


Booth Transport		
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Subcontractor Agreement – Terms and Conditions		
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Booth Transport Pty Ltd

Part 1 – Introductory Matters

1. Introduction

The Contractor carries on the business of transporting goods and provides Vehicles and Drivers for hire. Booth carries on a transport and logistics business and engages the Contractor under this Contract as an independent contractor to supply services and Vehicles to transport goods for Booth or for Booth’s customers.

2. Definitions and Meanings

In this document unless the context otherwise requires:

Booth means Booth Transport Pty Ltd ABN 98 007 678 622, ACN 007 678 622, a party to this Contract.

Booth Manager means the person with Booth who is responsible for managing the relationship between Booth and the Contractor from time to time.

Confidential Information includes information of Booth relating to or about:

Marketing information and customer lists;

- 2.1.1. Marketing Information and customer lists
- 2.1.2. Financial information, pricing lists and structures, and business plans;
- 2.1.3. Information about arrangements and agreements between its clients;
- 2.1.4. Commercially sensitive information or trade secrets;
- 2.1.5. Information designated in writing by Booth as confidential;
- 2.1.6. Information which of its nature is confidential.

Contractor means the Contractor, a party to this Agreement;

Dangerous Goods means dangerous goods as defined in the *Australian Code for the Transport of Dangerous Goods by Road or Rail*.

Driver means any person approved by the Contractor to drive a Vehicle in the course of performing services under this Contract as specified in the Schedule or approved in advance by Booth in writing to drive a Vehicle.

Goods means anything or substance that the Contractor transports in or on a Vehicle from time to time for Booth.

GST means any tax, levy, charge or impost implemented under the *A New Tax System (Goods and Services Tax) Act (GST Act)* or an Act of the Parliament of the Commonwealth of Australia substantially in the form of, or which has a similar effect to, the GST Act;


Paperwork means any documents, including proof of delivery documents and invoices that have been obtained or completed by the Contractor in the form, time and manner reasonably required by Booth from time to time in the course of providing services under this Contract.

Vehicle means any vehicle supplied or used by the Contractor to perform services under this Contract and includes any specialised equipment to be provided by the Contractor, for example, refrigeration unit, hoist, tailgate, curtains, dog and chains.

In this document unless the context otherwise requires:

The singular includes the plural and vice versa;

- 2.1.7. Reference to a person includes any other entity recognised by law and vice versa;
- 2.1.8. Any reference to a party to this document includes its successors and permitted assigns;
- 2.1.9. Reference to a statute includes all regulations and amendments to that statute and any statute passed in substitution for that statute or incorporating any of its provisions to the extent that they are incorporated.

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3. Term

This Contract commences on the date specified in the Schedule and will continue until it is terminated in accordance with the terms of this Contract.

Part 2 – Contractor – Rights and Obligations

4. Transport Services

4.1. Provision of Service

The Contractor agrees to provide transport services to Booth from time to time and as requested. Such services may include (subject to the ability of the Contractor's business):


- 4.1.1. Carrying general freight
- 4.1.2. Carrying unusual or dangerous goods
- 4.1.3. Use of crane, loading and loading tasks.

The services will be provided in a professional manner.

4.2. Contractor's Responsibilities

The Contractor is responsible for ensuring that:

- 4.2.1. the Goods transported by it are delivered directly and promptly to the address shown on the delivery docket and are unloaded and placed at the delivery site unless the Contractor has other directions endorsed on the delivery docket by the intended recipient of the Goods or the recipient's agent.
- 4.2.2. it advises Booth as soon as practicable if the Contractor is unable to perform any services (indicating why and for how long it will be unable to do so), if there will be an unexpected delay in the performance of the services or if the Contractor intends to cease providing the services on any day prior to any agreed or scheduled time.
- 4.2.3. Its Vehicles are loaded with the correct Goods specified in each delivery docket.
- 4.2.4. The Goods are handled carefully from the commencement of loading until placed upon the delivery site.
- 4.2.5. Any loss, damage or accident in relation to the Goods is immediately reported to Booth.
- 4.2.6. The reasonable instructions of Booth in relation to any delivery of the Goods (including providing all Paperwork to Booth as required by it) are complied with.
- 4.2.7. All reasonable efforts to ensure that Goods are loaded on time are made. Booth will not be liable to the Contractor in any way for any delays in either the loading of the Goods or in making Goods available for loading.
- 4.2.8. Any illegal activities or attempted illegal activities, including but not limited to theft or persons who attempt to defraud Booth, are reported to Booth.

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4.3. Hours of Work and Other Matters

4.3.1. Booth does not promise or guarantee to the Contractor the nature, quantity, quality, regularity or profitability of the services to be performed under this Contract. Accordingly, Booth does not guarantee minimum number of hours of work.

4.3.2. The Contractor acknowledges:

4.3.2.1. Booth may engage as it deems appropriate any other contractors (including permanent or casual) in accordance with its operational requirements from time to time.

4.3.2.2. This Contract is not to be construed as importing any improvement in value or attaching any goodwill to any Vehicle utilised by the Contractor under this Contract.

4.3.2.3. Nothing in this Contract places any constraint on the Contractor from providing services for persons other than Booth.

4.4. Control of Pallets and Other Property

4.4.1. The Contractor must keep proper records and documentation for pallet control. In the event that pallets are lost because the Contractor has failed to keep properly completed documentation, the Contractor will replace the lost pallets or reimburse Booth for any amount it must pay to the owner of the pallets as a result of the pallets being lost.

4.4.2. The Contractor is responsible for the safe return to Booth of any property of Booth it uses in relation to the transport services. Such property includes dunnage, load restraint equipment, ropes and chains. The Contractor will also reimburse Booth for the replacement cost of such property that the Contractor fails to return to Booth.

4.5. Purchase of Equipment or Services by Booth

If the Contractor requests Booth to purchase on its behalf any equipment or services from another person, the Contractor agrees to pay to Booth, or that Booth may deduct from money payable to the Contractor, the actual cost of the services or equipment plus an administrative fee at Booth's discretion of no more than 20% of such cost.

4.6. E-Tags

Booth may in its discretion provide the Contractor with an e-tag (at Booth's cost) for use on tolled roads and which is to be used solely for work performed by the Contractor for Booth. Booth may cancel or recover the e-tag at its discretion.

5. Drivers

5.1. Approved Drivers Only

The Contractor will only permit a Driver to provide services under this Contract.

Booth may withhold or withdraw approval for any particular Driver to provide the services if Booth believes on reasonable grounds that the Driver:


5.1.1. Is not qualified, licensed or capable of performing the services;

5.1.2. Is not a fit or proper person to perform the services;

5.1.3. Is not acceptable to any customer of Booth;

5.1.4. Has engaged in misconduct; or

5.1.5. Has failed to comply with a provision of this Contract.

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5.2. Driver Conduct

The Contractor must ensure that its Drivers: Is qualified, licensed or capable of performing the services;

- 5.2.1. Are at all times medically fit to perform the services under this Contract but that no Driver will work if he or she is not medically fit to do so.
- 5.2.2. Conduct themselves in a courteous manner while providing services under this Contract and in particular in their dealings with customers of Booth.
- 5.2.3. Comply with the terms of this Contract.
- 5.2.4. Use any communications or monitoring equipment installed by Booth in its Vehicles in a manner directed by Booth.

5.3. Employment Obligations

The Contractor accepts all responsibility and liability to conduct relevant checks regarding the work entitlement of all employees of the Contractor and to make provisions for annual leave, personal leave, long service leave, superannuation, training guarantee levies, payroll tax and any other payments required to be made for or on behalf of the Contractor or any employee or agent of the Contractor by virtue of the Contractor conducting its business pursuant to this Contract. The Contractor agrees that no claim will be made on Booth for these or any similar payments and the Contractor agrees to keep Booth indemnified from and against any liability to make any such payments on its behalf.

6. Vehicle Requirements

6.1. Condition of Vehicle

The Contractor will ensure that each of its Vehicles:

- 6.1.1. Is suitable for the cartage of the Goods and fit to provide the services required under this Contract;
- 6.1.2. Is maintained at its cost in a roadworthy condition and is maintained and presented in a clean condition inside and out.

6.2. Booth Logos

The Contractor will allow Booth to paint, affix to or display upon any Vehicle such paintwork, sign, logo or advertising medium or material as Booth will require at Booth's expense provided that if this Contract is terminated for any reason then Booth will at its own expense arrange to remove any such paint, sign or logo from each Vehicle within 30 days of the date of termination.

The Contractor will not display upon any Vehicle used to perform services under this Contract any sign or logo not being that of Booth with the exception that the name of the Contractor may be displayed on the Vehicle if it does not detract from any signs or logos of Booth displayed on the Vehicle.

6.3. Communication, Monitoring and Other Equipment

Booth may install in any Vehicle, at its cost, any vehicle communications or monitoring equipment for the purpose of communicating with a Driver and any operating system required by Booth to be used in relation to the transport services. Such equipment will at all times remain the property of Booth and may be removed by Booth, at its cost, at any time including upon termination of this Contract.

All Drivers of the Contractor will undertake training in relation to the use of such equipment and systems as required by Booth.

The Contractor indemnifies Booth for the cost of repair or replacement of any communications or monitoring equipment damaged by the Contractor's negligent or wilful conduct.

7. Regulation and Safety

7.1. Complying with the Law

The Contractor must observe and comply with all Federal, State and local government laws (including regulations, by-laws, codes of practice) which are applicable to the services under this Contract and which control, regulate or otherwise affect the operation of the Vehicles, including but not limited to laws that deal with:

- 7.1.1. Registration of the Vehicles and compulsory third party insurance.
- 7.1.2. Heavy vehicle safety, mass, dimension and load restraint regulations.
- 7.1.3. Environmental requirements, emission controls and noise standards.
- 7.1.4. Mandatory Australian design standards.
- 7.1.5. Road safety, speeding, road rules, parking and traffic management.
- 7.1.6. Occupational health and safety - manual handling, prevention of falls, ventilated work spaces, rest and meal breaks.
- 7.1.7. Dangerous and hazardous goods including any signage and compulsory insurance requirements.
- 7.1.8. Chain of responsibility including driving hours, fatigue, speeding and dangerous goods regulations, mass and dimension limits and load restraint requirements.
- 7.1.9. Food transport and hygiene, livestock transport.
- 7.1.10. Ports and maritime security.
- 7.1.11. Fatigue management, driving hours and log books.

7.2. Licences

The Contractor must obtain, maintain and promptly, upon request by Booth, produce for inspection:

- 7.2.1. A certificate of registration for each Vehicle
- 7.2.2. A valid current driver's licence for each Driver
- 7.2.3. All necessary licences required by the Drivers to operate specialised equipment (such as forklifts or cranes) while providing the services.
- 7.2.4. All necessary licences required by Drivers who will transport dangerous goods (such as a Dangerous Goods Bulk Vehicle licence and driver's licence).
- 7.2.5. A valid Maritime Security Identification Card (MSIC) and security access cards for Drivers required to work within ports.


8. Insurance and Indemnity

8.1. Insurance

The Contractor will arrange and hold the following current insurance policies with a reputable and authorised Australian insurer and noting (where applicable) Booth as a principal and will provide evidence of such policies when requested by Booth:

8.1.1. Motor Vehicle Insurance

Third Party Property Damage	Australia Wide Coverage – not less than \$20,000,000
Dangerous Goods Liability	If applicable – in accordance with the Schedule
Trailer in Control	\$150,000 for each trailer (Material damage cover).

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8.1.2. Public Liability Insurance

Third Party Property Damage or Bodily Injury	Not less than \$10,000,000 for any one occurrence, unlimited in the period of insurance
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8.1.3. Goods in Transit Insurance

Goods in Transit Insurance	In accordance with the Schedule
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8.1.4. Workers Compensation

The Contractor must comply with all of its obligations under the relevant state legislation to obtain insurance covering liability arising, whether at common law or under any statute relating to workers compensation employer’s liability, to Contractor Personnel (including any other person deemed by statute to be an employee of the Contractor) engaged in doing anything for the purpose of the performance of the Contract or executing the Contractor’s rights or obligations under the Contract. The insurance must;

- a) Be extended to indemnify Booth as principal; and
- b) Provide a waiver of subrogation in favour of Booth

8.1.5. Any other insurance required by law to be effected by you, and

8.1.6. Any other insurance which Booth notifies you is required.

8.2. Indemnity

The Contractor will indemnify Booth:

- 8.2.1. in respect of all claims, demands, actions, proceedings, damages and costs (legal or otherwise) arising from the operation of any Vehicle and from the acts or omissions of the Contractor or any servant or agent of the Contractor, when performing services under this Contract;
- 8.2.2. against all losses arising from damage to the Goods consequent upon negligent or careless loading, carriage or unloading of Goods by the Contractor or any servant or agent of the Contractor.

9. Confidentiality


9.1. Confidential Information

The Contractor acknowledges that during the period of this Contract its Drivers, employees and agents may become acquainted with or have access to Confidential Information. The Contractor agrees that during and after the term of this Contract it will not, except to the extent necessary to perform its obligations under this Contract, use or divulge any Confidential Information and will prevent its unauthorised disclosure to or use by any other person.

9.2. Confidential Information

The Contractor agrees that it will not during this Contract and for the period 6 months after the termination of this Contract, whether by itself or with others, without the prior written approval of Booth:

- 9.2.1. Canvass, solicit, induce or encourage any employee or contractor of Booth to terminate their employment or contract with Booth;
- 9.2.2. Canvass, solicit, induce or encourage any person who or which was a customer or client of Booth in the 12 months prior to the termination of this Contract cease or reduce their business or dealings with Booth or commence providing their business to or dealing directly with the Contractor, any related body corporate (as defined in the Corporations Act 2001) of the Contractor or any officer, employee or shareholder of the Contractor, in any capacity whatsoever;
- 9.2.3. Counsel, procure or assist any person to do any of the acts referred to in this clause.

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Part 3 – Booth – Rights and Obligations

10. Payment for Services

10.1. Payment

- 10.1.1. Booth will pay the Contractor for the services at the rates set out in the Schedule. However, it may withhold payment for any services in respect of which the Contractor has not provided to Booth or the customer the necessary Paperwork.
- 10.1.2. Booth will pay to the Contractor the amount owing on a regular cycle as it determines. Payments will be made by electronic funds transfer into the Contractor's bank account.
- 10.1.3. Booth will pay the Contractor a fuel surcharge in addition to the rates set out in the Schedule providing such surcharge is recovered from its clients. The surcharge may fluctuate from time to time in line with the Terminal Gate Price (ADO) of Oil Companies as published daily and will be calculated on the basis of the average TGP for the previous month.

10.2. Recipient Created Tax Invoice

The Contractor acknowledges and agrees:

- 10.2.1. That Booth will provide the Contractor with a Recipient Created Tax Invoice (RCTI) at the time of each payment;
- 10.2.2. Not to issue tax invoices to Booth in respect of the services;
- 10.2.3. That it is registered for GST and will notify Booth of the date of the effect of any cancellation of GST registration;
- 10.2.4. All amounts referred to in this Contract are exclusive of GST unless expressly stated otherwise.

The rates will be reviewed on each anniversary of the date of commencement of this Contract or at such other times as the parties otherwise agree. Any new rates must be agreed in writing and will replace all previous rates previously agreed (including those in the Schedule).

No claim may be made by the Contractor in relation to any error or omission made in an RCIT after 30 days of the date of the RCIT.

11. Delays in Delivery

If there is an undue delay in the delivery of Goods by the Contractor (because of breakdown or any other reason) and such delay may cause Booth to breach its contract with the customer, Booth may transfer the Goods from the Contractor's Vehicle in order to complete the delivery. In this event, Booth may deduct from moneys owed to the Contractor the costs incurred by Booth to transfer the Goods and complete the delivery.

Part 4 – Termination


12. Termination by Notice

Either party may terminate this Contract by giving 3 months' notice in writing. If relevant State owner driver legislation applies to the Contractor, Booth may at its option, in lieu of the notice period pay the Contractor an amount calculated in accordance with the relevant legislation.

13. Termination for Breach

Either party may immediately terminate this Contract without the need to give notice if the other party commits a fundamental breach of this Contract, including:

- 13.1. Failure to pay for the services;
- 13.2. Dishonesty;
- 13.3. Falsification of documents;
- 13.4. Committing an act of insolvency or being declared insolvent.

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Part 5 – Resolution of Disputes

14. Dispute Settlement Procedure

14.1. In the event of a dispute or difficulty arising between the Contractor and Booth in relation to the performance of this Contract or arising under or in relation to a code of practice, the parties will engage in the following dispute resolution process:

14.1.1. The Contractor will discuss the matter in dispute with the Booth Manager.

14.1.2. If the matter in dispute cannot be resolved the parties may agree to refer the dispute to a person or persons they agree will seek to resolve the dispute either through mediation or other alternative dispute resolution agreed to by the parties.

14.1.3. Except in the case of termination of this Contract, the Contractor undertakes to continue to perform its obligations under this Contract pending completion of this dispute settlement procedure.

14.2. Nothing in this clause will prevent either party from exercising their rights, if any, under the relevant owner driver legislation.

Part 6 – General Provisions

15. Law

This Contract is governed by and construed under the law in the State of the Contractor operates under.

16. Amendments

Any amendment to this Contract has no force or effect unless it is in writing and signed by both parties.

17. Force Majeure

Neither party will be held liable for its failure to comply with any of the terms of this Contract caused by an act of God or other cause beyond its control and without its fault, but the party in default will use its best efforts to cure such default and comply with the terms of this Contract as quickly as possible.

18. Notices

A notice given under this Contract may be delivered to a party by post or by hand to its usual place of business or by fax or email.

19. Waiver


Any failure by a party to exercise any right under this Contract does not operate as a waiver and the single or partial exercise of any right by that party does not preclude any other or further exercise of that or any other right by that party.

20. Severability

Any provision of this Contract which is invalid in any jurisdiction is invalid in that jurisdiction to that extent, without invalidating or affecting the remaining provisions of this Contract or the validity of that provision in any other jurisdiction.

21. Assignment

A party cannot assign their rights and obligations under this Contract to another person unless it is done with the written consent of the other party.

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Part 7 – Schedule

22. Insurance

22.1. Dangerous Goods Insurance by Contractor:

The Contractor will carry dangerous goods for Booth. In addition to all other policies required to be held by law and by this Contract, the Contractor is required to have a motor vehicle insurance policy specifically endorsed to cover third party property damage resulting from carrying dangerous goods for a minimum of \$5,000,000 for packaged goods and a minimum of \$5,000,000 for bulk goods. The cover must include any loss or damage, and the cost to clean up or remove by (or on behalf of) a public authority as a result of fire, explosion, leakage or spillage of dangerous goods in, on or from the Vehicle.

22.2. Goods in Transit Insurance by Contractor

The contractor will carry goods in transit insurance with the following cover:

22.2.1. Limit any one loss;

- 22.2.1.1.** Rigid trailer - \$100,000
- 22.2.1.2.** Semi – trailer - \$170,000
- 22.2.1.3.** B-Double trailer - \$250,000
- 22.2.1.4.** Road Train - \$340,000

22.2.2. Cover for at least the following insured events:

- 22.2.2.1.** Fire, hail, explosion, lighting
- 22.2.2.2.** Collision of the Vehicle with any external object
- 22.2.2.3.** Overturning, jack-knifing or derailment
- 22.2.2.4.** Impact of the Goods with something other than the Vehicle or part of it
- 22.2.2.5.** Loss of profit and consequential loss to a minimum of \$100,000
- 22.2.2.6.** Theft, pilferage and non-delivery
- 22.2.2.7.** Debris removal following loss – limit to a minimum of \$25,000
- 22.2.2.8.** Shedding of load
- 22.2.2.9.** Damage caused by strikers, locked out workers or persons taking part in labour disturbances, riots or civil commotions
- 22.2.2.10.** The wilful act of a third person committed without the knowledge or connivance of the Contractor or the owner of the Goods
- 22.2.2.11.** The cost of deterioration of refrigerated goods caused by any of the above events or by mismanagement or malfunction of the refrigeration equipment.
- 22.2.2.12.** Loading and unloading.