

Terms and Conditions

1. Interpretation

In these terms and conditions:

“**Cargo**” means the goods that the Customer contract to be transported under this agreement with the Company.

“**Company**” means Applied Logistics Pty. Ltd., trading as Applied Logistics (ABN 49 613 040 305), of Level 17, 239 George Street, Brisbane City, Queensland, 4000 and any legal successor entity of the Company.

“**Customer**” means the person(s) or body(ies) corporate to whom these terms and conditions are directed.

“**GST**” means the same as it does within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) or any similar legislation in another jurisdiction.

“**PPSA**” means the *Personal Property Securities Act 2009* (Cth) or any similar legislation in another jurisdiction.

“**Premium Rate Structure**” has the meaning contained in clause 11.3 below.

“**Premium Services**” means Services provided by the Company which are subject to the Premium Rate Structure.

“**Price**” means the total price, including any taxes, agreed between the parties and shown on the most recently accepted quotation from the Company.

“**Route**” means the total intended journey for the Cargo which the Customer has contracted the Company to arrange.

“**Services**”, whether in isolation or in conjunction with the Cargo, means the services of transporting the Cargo and any specific advice relating to the same together with any other ancillary, value added or other service as required to achieve the desired outcome provided by the Company, its officers, agents, employees, consultants and contractors including independent carriers.

“**Stage**” means each portion of the Route that ends or begins with the acceptance or delivery of the consignment between consignee and consignor or between one carrier and another.

2. Application of Terms

- 2.1. The placement by the Customer of an order with the Company, whether written or verbal, is deemed acceptance of these Terms and Conditions by the Customer. These Terms and Conditions apply to the sale of any items, equipment or Services of the Company or, where a quotation is given, they shall form part of that quotation.
- 2.2. The Company may vary the Terms and Conditions from time to time. The Customer agrees that the ordering of any goods and/or Services after the notice of variation has been issued to the Customer will constitute an acceptance by the Customer of the variation of any of these Terms and Conditions.
- 2.3. No variation of any of these Terms and Conditions shall be binding on the Company unless agreed by an authorised officer of the Company in writing. No agent or representative of the Company has the authority to waive or alter these Terms and Conditions.
- 2.4. The Company may use any number of subcontractors to perform the Services. Where a subcontractor is disclosed to the Customer through a consignment note or otherwise, the Customer is deemed to have accepted, in addition to these Terms and Conditions, the Terms and Conditions of the relevant subcontractors, including, without limitation, those which are available on the Company's website.

3. Precedence

- 3.1. In the event of conflict between these Terms and Conditions and those conditions which may be included in, or implied by, any document forming part of any correspondence, enquiry, specification, order or contract, then these Terms and Conditions shall prevail.
- 3.2. If any condition expressed herein is deemed to be contrary to or excluded by law, then these Terms and Conditions shall be modified, but only to the extent of those parts of the Terms and Conditions affected.

4. Acceptance

- 4.1. A quotation shall remain open for acceptance for 14 days from the date of that quotation, after which time it shall be subject to review and reconfirmation.
- 4.2. The acceptance of any quotation must be accompanied by sufficient information to enable the Company to proceed with Route planning, pricing and the order to completion.

5. Pricing

- 5.1. Unless otherwise stated all prices quoted by the Company are exclusive of GST.
- 5.2. The prices quoted apply only if all Services included in the quotation are purchased. Should the Customer require partial or different services, the Company reserves the right to submit a revised quotation.
- 5.3. If the Customer requests any variation to the quotation, the Company may, in its absolute discretion, accept that variation and increase or decrease the quotation to account for the variation.
- 5.4. All prices are based upon current transport service costs and current costs of materials, labour and insurance, current rates of freight, taxation and currency exchange and all other costs and charges prevailing at the date of the quotation. Should there be any variation in any such costs, rates or charges, the Company shall have the right to vary the quoted price to enable it to retain the same profit margin as if no variation in the costs, rate or charges, had taken place.
- 5.5. Should there be any variations between the actual Cargo measurements, loading or unloading requirements, delivery times, dimensions or route reviewed in formulating a quotation, the Company reserves the right to revise its price accordingly.

6. Terms of Payment

- 6.1. Time for payment for any Services is of the essence.
- 6.2. Unless agreed otherwise in writing, and notwithstanding any credit terms which may only alter payment due dates, payment is required on the following basis:
 - a) If the Services are Premium Services, payment is deemed earned and due in full on first uplift of the Cargo; and
 - b) In any other case, payment for each Stage is deemed earned and due and payable on uplift of the Cargo for that Stage.
- 6.3. The Company may issue an invoice, payable immediately for any Services at any time after the relevant payment becomes due.
- 6.4. Payment by cheque is not deemed made until the proceeds of the cheque have cleared.
- 6.5. Payment terms may be revoked or amended at the Company's sole discretion immediately upon giving the Customer written notice.
- 6.6. The Company may at its sole discretion charge interest on any overdue invoiced amount at a rate of 10% per

month, calculated pro rata, until the invoiced amount is received in full. In addition, the Company may charge any reasonable storage costs incurred.

- 6.7. The Company reserves the right to commence recovery action on an overdue amount without notice to the Customer. Any legal or collection costs incurred in the recovery of any overdue amounts will be recoverable from the Customer on an indemnity basis.

7. Customer Rights and Obligations

- 7.1. The Customer must:
- a) ensure that the Cargo does not contain dangerous (unless in accordance with the Australian Dangerous Goods Code or the International Maritime Dangerous Goods Code or the IATA Dangerous Goods Regulations) or illegal goods;
 - b) ensure that the Cargo is appropriately packed and labelled and otherwise complies with all applicable laws and standards;
 - c) ensure that the Cargo is ready for uplift at the time and place listed in the quotation, booking confirmation, consignment note or as otherwise agreed;
 - d) ensure the Cargo conforms to the receiver's requirements, comply with the *Heavy Vehicle National Law Act 2012* (Qld), be deemed the importer of any products purchased overseas for or on behalf of the Customer, and pay hire on all hired pallets and will be responsible for any compensation payments made in respect of any pallets deemed lost.
- 7.2. The Customer warrants that it is the owner or authorised representative of the owner of the Cargo. If it is a representative, it accepts these Terms and Conditions on behalf of and with the authority of the owner.
- 7.3. The Customer may cancel a Route if at least 7 calendar days are left before the scheduled uplift. In this case, clause 25.2 applies.

8. Agency

- 8.1. The Customer appoints the Company as its agent for the purposes of securing transportation of the Cargo in accordance with the quotation over the Route.
- 8.2. The Customer expressly authorises the Company to enter into such contracts on its behalf as the Company deems reasonably necessary to effect transport of the Cargo as agreed.
- 8.3. The Customer acknowledges that it will be liable under and responsible for the performance of such contracts, and is entitled to be provided with a copy of the same within a reasonable time of a request to that effect.
- 8.4. To the maximum extent permitted by law, the Company will have no fiduciary or to other duties to the Customer under these Terms and Conditions, being obliged only to act reasonably in exercising its agency under this clause.

9. Default

- 9.1. If:
- a) there is any default or failure by the Customer in making due and punctual payment to the Company of any monies owed by the Customer;
 - b) there is any failure by the Customer to provide any reasonably requested instructions;
 - c) an administrator, liquidator or provisional liquidator is appointed in respect of the Customer;
 - d) a receiver, receiver and manager, administrator or controller is appointed in respect of any assets or group of assets of the Customer;

- e) the Customer goes into bankruptcy or is wound up;
- f) the Customer becomes, admits in writing that it is, or is declared by a court to be unable to pay its debts as and when they fall due; or
- g) there is a breach by the Customer of any of these Terms and Conditions,

then all monies payable by the Customer to the Company under these Terms and Conditions shall become immediately due and payable notwithstanding the due date for payment shall not have passed.

- 9.2. Upon the occurrence of a default pursuant to clause 9.1, the Company may without prejudice to any other rights they may have do any or all of the following:
- a) withhold any further Services; and
 - b) in respect of Services already delivered, sell the Customer's property in the possession or control of the Company or enter onto the Customer's premises to sell any Cargo for their own benefit to recover monies owing.
- 9.3. The Customer irrevocably waives its right to any notice under the PPSA.

10. Route and Timing

- 10.1. The Company may plan and vary the route or method for the Cargo in any way and through any waypoints that the Company deems appropriate.
- 10.2. The Customer acknowledges that if it requests an alternative route, method or different timing, the Company may accept such alternate in its absolute discretion and reserves the right to amend the pricing for the revised Route, which pricing the Customer agrees to accept. The Customer remains liable for any cancellation charges that the Company may incur and also for any work already performed.

11. Delivery

- 11.1. Notwithstanding that the Company will endeavour to comply with the timeframe for delivery of Services requested by the Customer, delivery time is not guaranteed nor is it of the essence. The Company will not be liable for any loss or damage of whatsoever nature arising by virtue of delay in the delivery of Services.
- 11.2. The delivery period quoted commences from the date the Company receives acceptance of the quotation from the Customer and 20% of the total sum due and owing by the Customer for the supply of the Services. Quoted delivery dates are subject to confirmation when an order is placed.
- 11.3. Where the Company has offered and the Customer has accepted the application of a Premium Rate Structure, the Company agrees to use all reasonable endeavours to deliver the Cargo within the requested timeframe, subject to not being required to outlay total funds greater than the Price. The Customer acknowledges that this is a premium service and attracts a higher than standard fee structure ("**Premium Rate Structure**").

12. Claims upon Company

- 12.1. Subject to the requirements of any law, all claims for the Company's failure to comply with the Customer's order whether due to shortfall, defect, damage, incorrect delivery or otherwise must be made by giving written notice to the Company within 14 days from the date of delivery.
- 12.2. If the Customer fails to provide such notice then the Customer shall be deemed to have accepted the Services provided and irrevocably releases the Company from any claim, however described, in relation to the Services, the Cargo and the Route.

13. Title and Property

- 13.1. Unless the Company otherwise specifies in writing, until the full price of the Services provided to the Customer has been paid in full to the Supplier:
- The Customer agrees to hold the purchase price of the Goods on trust for the Company.
 - The Customer gives the Company, its agents and employees an irrevocable licence to access any premises where the Cargo of the Customer is stored from time to time for the purposes of inspecting and/or claiming or repossessing the said goods for the purposes of sale and recovery of any unpaid portion of the Price.
 - The Customer releases and discharges the Company from any and all claims which the Customer may have against the Company arising from the exercise of this right.
- 13.2. The Customer agrees to indemnify and hold the Company, its agents and employees harmless against any and all claims, suits or actions, including for costs (whether by the Customer or a third party) arising from the entry or repossession of goods by the Company, its agents or employees pursuant to clause 13.
- 13.3. The Customer agrees to pay all costs, including legal costs on an indemnity basis, of the Company incurred in repossessing the Goods pursuant to clause 13.

14. Cost of Carriage and Packing

- 14.1. The price stated in any quotation for the supply of Services by the Company to the Customer includes standard packing where specifically agreed in writing by the Customer and the Company. Otherwise, the Customer is responsible for all packing.
- 14.2. The total cost of any applicable demurrage, additional packaging, loading and unloading or related cost incurred to properly prepare or transport the Cargo shall be borne by the Customer.
- 14.3. In addition to any other remedy that the Company may have, if the Customer has failed to comply with any provision of these Terms and Conditions, and the Company considers in its absolute discretion that it can remedy the situation, it may do so at the sole expense of the Customer and any such sums expended will be a debt due to the Company and form part of the Price.
- 14.4. In addition, the Company may, if it considers it reasonably necessary to do so for safe and efficient transport, unpack and repack any Cargo at the Customer's expense.

15. Risk and Insurance

- 15.1. If the Customer so requests in writing, the Company may, at the Customer's expense, insure the Cargo.
- 15.2. Otherwise, the Customer must ensure that all Cargo is fully insured for all risks in relation to the Cargo and its potential loss.
- 15.3. The Customer assumes all risk and liability for loss, damage or injury to persons or to the property of the Customer, or third parties arising out of the transport, use, installation or possession of any of the Cargo.

16. Not a common carrier

- 16.1. The Customer acknowledges that the Company is not a common carrier and will accept no liability as such.
- 16.2. The Company may refuse to carry any goods or Cargo at any time and without reason, except by written agreement with the Customer.

17. Taxes

- 17.1. Unless otherwise expressly agreed, or shown on an invoice or quotation issued by the Company, the prices specified do not include taxes, duties or other external charges however described. The Customer must bear and pay all such taxes and charges.
- 17.2. The Company may recover from the Customer the amount of any GST in relation to any Goods and/or Services in addition to, and at the same time and in the same manner as, any amount that the Customer is obliged to pay for those Services.

18. Applicable Law

- 18.1. Any supply of Services by the Company to the Customer, and these Terms and Conditions, will be governed by the laws of the State of Queensland.
- 18.2. The United Nations Convention on Contracts for the International Sale of Goods will not apply to these Terms and Conditions.

19. Warranties and Liability

- 19.1. The Company does not give any warranty or make any representations that the Services will be free from defects, meet any particular description or meet any particular timeline (save for those warranties which are imposed by statute, which cannot be contracted out of).
- 19.2. To the extent permitted by law, in no circumstances will the Company have any liability, whether in contract, tort (including negligence or breach of statutory duty (including without limitation under the provisions of the *Competition and Consumer Act 2010* (Cth))) or otherwise and whatever the cause, to the Customer for any indirect loss or consequential loss arising in connection with these Terms and Conditions, even if the Company has been advised of the possibility of such loss, including loss of profits, revenue, opportunity, goodwill, anticipated profits or business interruption.
- 19.3. In addition, notwithstanding any other clause of these Terms and Conditions, to the maximum extent permitted by the law, the Company's liability for any claim under or in relation to these Terms and Conditions, whether in contract, tort (including negligence) and breach of statutory duty (including without limitation under the provisions of the *Competition and Consumer Act 2010* (Cth)) or otherwise is limited to the total amount of the fees actually paid to the Company by the Customer for the Stage during which the relevant default occurred.
- 19.4. In the event that the law (including the *Competition and Consumer Act 2010* (Cth)) has the effect that either of the limitations in clauses 19.2 and 19.3 do not apply (and if they do, then in addition to the limitations contained in them), the Company's liability is limited in relation to each Stage and again in relation to all Stages taken together, as follows to:
- the supplying of the services again; or
 - the payment of the cost of having the services supplied again,
- at the option of the Company, acting reasonably.
- 19.5. The Customer agrees to indemnify the Company (to the extent permitted by law) for all liability, whether in contract or tort (including negligence) and breach of statutory duty (including without limitation under the provisions of the *Competition and Consumer Act 2010* (Cth)) or otherwise, arising in connection with:
- any breach by the Customer of these Terms and Conditions;
 - any act or omission of the Customer or any of its personnel (including any negligence, unlawful

conduct or wilful misconduct, incorrect packaging or labelling or defect in the Cargo); and

- c) any third party claims against the Company relating to the Services or the Cargo.

19.6. To the extent that this clause involves an indemnity for:

- a) an economic loss or damage to property liability arising from a breach of a duty of care; and
- b) the *Civil Liability Act 2003* (Qld) (or other State equivalent) provides that the liability must be apportioned with the Company,

the Customer's liability to indemnify the Company is reduced proportionately to the extent that the Company or its personnel cause the liability.

19.7. The guarantees contained in the *Competition and Consumer Act 2010* (Cth) are included in these Terms and Conditions to the extent required by law in any particular case.

19.8. This clause survives termination of these Terms and Conditions.

20. Descriptive Material

20.1. To the extent permitted by law, descriptions and illustrations contained in the Company's materials, portfolios, price lists and other advertising materials are only general descriptions of the Services and do not constitute a basis for, or part of, any contract and/or agreement in respect of the supply of the Services by the Company to the Customer, these Terms and Conditions being the sole governing document.

20.2. Any performance figures given by the Company are estimates only. The Company is under no liability for damages for failure of any deliverables to attain such figures unless specifically guaranteed in writing. Any such written guarantees are subject to the recognised tolerances applicable to such figures.

20.3. The Customer warrants and represents that it is relying upon its own skill and judgment in relation to the quality of the Services, and their fitness for any purpose for which they may be required, and not upon any conduct or representation of the Company or any of its officers, employees, agents, consultants or contractors.

21. Storage

The Company reserves the right to charge a reasonable fee for storage if delivery instructions are not provided by the Customer within 2 calendar days of a request by the Company for such instructions. The parties agree that the Company may charge for storage from the first day after the Company requests the Customer to provide delivery instructions, and any such charge forms part of the Price.

22. Notices

22.1. Notice to be given by the Customer to the Company may be delivered personally or sent to Mr Elliot Price at the Company's address shown above and unless the contrary is proved shall be taken as delivered when received by the Company.

22.2. Notice to be given to the Customer by the Company may be delivered personally, or sent to the Customer's last known postal address, facsimile or electronic mail address and unless the contrary is proved shall be taken as delivered on the second business day following posting or on the date that such facsimile or electronic mail was sent.

22.3. Invoices and statements are deemed received by the Customer on the second business day after posting by ordinary prepaid post but otherwise on the date of transmission by facsimile or electronic mail.

23. Force Majeure

Notwithstanding anything contained in these Terms and Conditions, the Company shall not be liable for any loss, damage or delay caused by events beyond its reasonable control including, without limitation, industrial disputes, war, acts or threats of terrorism, strikes, lockouts, accident, breakdown, import or export restrictions, delay of or inability to obtain labour, inaccessibility to site caused by wet weather, acts of God, fire, flood or drought. If an event force majeure occurs, the Company may suspend or terminate the order by written notice to the Customer. In the event of termination of the order by virtue of any such cause arising, the Company shall not be liable for damages and the Customer shall pay the Company a portion of the Price proportionate to the work actually performed up to the date of such termination.

24. Further assignments

The Company may assign, license or otherwise dispose of or deal in whole or in part with the benefit of these Terms and Conditions (including by novation) and any of its additional rights to any person, firm or company. The promises and assignment and the covenants, agreements and warranties by the Customer contained in these Terms and Conditions will enure for the benefit of any such assignee or licensee of the Company.

25. Cancellation

25.1. If the Company is unable to deliver or provide the Services or any part, the Company may cancel the Customer's order (even if it has been accepted and/or uplifted) by written notice to the Customer.

25.2. If the Customer cancels an order, which may only be done upon 7 calendar days' written notice the Company shall be entitled to receive payment from the Customer for all the work performed by the Company to the date of cancellation, in addition to damages which the Company may rightly recover in connection with the cancellation of the order. The Company shall refund to the Customer any monies already received from the Customer for such cancelled order over and above the monies which the Company is entitled to retain pursuant to this clause 25.

26. Termination

26.1. In the absence of any breach of this agreement, either party may terminate this agreement in its absolute discretion with a minimum of 14 calendar days written notice to the other party. In this event, if the terminating party is the Customer, clause 25.2 will apply, as if the termination were a cancellation.

26.2. This agreement will automatically terminate if a party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).

26.3. Exercise of the right of termination afforded to either party under this clause 26 will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.

26.4. The obligations of the parties that by their nature could reasonably be construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.