to authorise such other method or methods.
- 4.2 The Customer is also deemed to have authorised all further or additional charges which may become payable as a result of the goods being carried by some other method or methods outlined in Clause 4.1.

5. DELIVERY OF GOODS

- 5.1 The Courier is authorised to deliver the goods at the address given to the Courier by the Customer for that purpose, and without prejudice to any other method of delivery.
 - 5.2 The Courier is taken to deliver the goods specified in the Contract in accordance with the term and conditions of the Contract if at that address the courier obtains from any person a receipt or signed delivery docket for the goods.
 - 5.3 If the specified place of delivery is unattended or if the Courier is otherwise unable to effect delivery, the Courier has the option to deposit the goods at that place or to store the goods. If the Courier decides to store the goods the Customer must pay or indemnify the Courier for all costs and expenses incurred in or about such storage. Furthermore, the Courier has the discretion to re-deliver the goods to the Customer from the place of storage at the Customer's expense.
 - 5.4 If the Courier decides to deposit the goods in accordance with Clause 5.3, this is deemed to be delivery of the goods under this contract.
 - 5.5 Where a Courier accepts goods from a Customer for forwarding by road, rail or air to an address in a town or other place where the Courier has no receiving depot, the goods are deemed to be properly delivered under this contract if they are delivered to the designated agent in that town or other place.
- 5.6 The Customer agrees to any deviation by the Courier from the usual route or manner of carriage of the goods, which may be deemed by the Courier to be reasonable or necessary in the circumstances at its absolute discretion.

6. RESPONSIBILITY FOR LOSS OR DAMAGE TO GOODS OR MISS- DELIVERY

- 6.1 Unless otherwise agreed in writing, the goods are carried at the risk of the Customer and the Courier accepts no responsibility in tort or contract or otherwise for any loss or destruction of, or damage to, or misdelivery or failure to deliver, or delay in delivery of goods either in transit or in storage, whatever the reason.
- 6.2 The Customer agrees to indemnify the Courier against all loss, damage and expense sustained by any person (including the Courier) by reason of any such loss, damage, misdelivery, non-delivery or delay in delivery as mentioned in Clause 6.1.

7. EXPLOSIVE, INFLAMMABLE OR OTHERWISE DANGEROUS GOODS

- 7.1 The Customer or the Customer's authorised agent must not tender any explosive, inflammable, or otherwise dangerous or damaging goods for carriage by the Courier unless the Customer gives the Courier a full description of the goods.
- 7.2 If the Customer fails to comply with Clause 7.1, the Customer is liable for all loss and damage resulting from this breach.

8. CLAIMING FOR LOSS OR DAMAGE

- 8.1 Any claim by the Customer or the Consignee for loss or damage in whole or in part to the goods the subject of this Contract which are the subject of insurance under clause 11 must be lodged with the Courier in writing within 48 hours from delivery from the date of despatch of the goods.

9. CUSTOMER'S WARRANTY AS TO OWNERSHIP OR OTHERWISE

- 9.1 The Customer expressly warrants to the Courier that the Customer is either the owner of, or authorised agent of the owner, of any goods under this contract.
 - 9.2 By entering into this contract, the Customer agrees to accept these Terms and Conditions of this contract of carriage on behalf of the Consignee, as well as for all other persons on whose behalf the Customer is signing.
- 9.3 The Customer agrees to indemnify the Courier from any liability whatsoever to any person in respect of the goods the subject of this

Contract who claims to have, who has, or may have later on, any interest in the goods in whole or in part.

10. CUSTOMER'S WARRANTY AS TO PACKAGING OF GOODS

- 10.1 The Customer warrants that the Customer has complied with all laws and regulations relating to nature, packaging, labelling or carriage of the goods and that the goods are packed in an adequate manner to withstand the ordinary risks of carriage when having regard to the nature of the goods.
- 10.2 The Customer agrees to indemnify the Courier to the extent that the Customer fails to comply with this warranty and loss or damage result from the Customer's failure to comply.

11. INSURANCE OF GOODS

- 11.1 The Courier will effect insurance of goods as the agent of the Customer if the Customer instructs the Courier to do so.
- 11.2 To avoid doubt, it is not the responsibility of the Courier to effect insurance of goods. Insurance of goods will only be affected by the Courier for the benefit of the Customer if the Courier receives written instructions from the Customer and the Customer agrees to pay the cost of insurance.

12. CHARGES BY THE COURIER

- 12.1 The Courier's charges are deemed to be earned as soon as the goods are loaded and despatched by the Courier.
- 12.2 The Customer will be and remains responsible to the Courier for all proper charges incurred by the Courier for any reason whatsoever.
- 12.3 The Courier is entitled to make a charge for any delay in loading or unloading the goods which results from the Customer's default. The permissible delay period starts upon the Courier reporting at the relevant place for loading or unloading.
- 12.4 The cost of any labour to load or unload the vehicle is the responsibility of the Customer or Consignee of the goods.

13. TERMS OF PAYMENT

- 13.1 The Customer agrees to accept the terms of trading as strictly 14 days from date of invoice.
- 13.2 (a) If any person fails to pay the charges due to the Courier for any service rendered by the Courier upon reasonable demand being made under this contract, the Courier has the right to detain and sell all or any other goods of that person which are in its possession.
 - (b) The Courier may also deduct charges so payable and all reasonable charges and expenses resulting from the detention and sale of goods out of monies arising from the sale.
 - (c) If there is any surplus arising from the sale of the goods, the Courier must render the surplus to the customer.
- 13.3 Any sale under Clause 13.2 will not prejudice or otherwise affect the Courier's right to recover charges due or payable for services rendered or the detention or sales of goods from the person liable to pay the charges.
- 13.4 The Customer agrees to pay all costs, legal or otherwise, incurred in the collection of charges due and owing by the Customer to the Courier for carriage of goods.

14. RESTRAINT

- 14.1 The Customer shall not either by itself, or through any related person or corporation, engage one or more of the Courier's employees, contractors or sub-contractors or former employees, contractors, or subcontractors to perform the same or substantially the same or similar services or a part of those services previously performed for the Customer by or on behalf of the Courier within a 12 month period prior to the Customer's engagement of such person or persons.
- 14.2 If the customer breaches the provisions of clause 14.1, the Customer will immediately pay to the Courier liquidated damages in the amount equivalent to the fees charged by the Courier to the Customer in the 12 month period to the date on which the Courier's employee, contractor or sub-contractor, as the case may be, was so engaged, or if the Courier's services have been provided to the Customer for a period of less than 12 months, then the amount equivalent to 12 times the average monthly fees charged by the Courier to the Customer.

15. GOODS AND SERVICES TAX

- 15.1 In this Agreement:
 - "GST" means any tax imposed by authority of any GST law enacted by the Commonwealth Parliament and includes goods and services tax within the meaning of the GST Act.
 - "GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (as amended).
- 15.2 The Customer agrees that to the extent that the Courier is or becomes liable to pay GST pursuant to making a taxable supply under the GST Act to the Customer, the Customer will pay or reimburse the Courier for that GST liability.
- 15.3 The Customer must pay the Courier the GST imposed in respect of the taxable supply made by the Courier to the Customer at the time when the Customer pays the Courier the amount owing in respect of that supply.

16. GENERAL

- 16.1 The Customer accepts that all rights, immunities and limitations of liability accruing to the Courier under these Terms and Conditions continue to have full force and effect, notwithstanding any breach of contract or any condition by the Courier.
- 16.2 Notwithstanding anything in these Terms and Conditions, the Courier continues to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) or any other Commonwealth or State legislation if and to the extent that the relevant Act applies to the contract and prevents any exclusion, restriction or modification of any such warranty.
- 16.3 The Courier is not bound by any agreement which purports to vary these Terms and Conditions unless the agreement is in writing and signed by or on behalf of the Courier by its duly authorised officer.
- 16.4 These Terms and Conditions are to be governed and construed by the laws of the State in which the Courier has its principal place of business wherever the contract is made. Accordingly, any proceedings in respect of any claim, matter or thing against the Courier must be instituted in that State only.
- 16.5 The clauses and provisions in these Terms and Conditions are severable from each other and if for any reason any clause or provision is invalid or unenforceable, such invalidity or unenforceability does not prejudice or in any way affect the invalidity or unenforceability of any other clause or provision of these Terms and Conditions.