

Rex J Andrews Pty Ltd – Terms & Conditions of Cartage

- 1. Definitions**
- 1.1 "RJA" shall mean Rex J Andrews Pty Ltd and its successors and assigns or any person acting on behalf of and with the authority of Rex J Andrews Pty Ltd.
- 1.2 "Sub-Contractor" shall mean and include:
- railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - any other person or entity with whom RJA may arrange for the carriage or storage of any Goods the subject of the contract; or
 - any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clauses 1.2(a) and 1.2(b).
- 1.3 "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of RJA's Services.
- 1.5 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of RJA's Services, or for storage by RJA.
- 1.6 "Services" shall mean all services supplied by RJA to the Customer and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by RJA to the Customer and includes any advice or recommendations.
- 1.7 "Price" shall mean the cost of the Services as agreed between RJA and the Customer subject to clause 3 of this contract.
- 2. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts**
- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 2.3 Liability of RJA arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by RJA:
- the supplying of the Services again; or
 - the payment of the cost of having the Services supplied again; or
 - where the Customer is a consumer as defined in the Competition and Consumer Act 2010 then the Customer may also be entitled to a refund.
- 3. Acceptance**
- 3.1 Any instructions received by RJA from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of RJA.
- 3.3 These terms and conditions are to be read in conjunction with RJA's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by RJA to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 3.4 The Customer shall give RJA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by RJA as a result of the Customer's failure to comply with this clause.
- 4. Price And Payment**
- 4.1 At RJA's sole discretion the Price shall be either:
- as indicated on invoices provided by RJA to the Customer in respect of Services supplied; or
 - RJA's quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon RJA provided that the Customer shall accept in writing RJA's quotation within thirty (30) days.
- 4.2 RJA may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to RJA beyond the reasonable control of RJA (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 4.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weight, or re-value or re-measure or require the Goods to be re-weighted, or re-valued or re-measured and charge proportional additional freight accordingly.
- 4.4 At RJA's sole discretion a deposit may be required.
- 4.5 At RJA's sole discretion:
- payment shall be due on delivery of the Goods, or
 - payment shall be due before delivery of the Goods, or
 - payment for approved Customers shall be made by instalments in accordance with RJA's payment schedule, or
 - payment for approved Customer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Customer and RJA.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 5. RJA Not Common Carrier**
- 5.1 RJA is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by RJA subject only to these conditions and RJA reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 6. Customer-Packed Containers**
- 6.1 If a container has not been stowed by or on behalf of RJA RJA shall not be liable for loss of or damage to the Goods caused by:
- the manner in which the container has been stowed; or
 - the unsuitability of the Goods for carriage or storage in containers; or
 - the unsuitability or defective condition of the container.
- 7. Nomination Of Sub-Contractor**
- 7.1 The Customer hereby authorises RJA (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as RJA. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled RJA shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 8. RJA's Servants or Agents**
- 8.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of RJA which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify RJA and any such servant or agent against all consequences thereof.
- 9. Method Of Transport**
- 9.1 If the Customer instructs RJA to use a particular method of carriage whether by road, rail, sea or air RJA will give priority to the method designated but if that method cannot conveniently be adopted by RJA the Customer shall be deemed to authorise RJA to carry or have the Goods carried by another method or methods.
- 10. Route Deviation**
- 10.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of RJA be deemed reasonable or necessary in the circumstances.
- 11. Charges Earned**
- 11.1 RJA's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.
- 12. Demurrage**
- 12.1 The Customer will be and shall remain responsible to RJA for all its proper charges incurred for any reason. A charge may be made by RJA in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of RJA. Such permissible delay period shall commence upon RJA reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.
- 13. Dangerous Goods**
- 13.1 Unless otherwise agreed in advance in writing with RJA the Customer or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Customer shall be liable for and hereby indemnifies RJA for all loss or damage whatsoever caused by any Dangerous Goods.
- 14. Consignment Note**
- 14.1 It is agreed that the person delivering any Goods to RJA for carriage or forwarding is authorised to sign the consignment note for the Customer.
- 15. Customer's Responsibility**
- 15.1 The Customer expressly warrants to RJA that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.
- 16. Delivery**
- 16.1 RJA is authorised to deliver the Goods at the address given to RJA by the Customer for that purpose and it is expressly agreed that RJA shall be taken to have delivered the Goods in accordance with this contract if at that address RJA obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 RJA may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 16.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
- 16.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 16.5 The failure of RJA to deliver shall not entitle either party to treat this contract as repudiated.
- 17. Loss Or Damage**
- 17.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- RJA shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of RJA or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - the Customer will indemnify RJA against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by RJA in connection with the Goods.
- 17.2 Notwithstanding any other provision hereof other than clause 2, RJA shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is brought within six (6) months from their delivery or from the date on which in the ordinary course of business delivery would have been effected.
- 18. Insurance**
- 18.1 The Customer acknowledges that:
- the Goods are carried and stored at the Customer's sole risk and not at the risk of RJA; and
 - RJA is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - under no circumstances will RJA be under any liability with respect to the arranging of any such insurance and no claim will be made against RJA for failure to arrange or ensure that the Goods are insured adequately or at all.
- 19. Default & Consequences Of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at RJA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Customer owes RJA any money the Customer shall indemnify RJA from and against all costs and disbursements incurred by RJA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RJA's collection agency costs, and bank disbursement fees).
- 19.3 Without prejudice to any other remedies RJA may have, if at any time the Customer is in breach of any obligation (including those relating to payment) RJA may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. RJA will not be liable to the Customer for any loss or damage the Customer suffers because RJA exercised its rights under this clause.
- 19.4 Without prejudice to RJA's other remedies at law RJA shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to RJA shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to RJA becomes overdue, or in RJA's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 20. Unpaid RJA's Rights to Dispose of Goods**
- 20.1 RJA shall have a lien on any Goods owned by the Customer and in the possession or control of RJA (and any documents relating to those Goods) for all sums payable by the Customer to RJA, and RJA shall have the right to sell such Goods, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. RJA shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 21. Personal Property Securities Act 2009 ("PPSA")**
- 21.1 In this clause:
- financing statement has the meaning given to it by the PPSA;
 - financing change statement has the meaning given to it by the PPSA;
 - security agreement means the security agreement under the PPSA created between the Customer and RJA by these terms and conditions; and
 - security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:
- constitute a security agreement for the purposes of the PPSA; and
 - create a security interest in all Goods being transported by RJA.
- 21.3 The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RJA may reasonably require to:
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - register any other document required to be registered by the PPSA; or
 - correct a defect in a statement referred to in clause 21.3(a)(i) or 21.3(a)(ii);
 - indemnify, and upon demand reimburse, RJA for all expenses incurred in registering a financing statement or financing change statement on the

Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;

- not register a financing change statement in respect of a security interest without the prior written consent of RJA;
 - not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of RJA.
- 21.4 RJA and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 21.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 21.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 21.7 Unless otherwise agreed to in writing by RJA, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 21.8 The Customer shall unconditionally ratify any actions taken by RJA under clauses 21.3 to 21.5.

22. Security And Charge

- 22.1 Despite anything to the contrary contained herein or any other rights which RJA may have however:
- where the Customer is the owner of land, realty or any other asset capable of being charged, the Customer agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to RJA or RJA's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer acknowledges and agrees that RJA (or RJA's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met;
 - should RJA elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer shall indemnify RJA from and against all RJA's costs and disbursements including legal costs on a solicitor and own client basis;
 - the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint RJA or RJA's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22.1.

23. Privacy Act 1988

- 23.1 The Customer agrees for RJA to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by RJA.
- 23.2 The Customer agrees that RJA may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 23.3 The Customer consents to RJA being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 23.4 The Customer agrees that personal credit information provided may be used and retained by RJA for the following purposes (and for other purposes as shall be agreed between the Customer and RJA or required by law from time to time):
- the provision of Services; and/or
 - the marketing of Services by RJA, its agents or distributors; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 23.5 RJA may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 23.6 The information given to the credit reporting agency may include:
- personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - details concerning the Customer's application for credit or commercial credit and the amount requested;
 - advice that RJA is a current credit provider to the Customer;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of RJA, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Customer by RJA has been paid or otherwise discharged.

24. Cancellation

- 24.1 RJA may cancel any contract to which these terms and conditions apply or cancel the Services at any time before the Services are completed by giving written notice to the Customer. On giving such notice RJA shall repay to the Customer any sums paid in respect of the Price. RJA shall not be liable for any loss or damage whatever arising from such cancellation.
- 24.2 In the event that the Customer cancels delivery of the Services the Customer shall be liable for any and all loss incurred (whether direct or indirect) by RJA as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 25. General**
- 25.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 25.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 25.4 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by RJA.
- 25.5 RJA reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which RJA notifies the Customer of such change. Except where RJA supplies further Services to the Customer and the Customer accepts such Services, the Customer shall be under no obligation to accept such changes.
- 25.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.7 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 25.8 The failure by RJA to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect RJA's right to subsequently enforce that provision.