

Haulift Terms and Conditions

1. DEFINITIONS

1.1 The meanings of the terms used in these conditions are set out below.

Term

Carriage - 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 but without limiting the generality of this definition, loading, unloading, lifting, packing, handling, unpacking and storage of the Goods, the towing of a trailer, and the provision of forklift or crane services and any advice.

Carrier - Condar Pty Ltd as Trustee for JA and KM Williams Family Trust t/a Haulift or under any other business name, and its officers, employees, agents, and Subcontractors.

Consequential Loss - 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.

Container - includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods.

Customer - the Person who engages the Carrier to provide services of Carriage.

Dangerous Goods - 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 damage any property whatsoever.

Enforcement Costs - any fees, costs, and expenses, including legal expenses, incurred by the Carrier in connection with any default under or enforcement or attempted enforcement of these conditions on an indemnity basis.

Force Majeure Event - an act, event or cause that is beyond the reasonable control of the Carrier or its officers, employees or agents or its Subcontractors, including but not limited to:

- (a) acts of God, lightning, earthquakes, floods, storms, explosions, fires, and any natural disaster
- (b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage, and revolution
- (c) strikes and labour disputes

Goods - the property from time to time accepted by the Carrier for Carriage and includes any Container or packaging supplied by or on behalf of the consignor or the Customer.

Outstanding Amount - any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Customer is otherwise liable, pursuant to these conditions, to the Carrier.

Person - includes a corporation, company, partnership, or any other entity.

PPSA - Personal Property Securities Act 2009 (Cth) (as amended from time to time) and the regulations.

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 Terms used in these conditions have the same meaning as under the PPSA.

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 storage and other services are 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. CUSTOMER'S WARRANTIES

3.1 The Customer warrants that:

- (a) the Goods are fit for Carriage and have been suitably packaged for those purposes;
- (b) the Customer has the authority of all Persons owning or having any interest in the Goods to enter into this agreement on their behalf;
- (c) the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements supplied by the Customer, or any other party are correct;
- (d) there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles and cranes to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (e) any place from which any Goods are to be collected or to which any Goods are to be delivered will have safe and adequate loading facilities and equipment available;
- (f) where required by law, it has accurately completed and supplied a container weight declaration form;
- (g) it has complied with all laws and regulations in relation to Carriage of the Goods; and
- (h) unless specifically declared in writing prior to Carriage, the Goods are not Dangerous Goods.

3.2 Without limiting clause 6, the Customer:

- (a) acknowledges that the Carrier has no responsibility or liability in relation to:
 - (i) any Container used for Carriage; or
 - (ii) any hire charge or demurrage charge associated with any Container used for Carriage;
- (a) must ensure that any pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
- (b) releases and indemnifies the Carrier from and against:
 - (i) any liability in relation to the loss of Containers; and
 - (ii) the failure of any party to transfer pallets on or off any hire account or to return a Container.

3.3 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer and the consignor but does not admit their accuracy.

3.4 The Carrier accepts no responsibility for collection of cash or other payments from any party.

3.5 The Customer will indemnify the Carrier:

- (a) in respect of any liability whatsoever in respect of the Goods to any Person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods; and
- (b) against all losses, damages, expenses, claims, fines, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against, the Carrier as a result, directly or indirectly, of
 - (i) a breach of the Customer's obligations under these conditions;
 - (ii) the nature or condition of the Goods; or
 - (iii) any negligence, wilful misconduct or recklessness of the Customer, the consignor, or the consignee

4. RIGHT TO SUBCONTRACT

The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.

5. EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS

5.1 The Customer agrees that no claim or allegation may be made against any employee, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods or the Carriage of them whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences of any such claim or allegation.

5.2 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature 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;
- (c) every other Person (other than the Carrier) by whom the Carriage or any part of it is undertaken; and
- (d) all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within clauses 5.2(a), 5.2(b) or 5.2(c).

5.3 For the purposes of clause 5.2 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 each of them and all such Persons and each of them will to this extent be or be deemed to be parties to this agreement.

6. LIABILITY OF CARRIER

6.1 The Customer acknowledges and agrees that neither the Carrier nor any employee or agent or Subcontractor of the Carrier nor any other Person who undertakes the Carriage of the Goods at any time pursuant to these conditions will in any circumstances (except where any statute otherwise requires) be under any liability whatsoever (whether in contract, tort or otherwise) for:

- (a) any loss of or damage to, deterioration, evaporation, or contamination of the Goods, or
- (b) mis delivery, delay in delivery or non delivery of the Goods or any of them, whether in the course of Carriage or otherwise including where loss, damage, deterioration, evaporation, contamination, mis delivery, delay in delivery or non delivery is caused or alleged to have been caused by the negligence of the Carrier or its officers, employees or agents or its Subcontractors.

6.2 Without limiting the generality of the foregoing, the Carrier will not be liable for any loss of or damage to Goods:

- (a) caused by vibration;
- (b) comprising glass, internal or external fittings, plasterwork, cornices or any other fragile material or substances;
- (c) caused by weather or weather events of any kind whatsoever, including but not limited to rain, hail or storm damage;
- (d) which are brittle, inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
- (e) caused by inherent vice or the nature of the Goods;
- (f) where such loss or damage comprises of mechanical, electrical and/or electronic breakdown, derangement, or malfunction of the Goods; or
- (g) caused by insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary incidents of Carriage. For the purpose of this clause 6.2(g), 'packing' will be deemed to include stowage of any Goods inside a building or other structure.

6.3 The Carrier will be entitled to the benefit of the exclusion of liability provided for in clause 6.1 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

6.4 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Carrier contained in these conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

6.5 Notwithstanding any other provision of these conditions, the Carrier will under no circumstances be liable for any claim for Consequential Loss.

6.6 Where clauses 6.1, 6.2, 6.3, 6.4 or 6.5 cannot legally operate and to the extent permitted by law, the Carrier's liability (including for breach of any warranty, guarantee or any term implied by law into these conditions) is limited to:

- (a) in the case of the supply of Carriage, the cost of having those services supplied again; or

- (b) 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.

7. CRANE/LIFTING SERVICES

7.1 Where the Carrier provides crane services at the request of the Customer, the Customer warrants that:

- (a) the ground at the site where the crane will be used is adequate to support the crane;
- (b) the ground giving access to the site is stable and firm and of a gradient to allow the crane to be operated safely;
- (c) sufficient clearance is afforded in respect of all overhead wires;
- (d) the specifications and size of the crane are suitable for the site where the crane will be used and for the purpose required by the Customer; and
- (e) the road surfaces, access and egress to the site are always clear of obstacles and will allow safe movement of the crane.

7.2 The Carrier will supply a standard selection of slings, lugs and chains but accepts no responsibility for loss or delay if any slings, lugs, or chains are found to be unsuitable for the purpose required by the Customer.

7.3 The Customer warrants that the weight of the object or objects to be lifted in any one lift and the radius of the proposed lift, measured from the radial point of the crane, will not exceed the limits of the crane.

8. ROUTE AND DEVIATION

If the Customer expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of lifting, 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 Customer authorises the Carrier to lift, handle or store or to carry or to have the Goods lifted, handled, stored or carried by another method or methods.

9. DELIVERY

9.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Customer for that purpose. The Carrier will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.

9.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier or the consignee otherwise fails to take delivery of the Goods the Carrier may at its option deposit the Goods at that place (which will be conclusively presumed to be due delivery under these conditions) or store the Goods and if the Goods are stored by the Carrier the Customer will 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 the Carrier will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.

10. Hire Period

10.1 Hire charges shall commence from the time the Equipment leaves the Haulift depot (95 Penda Avenue, Gladstone, QLD, 4680) and will continue until the return of the Equipment to the Haulift depot, and/or until the expiry of the Minimum Hire Period, whichever last occurs.

10.2 No allowance whatsoever can be made for time during which the Equipment is not in use for any reason, unless Haulift confirms special prior arrangements in writing. In the event of Equipment breakdown provided the Customer notifies Haulift immediately, hiring charges will not be payable during the time the Equipment is not working, unless the condition is due to negligence or misuse on the part of or attributable to the Client.

11. Cancellation

- 11.1 Haulift may cancel these terms and conditions or cancel delivery of Equipment at any time before the Equipment is delivered by giving written notice. On giving such notice Haulift shall repay to the Client any sums paid in respect of the Price. Haulift shall not be liable for any loss or damage whatever arising from such cancellation.
- 11.2 In the event of the Client cancelling delivery of the Equipment, the Client shall be liable for any loss incurred by Haulift (including, but not limited to, any loss of profits) up to the time of cancellation.

12. DELAY IN LOADING OR UNLOADING

The Customer will be and remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in accordance with its schedule of rates in respect of any delay in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading.

13. CARRIER'S CHARGES

- 13.1 Quotations provided by the Carrier are subject to withdrawal or revision by the Carrier without notice.
- 13.2 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier and are non-refundable in any event. The Customer agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 13.3 Any special instruction given by the Customer to the effect that charges will be paid by the consignee or any other third party will be deemed to include a stipulation that, if the consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Goods, the Customer will pay such charges.
- 13.4 If the Customer has a credit account with the Carrier, the Customer must pay any Carrier's tax invoice within 30 days of the date of the Carrier's tax invoice.
- 13.5 The Customer acknowledges and agrees that:
- (a) the Customer will not withhold payment due to the Carrier's failure to provide a proof of delivery;
 - (b) any payment made by credit card will attract a surcharge (1.5% for Visa or MasterCard); and (c) the Customer be responsible for bank charges incurred by the Carrier for any dishonoured cheques.
- 13.6 The Customer must pay the Enforcement Costs and Interest in respect of any Outstanding Amount.
- 13.7 Where the Carrier stores Goods for the Customer, the Customer must:
- (a) 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;
 - (b) if any Goods are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that the Carrier becomes liable to pay or pays;
 - (c) supply or pay for labour or machinery, or both, to load or unload the Goods;
 - (d) compensate the Carrier for any cost, expense or loss to the Carrier's property or any injury to any Person caused by the Goods; and
 - (e) if the Goods are at any time re-quantified, re-weighted or re-measured, pay any proportional additional charges.
- 13.8 The Customer authorises the Carrier, but the Carrier will not be obliged, to pay any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer will be liable to reimburse the amount of such disbursement to the Carrier.
- 13.9 The Customer authorises the Carrier to provide to and obtain from other credit providers relevant information for the purpose of assessing the Customer's credit worthiness. This information may include information whether by way of report record or otherwise about the credit worthiness, credit standing, credit history or credit capacity of the Customer.
- 13.10 If there is any variation to any of the information supplied by the Customer to the Carrier, or any change to the structure or nature of the Customer's business (such as the conversion from a partnership to a company), the Customer will immediately notify the Carrier in writing and complete a new application for credit which will be considered by the Carrier.
- 13.11 If the Customer breaches any of these conditions, the Carrier may cancel the Customer's credit facilities or refuse to provide further Carriage to the Customer. If the Customer defaults in making any payment in accordance with these conditions, then all money due to the Carrier will immediately become due and payable.

14. Price and Payment

14.1 At Haulift's sole discretion the Price shall be either;

- (a) as indicated on invoices provided by Haulift to the Client in respect of Equipment supplied on hire; or
- (b) Haulift's current hourly rate, at the date of delivery of the equipment; according to Haulift's current Price List; or

(c) Haulift's quoted Price (subject to 3.2) which shall be binding upon Haulift provided that the Client shall accept in writing Haulift's quotation within thirty (30) days.

14.2 Haulift reserves the right to change the Price in the event of a variation to Haulift's quotation.

14.3 At Haulift's sole discretion a bond may be required which shall be refunded upon return of the Equipment in a condition acceptable to Haulift.

14.4 At Haulift's sole discretion payment shall be due on delivery of the Equipment.

14.5 Time for payment for the Equipment shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

14.6 The date upon which the Client advises of termination shall in all cases be treated as a full day's hire.

14.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by Visa Card / Mastercard, or by any other method as agreed to between the Client and Haulift.

14.8 GST and other taxes and duties that may be applicable shall be added to the Price and clearly marked on the invoice except when they are expressly included in the Price.

14.9 Payments made by Credit Card (Visa or Mastercard) will incur a 1.5% Surcharge which will be calculated on the total of the Invoice. This charge is GST free. American Express is not accepted.

15. DANGEROUS GOODS

14.1 If the Carrier accepts Dangerous Goods for Carriage:

- (a) such Goods must be accompanied by a full written declaration disclosing the nature of such goods;
- (b) the Customer must comply with all laws, regulations, ordinances, and codes that deal with the Carriage of Dangerous Goods, including but not limited to the Australian Code for the Transport of Dangerous Goods by Road & Rail; and
- (c) the Customer warrants that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature.

14.2 The Customer will indemnify the Carrier against all loss, damage or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.

14.3 The indemnity in clause 14.2 extends to Consequential Loss.

14.4 If, in the opinion of the Carrier, the Goods are or are liable to become of a dangerous or flammable or damaging nature, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Carrier's right to charge for the Carriage of the Goods.

16. FORCE MAJEURE

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 a Force Majeure Event.

17. NOTIFICATION OF CLAIM

17.1 Notwithstanding any other provision of these conditions (other than clause 17), the Carrier will, 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:

- (a) in the case of Goods allegedly lost or damaged in the course of lifting, loading, unloading or transit 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; or
- (b) in the case of Goods allegedly lost or damaged during storage, within 14 days of the date of removal of the Goods from storage.

17.2 The Carrier will, in any event, be discharged from all liability whatsoever in respect of the Goods unless suit is brought:

- (a) in the case of Goods allegedly lost or damaged while lifting, loading, unloading or transit within 12 months of their delivery or of the date on which they should have been delivered; or
- (b) in the case of Goods allegedly lost or damaged during storage, within 12 months of the date of removal or attempted removal of the Goods from storage.

17. APPLICABLE LEGISLATION

Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the Competition and Consumer Act 2010 (Cth) or any other Commonwealth or state legislation in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

18. ENTIRE AGREEMENT

18.1 This agreement sets out the entire agreement of the parties with respect to its subject matter. No other agreement, warranty, or representation, express or implied has been given or made by the parties with respect to the Carriage of Goods.

18.2 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.

19. GENERAL

19.1 These conditions will be construed in accordance with the laws in force in Queensland and the parties submit to the jurisdiction of the courts of Queensland.

19.2 Headings are included for convenience only and do not affect interpretation of these conditions.

19.3 Words importing the singular include the plural and vice versa and words importing a gender include other genders.

19.4 Where the Customer, consignor or consignee comprise two or more Persons an agreement or obligation to be performed or observed by the Customer, consignor or consignee binds those Persons jointly and severally.

19.5 The Carrier may alter these conditions at any time and any change will take effect from the date on which the Carrier notifies the Customer of any change.

19.6 If any part of these conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and these conditions will remain otherwise in full force