


<b>Booth Transport</b>		
<b>National Form 210</b>		
<b>Conditions of Carriage</b>		
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## 1. Definitions

1.1 In this document the following definitions apply;

- **We, our** and **us** means Booth Transport Pty Ltd (ABN 98 007 678 622), including its employees, servants and agents.
- **You** and **your** means the party for whom the Services are performed.
- **Goods** include any container, pallet, tank or packaging which the goods are in or on.
- **Services** means the whole of the services performed by us or a subcontractor, including storing and carrying the goods, loading and unloading them, warehousing them, dismantling, detaching, assembling, and installing them; the hiring out of tanks; liaising with third parties, arranging any necessary permits or authorisations; and delivering the goods to a subcontractor.
- **Subcontractor** means any person (including a person operating a railway) we use to perform all or part of the services instead of us, and any person who is a servant, agent or subcontractor of such a person.
- **PPSA** shall mean Personal Property Securities Act 2009 (and amendments).

## 2. Conditions applying to carriage of goods

### Application of conditions


- 2.1 These conditions apply to the services we perform for you, or a subcontractor performs for you, in connection with each carriage of your goods. They also apply to any work we have to do, or reasonably do, in addition to the work we quote for.
- 2.2 These conditions continue to apply despite any breach by us or a subcontractor, even if the breach is of a fundamental term.
- 2.3 We are not a common carrier. We do not accept liability as a common carrier. We may refuse to carry or deal with any goods.
- 2.4 You warrant that, when you give us or a subcontractor goods for carriage, you are acting as agent for each person who has an interest in the goods. Each of them is a party to the contract and is bound by these conditions in the same way as you are. You also warrant that, when you give us or a subcontractor goods for carriage, the person who signs any document containing these conditions has authority to accept these conditions on your behalf.

### Our services

- 2.5 We intend to perform the services necessary to deliver the goods to the place you nominate. We intend to follow any instructions you have given us. However, we are entitled to depart those instructions (including deviating from the usual route or changing the place of storage) if we think it desirable in the circumstances.
- 2.6 We deliver the goods when we leave them at the place you nominate. If no-one is there, we may choose whether to leave the goods there, store them, or return them to you. If we decide to store them, or to return to you, you must pay our reasonable charges. If you ask us to onforward goods, we deliver them when we give them to the onforwarding agent.
- 2.7 A receipt from a person at the destination is proof of delivery.
- 2.8 We are entitled to use a subcontractor to perform all or part of the services instead of us. We enter into this contract as agent or trustee for any subcontractor used. Each of them is a party to each contract we enter into with you. This contract applies as if the subcontractor were us. We, or a subcontractor, may agree with a subcontractor to any terms that that subcontractor requires. Those terms will be binding on you. However, the subcontractor may choose whether to rely on the terms of this contract or the terms on which it agrees to perform the services or part of them.
- 2.9 We are entitled to open anything in which the goods are placed or carried in order to inspect them to find out their nature, condition or destination, or who owns them.
- 2.10 If we think that the goods are or may become dangerous or offensive, we may do anything we believe appropriate to avoid or minimise any loss, damage or offence. This includes destroying goods. This does not affect any other rights we may have.

## Your obligations

- 2.11 You must pay our charges for our services. You can arrange for someone else to pay those charges. However, you remain liable to us. If you are not told that you must pay when the goods are received by us, you must pay within 7 days after that day. You must pay our charges whatever happens to the goods – even if they are lost, delayed, damaged, or destroyed. You must not offset our charges against any loss suffered by you.
- 2.12 You must pay us an additional reasonable charge in each of the following cases;
- 2.12.1** We or a subcontractor have to perform services, or reasonably perform services, in addition to the services we quote for.
- 2.12.2** The carriage is delayed for a reason that is not our fault or the fault of the relevant subcontractor.
- 2.13 You must also pay us for any amount we have to pay, or a relevant subcontractor has to pay, in relation to the goods or their carriage. This excludes a payment for subcontracting the carriage.
- 2.14 We have a lien over the goods and any related documents, and over any other goods and related documents of yours in our possession, as security for payment of any money you owe us. We may sell the goods or documents without giving you notice. If we do, we are entitled to offset the amount we receive against the money you owe us. This does not affect any other rights we may have.
- 2.15 In addition to our lien over the goods, we may send you a letter requiring immediate payment of any money you owe us. If you do not pay us within 7 days of the date of the letter, we may charge you;
- 2.15.1** Interest at the rate of 15% per annum from the due date until the date of payment; and
- 2.15.2** For our costs and out of pocket expenses in recovering any money you owe us. These costs may include debt collection agency fees and/or solicitor fees.
- This does not affect any other rights we may have.
- 2.16 You irrevocably waive any right you may have to receive notes under sections 124(4) (enforcement of liquid assets – notice to grantor), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4), (statement of account if no disposal) and 135 (notice of retention) of the PPSA.
- 2.17 You must give us an accurate description of the goods, either by telling us or by writing on the consignment note. You must tell us if the goods are, or may become, dangerous or offensive. If the goods which you give us or a subcontractor for carriage are self propelled, and need to be operated during loading or unloading, then you must make sure the goods are mechanically sound and in good working order.
- 2.18 If you fail to pay charges due to us in respect of any service rendered by us on demand being made, we may (in addition to any rights we have under the PPSA);
- 2.18.1** Detain and sell all or any of your goods of that person which are in our possession; and
- 2.18.2** Out of the monies arising from the sale retain charges payable and all charges and expenses of the detention and sale; and
- 2.18.3** Shall render the surplus if any of the monies arising from the sale of and such of the goods as remain unsold to the person entitled to those monies. Any such sale shall not prejudice or affect our rights to recover from you or, the persons liable any such charge due or payable in respect of such services or the said detention and sale.
- 2.19 You must comply with all legal requirements, and any requirements of the person to whom we deliver the goods, in relation to the goods, including requirements relating to their shape, packaging, labelling and transportation.
- 2.20 At the end of the carriage, you must make sure that you return to their owner any containers, pallets, tanks or packaging which are delivered to us with the goods.
- 2.21 A waiver of any of your obligations is ineffective unless it is in writing and signed by an officer of ours.

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### Limitations on our liability

- 2.22 When we perform services, to the extent permitted by law;
- 2.22.1** Our liability is completely excluded; and
- 2.22.2** As a condition precedent to our liability, any legal proceeding must be commenced within 12 months after the date the goods were delivered or should have been delivered.
- 2.23 When we perform services for the purpose of a business, trade, profession or occupation carried on or engaged in by you, we do so entirely at your risk. No matter what the cause may be, we are not liable under any circumstances for delay in delivery of the goods, mis-delivery of them, or a total failure to deliver them; or for loss of goods or damage to them. We are not even liable for negligence or wilful misconduct by us or a subcontractor we use in relation to the carriage. Nor are we liable for an act or omission that is not contemplated by our contract with you.
- 2.24 Despite anything contained in this contract, the Company shall continue to be subject to any guarantee provided for in the *Competition and Consumer Act 2010 (Cth)*, as amended, if and to the extent that the Act is applicable to this contract and prevents the exclusion, restriction and modification of such guarantee.

### Claims

- 2.25 If you think you have a claim against us or a subcontractor in respect of our services, you must make it against us and no-one else. The claim must be in writing. It must reach us within 7 days after the date the goods were delivered or should have been delivered. You have no claim in any circumstances against any person (including a subcontractor) except us.
- 2.26 If you dispute our charges, you must put your dispute in writing. It must reach us within 7 days after you receive the invoice for our charges. This does not affect any rights we may have because of your failure to pay our charges.

### Your indemnity to us

- 2.27 You must continually indemnify us against any liability or expense we incur as a result of a breach of this document by you, or of our accepting goods for carriage that you inform us are, or may become, dangerous or offensive.