

Enaek Pty Ltd trading as Small Transport

Conditions of carriage

1 Definitions

1.1 'Agreement' means this document.

'Carriage' means the whole of the operations and services undertaken by the Carrier as specified on the face of this document including storage packaging or handling or other services where this is applicable. The term includes the towing of a trailer.

'Carrier' means **Enaek Pty Ltd trading as Small Transport** on whose behalf this Agreement has been signed.

'Container' includes any container, trailer, tilt, igloo, wagon, transportable tank, flat pallet or any other unit load device used to consolidate Goods.

'Customer' includes the sender, shipper, Consignor, Consignee, receiver of the Goods, any person owning or entitled to the possession of the Goods, and anyone acting on behalf of such persons.

'Dangerous Goods' means Goods which are or may become dangerous, inflammable or damaging including radioactive material(s), or which are or may become liable to damage any property whatsoever.

'Freight' includes all charges payable to the Carrier.

'Goods' means the Goods accepted from the Customer and includes any container not supplied by or on behalf of the carrier.

'Loss' includes any fine, levy, charge or other monetary imposition, including financial or market loss suffered from the sale of the goods, to which the Carrier may become liable as an incident to the carriage resulting from any breach of this Agreement by the Customer, as well as consequential loss.

'Place of Receipt' means the place designated as such on the face of this Agreement.

'Place of Delivery' means the place designated as such on the face of this Agreement.

'Storage' means the whole of the operations and services undertaken by the Carrier in respect of the Goods in receiving, storing and subsequently making the Goods available for collection.

'Storage Period' means the period of storage (if any) indicated on the face of this Agreement.

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'Sub-contractor' means any sub-contractor of the Carrier and the sub-contractor's servants, agents or sub-contractors, indirect and direct sub-contractors. The term includes railways operated by the Commonwealth, any State or private railway operator, any airline or sea carrier.

2 Interpretation

2.1 Severability

The parties acknowledge and agree that:

- 2.1.1 All the provisions of this Agreement are reasonable in all the circumstances and that each provision is and shall be deemed to be severable and independent.
- 2.1.2 This Agreement is subject to all compulsory rules and requirements of law to which the carriage is subject to the intent and effect that if any provision hereof is to any extent repugnant to or inconsistent with any such rules or requirements or if all or any part of any provision is judged invalid or unenforceable, such provision shall to that extent, but no further, be deemed not to form part of these Conditions of Carriage and Storage and shall not affect the validity or enforceability of the remaining provisions.
- 2.1.3 Regardless of any other term of this Agreement, the Carrier shall continue to be subject to any condition or warranty implied by the Trade Practices Act 1974 (Cth) or the Fair Trading Act 1989 (Qld), if and to the extent that the said Acts are applicable to this Agreement and prevent the exclusion, restriction or modification of any such condition or warranty.

2.2 Representation and Collateral Contracts Negatived

This Agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the storage and carriage or the matters to which the Agreement relates.

2.3 Governing Laws

- 2.3.1 This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
- 2.3.2 Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.

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3 Carriage/Demise

3.1 Common Carrier Negatived

The Carrier is not a common carrier and will accept Goods for carriage only on these conditions.

3.2 Carrier's Undertaking

The Carrier undertakes to:

3.2.1 procure the carriage of the Goods from the place of receipt to the place of delivery; and/or

3.2.2 procure the storage of the Goods for the storage period.

3.3 The Carrier at its discretion may sub-contract on any terms all or any part of its obligations contained within this Agreement.

4 Customer's Warranties Acknowledgments and Indemnities

4.1 The Customer warrants that:

4.1.1 The Goods are suitable for carriage and storage and have been packed and prepared by the Customer so as to withstand the rigours of Carriage and Storage.

4.1.2 The Goods are not Dangerous Goods and their carriage by the Carrier will not give rise to any unusual danger or hazard.

4.1.3 The Customer has the authority of all persons owning or interested in the Goods to enter into the contract on their behalf.

4.1.4 The person delivering any Goods to the Carrier for carriage and/or storage is authorised to sign this document for the Customer and by such signature or by the signature of any other person acting for the Customer, the Customer accepts these terms and conditions.

4.2 The Customer acknowledges that:

4.2.1 No agent or employee of the Carrier is permitted to alter or vary these conditions.

4.2.2 No representations have been made by any employee or agent of the Carrier to the Customer.

4.2.3 The Carrier enters into this Agreement for and on behalf of itself and its servants, agents and sub-contractors, all of whom shall be entitled to the benefit of the Agreement and shall be under no liability whatsoever to the Customer or anyone claiming through him in respect of the Goods, in addition to or separately from that of the Carrier under this Agreement.

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- 4.2.4 The Carrier has no responsibility for collection of cash or any other payment on behalf of the Customer or to any other person.
- 4.3 The Customer shall indemnify the Carrier against:
 - 4.3.1 All claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury however caused, whether or not by the negligence or wilful act or omission of the Carrier, his servants, agents or sub-contractors.
 - 4.3.2 Any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of the Agreement.
 - 4.3.3 Any loss or damage to the Carrier's containers or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the Goods in such containers, including loss resulting from the Customer's detention of any containers or any other equipment.
 - 4.3.4 All costs, demands, claims or expenses whatsoever and by whomsoever made arising as a result of the Customer making an incorrect description or advising of incorrect weight of the Goods.
 - 4.3.5 All loss (including consequential loss), damage or injury however 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.
- 5 **Himalaya Clause/Sub-contracting**
 - 5.1 Where the Customer is not the owner of some or all of the Goods, the Customer shall be deemed for all purposes to be the agent of the owner.
 - 5.2 The Customer undertakes that no claim or allegation shall be made against any servant, agent or sub-contractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence or a wilful act or omission on the part of any of them, and if any such claim or allegation should nevertheless be made, the Customer agrees to indemnify the Carrier against all claims made.
 - 5.3 Every servant, agent, and sub-contractor, shall have the benefit of all provisions of this Agreement benefiting the Carrier as if such provisions were expressly for their benefit.

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Route/Deviation and Delay

- 6.1 The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be necessary.
- 6.2 The Customer shall take delivery of the Goods as soon as the Carrier is ready to deliver them. If the Consignee fails to take delivery of the Goods, the Carrier shall be deemed to have delivered the Goods in accordance with this Agreement, if the Goods are delivered to the address specified for delivery. The Carrier may without notice unload the Goods and/or store them in the open or under cover and with or without refrigeration.
- 6.3 If the Carrier is for any reason unable to deliver the Goods, the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods and such return to the Customer or storage shall be deemed to constitute delivery and any responsibility that the Carrier has in respect of the Goods shall cease and the Customer shall be liable to reimburse the Carrier for any additional carriage and/or storage costs incurred.
- 6.4 The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to:
- 6.4.1 Use any means of transport or storage whatsoever. The Customer authorises the Carrier to adopt such specialist Carriage which may require the use of the services of other organisations or bodies necessary to ensure the safety of others (such as other road users) and to comply with all government requirements. Specialist carriage may involve police or private escorts, road closures and/or transport control by the relevant government authority and the use of specialist equipment such as special cooling.
- 6.4.2 Proceed by any route whether or not it is the nearest or most direct or customary route.
- 6.4.3 Proceed to or stay at any place whatsoever (although in a contrary direction to, or outside the customary or intended or advertised routes) once or more often, in any order and store the Goods at any such place whatsoever.
- 6.5 Any action taken by the Carrier under this Clause and any delay resulting there from shall be deemed to be included within the contractual route and shall not be deviation.
- 6.6 If the Carrier effects arrangements for storage or preservation of the Goods after delivery it does so as agent of the Customer and solely at the Customer's risk and expense.
- 6.7 The Carrier shall be under no liability whatsoever for any loss, including financial and market loss, or damage to the Goods arising from delay in performing the services of transport and/or storage of the Goods.

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7 Liability

- 7.1 At all times and in all circumstances and for all purposes the Goods shall be and remain at the sole risk of the Customer and the Carrier shall be under no liability whatsoever for any loss, or misdelivery of or damage to Goods occasioned during carriage and/or storage arising from any reason whatsoever, including without limiting the foregoing, any negligence or breach of contract or wilful act or default on the part of the Carrier, its servants and agents, or otherwise.
- 7.2 The defences and exclusions of liability provided for in this clause and throughout this Agreement generally shall apply in any action against the Carrier for loss or damage to the Goods whether the action is founded in contract or in tort or otherwise.
- 7.3 The Carrier shall be entitled to the benefit of the exclusions of liability provided for in this Agreement, even if it is proved that the loss or damage resulted from an act or omission of the Carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.
- 7.4 No conduct by the Carrier in breach of this Agreement or otherwise, whether lawful or unlawful, shall under any circumstances constitute a breach going to the root of this Agreement, or a repudiation so as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitation of liability and other like protections of the Carrier contained in this Agreement and all such rights, defences, exceptions, immunities, limitations of liability and like protections shall continue to have full force and effect in any event.

8 Trade Practices Liability

- 8.1 If the Carrier is liable for a breach of a condition or warranty implied by the Trade Practices Act 1974 (Cth) in respect of any transport of Goods, the Carrier's liability to the Customer shall be limited to:
- (a) the resupplying of the service of transporting the Goods; or
 - (b) the costs of having the service of transporting the Goods resupplied.
- 8.2 This clause applies only insofar as the service to be provided by the Carrier under this agreement is a service of a kind not ordinarily acquired for personal, domestic or household use.

9 General Lien

- 9.1 Goods are received and held by the Carrier subject to:
- 9.1.1 a lien for moneys due to the Carrier for the carriage and/or storage of and other proper charges or expenses upon or in connection with the Goods; and

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9.1.2 a general lien for all moneys or charges due to the Carrier from the Customer and the owner of such Goods for any services rendered or accommodation provided by the Carrier to the Customer or owner.

9.2 Where any lien remains unsatisfied within seven (7) days from the date on which the Carrier gave notice of the exercise of his lien to the Customer (or owner as the case may be), the Goods may at the Carrier's discretion be sold by public auction or private treaty and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper charges and expenses in relation to it (including the expenses of the sale) and the Carrier shall account to the Customer or the owner of the Goods for any surplus.

10 Storage

10.1 Any storage of Goods shall be as agent of the Customer and solely at the Customer's risk and expense, but the provisions of clause 7 of this Agreement shall nevertheless apply.

10.2 At the Carrier's discretion the Goods may be stored at any place and at any time and be removed from any place at which they may be stored or otherwise held to any other place to be stored.

10.3 If the Carrier is unable to deliver the Goods to the place of delivery the Carrier may in its discretion deposit the Goods at the place nominated by the Customer or store the Goods at any place. If the Carrier stores the Customer's Goods the Customer shall indemnify the Carrier in respect of any costs or losses incurred by the Carrier in storing same and may re-deliver those Goods to the Customer from the place of storage at the Customer's expense.

10.4 Where the Customer requires the Carrier to store the Goods the Customer shall provide an inventory of the Goods to the Carrier prior to storage. The Carrier shall be entitled to check the inventory and provide its own inventory of the Goods received at the time of receipt. The Carrier shall provide the Customer with a copy of the inventory. Should the Customer sign the inventory, the inventory shall be conclusive evidence of the Goods received by the Carrier. Such inventory shall disclose any visible items but not any contents unless the Customer requires in which case the Carrier shall be entitled to make a reasonable charge for preparation of such further inventory. Inspection of the Goods shall be at the Customer's risk.

11 Carriers charges

11.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person. Responsibility for payment of Goods sent 'freight on delivery' will remain with the Customer at all times whether or not the Customer is consignor or consignee. Where the consignee fails to pay within 30 days the freight shall be paid by the consignor.

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- 11.2 Freight shall be deemed fully earned on receipt of the Goods by the Carrier and is non-refundable in any event.
- 11.3 Freight is due and payable by the Customer seven (7) days after receipt of the Carrier's invoice, issued at the end of each calendar month. The Customer shall pay interest at the weighted average interest rate on credit outstanding for small business as published by the Reserve Bank of Australia from time to time in respect of unpaid freight or any other charge incurred by the Carrier pursuant to this Agreement.
- 11.4 Should the Carrier be delayed by the Customer for a period in excess of 30 minutes in loading, unloading or for any other reason beyond the control of the Carrier, the Customer shall pay to the Carrier the Carrier's reasonable costs and losses incurred by the Carrier due to such delay.
- 11.5 The Customer shall be liable for and shall pay for (in addition to Freight and storage charges and any other charges):
- 11.5.1 all other charges in relation to the Carriage of the Goods and/or any other services by the Carrier and/or any third party whether payable to the Carrier and/or third parties including excise and customs duties, shipping, customs, railway, port fees and other charges;
- 11.5.2 all taxes including sales tax and any tax in the nature of goods and services tax levied on all or any part of the Goods and/or the Carriage of any other services.
- 11.6 Unless otherwise specified, sales tax, goods and services tax and any other applicable tax, duties or charges imposed by any government or statutory authority are additional to the price quoted and invoiced.
- 11.7 Where sales tax or goods and services tax (including any other tax, duties or charges) are included in a quote, it is based on the rate applicable at the time of the quote and any subsequent variation is to the Customer's account.

12 Force Majeure

- 12.1 Where a party is unable, wholly or in part, by reason of any fact, circumstances, matter or thing beyond the reasonable control of the party affected ('force majeure'), to carry out any obligation under this Agreement, and that party:
- 12.1.1 gives the other party prompt notice of such force majeure with reasonable full particulars, and if known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and
- 12.1.2 uses all possible diligence to remove that force majeure as quickly as possible;

that obligation is suspended, so far as it is affected by force majeure.

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12.2 Any obligation to pay money under this Agreement shall not be excused by force majeure.

12.3 The requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

13 Insurance

13.1 The Carrier will not effect any insurance of the Goods for the benefit of the Customer or otherwise.

14 Pallets

14.1 If the Carrier accepts pallets or other packing devices from the Customer the Carrier shall do so on the basis that all charges pertaining to the pallets, packing devices or other material shall be paid by the Customer. In the event of the Carrier acknowledging receipt of the pallets, packing devices or material the Carrier shall do so on behalf of the Customer provided the Customer accepts full responsibility for them and freight charges thereon.

15 Loading/Unloading

15.1 The Customer shall provide to the Carrier equipment suitable for the loading and unloading of the Goods in a safe or reasonably safe manner and in compliance with the Transport Operations (Road Use Management - Road Rules) Regulations (Qld) and the Guidelines for the Safe Carriage of Loads on Road Vehicles as endorsed by the Federal Office of Road Safety and the National Transport Commission, including any safety signage.

15.2 The Carrier shall not be liable for loss, damage or delay in respect of the Goods caused by matters beyond its control, including:

15.2.1 the manner in which the Goods have been prepared or packed by anyone on behalf of the Customer for the carriage of the Goods by the Carrier;

15.2.2 the suitability of the Goods for carriage by the Carrier (including the height, width or weight of the Goods);

15.2.3 the defective condition of the Goods.