

# Consignment Note

## Trading as Hunter United Transport

### Conditions of Carriage

#### 1. DEFINITIONS AND INTERPRETATION

Hunter United Transport A.B.N. 78 826 430 766 (hereinafter referred to as "The Carrier"), which expressions shall include its servants, agents and Sub Contractors is not a common carrier and will accept no liability as such. The Carrier reserves the right to refuse the carriage or transport of goods for any reason, corporation or company and the carriage or transport of any class of goods as its discretion. In these conditions, unless the context does not permit:

- 1.1 "Carriage" means all services (including cartage, storage, packing, handling) undertaken by the carrier.  
"Collection address" means the place so designated on the face hereof from which the Carrier is to collect the Vehicle.  
"Container" includes any container, trailer, tilt, igloo, wagon, tank, pallet, frame or other thing used to consolidate, package or store vehicle.  
"Customer" includes the sender, shipper, consignor, consignee, receiver of the Vehicle, any person owing or entitled to possess the Vehicle, and anyone acting on behalf of same all be absolute and unfettered and the successors and assigns of the same.  
"Customers Warranty" means the warranties in clause 3.1 and the warranty of the authority to sign overleaf.  
"Delivery Address" means the place so designated on the face hereof to the Vehicle are to be delivered.  
"Lawful Authority" includes any government or public body having any power to regulate any part of the carriage or to issue permits or make directions or recommendations or to confiscate Vehicle or their destruction.  
"Loss" includes damage to Vehicle and/or consequential and/or economic loss.  
"Sub-Contractor" means the Carrier's sub-contractors and those sub-contractor's servants, agents or sub-sub-contractors, indirect and direct sub-contractors.  
"Vehicle" means any vehicle of whatever description to be carried and includes any trailers or other attachments and includes equipment and other things used on the vehicle and any property contained in the vehicle.
- 1.2 The customer shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to the agreement.
- 1.3 Any exercise of discretion by the Carrier shall be absolute and unfettered and may be unreasonable or arbitrary.
- 1.4 Where the customer comprises two or more persons, they are bound jointly and severally.
- 1.5 This agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of its Courts.

#### 2. COMPULSORY LEGISLATIVE REQUIREMENTS PARAMOUNT

- 2.1 Notwithstanding anything to the contrary herein the Carrier is (and these conditions must be read) subject to:
  - any condition, warranty or obligation imposed on the Carrier by the Trade Practice Act 1974 (cth) or the fair Trading Act 1989 (Qld);
  - any other legislation which is compulsorily applicable to the Carriage; if and to the extent that same is compulsorily applicable hereto and cannot be excluded.
- 2.2 if any condition herein invalid or unenforceable in any jurisdiction, such condition shall to that extent in that jurisdiction be deemed not to form part of these conditions but the validity and enforceability of the remainder of these conditions shall not be affected.

#### 3. CUSTOMERS WARRANTIES ACKNOWLEDGMENTS AND INDEMNITIES

- 3.1 The Customer warrants:
  - 3.1.1 the correctness of the information listed as defects in or damage to vehicle at the time it was delivered to the carrier.
  - 3.1.2 that the customer is the owner of the vehicle (or the Owner's agent) and the customer is authorised by all persons owning or interested in the Vehicle to enter into these arrangements and the customer accepts these conditions of contract for the customer as well as for all other persons on whose behalf the customer is acting,
  - 3.1.3 that the person handing over the vehicle to the carrier is authorised to sign and accept these conditions.
- 3.2 the customer shall indemnify the carrier against any loss (including any fine, levy, charge or other monetary in position to which the carrier may become liable incidental to the carriage) damage, death, or injury including loss or damage to the carriers containers and/or equipment arising out of:
  - 3.2.1 the customer's unreasonable detention of any vehicle container or other equipment of the carrier.
  - 3.2.2 any breach by the customer of any customers warranty.

#### 4. DEVIATION OR SUB CONTRACTION

The Carrier will arrange for the carriage of goods by any Independent Contractor or Sub-Contractor of the Carrier. In respect of any clause herein which excludes or in any way limits the liability of the Carrier in respect of the carriage of goods, the carrier in addition to acting for himself is acting as a agent of the trustee for each of his servants and persons or company so that his servants and such person or company and his or its servants are parties to this contract so necessary to give effect to this clause the carrier shall hold the benefit if these conditions for his servants and for any such person or company and or its servants.

- 4.1 the customer authorises the carrier (in its discretion at any time with out notice to the customer) to:
  - 4.1.1 sub-contract on any terms all or any part of the carriage.
  - 4.1.2 use any form of transport all storage whatever including:
    - using services of others to ensure safety of other road users and property and/ or compliance with lawful authority requirements and or police or private escort, road closers and/ or transport control and using specialist equipment.
  - 4.1.3 proceed by any route whether or not the nearest and/ or most direct and/ or customary route: proceed or stay at any place what so ever (although in contrary direction to, or differing from the customary or intend or advertised routes) once or more often in any order backwards or forwards, and store the vehicle at any such place for any period whatsoever: and
  - 4.1.4 comply with any order, direction or recommendation on loading, unloading, departure, route, place or call, stoppages, destination, arrival, discharge, delivery, or otherwise whatsoever given by any lawful authority AND any such action and resulting delay is deemed to be included within contractual route and manner of carriage and is not a deviation.

#### THE CARRIER

##### 5. LIABILITY

- 5.1 Subject to clause 2, at all times and in all circumstances and for all purposes, the vehicle shall be and remain at the customer's sole risk. The carrier shall not be liable for any delay or any loss or damage or any consequential loss to vehicle occasioned during carriage arising from:
    - any delay or loss or damage to vehicle occasioned during carriage arising from:
      - an act of god, or consequence of war or confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process or civil commotion lock out, general partial stoppage or restraint of labour from what ever cause or compliance with directions of any person or lawfully authority entitled to give them, or a delay in delivery or non-delivery in vehicle how soever arising out of or incidental to carriage including deviation, failure to delivery, mis delivery to any unauthorised person.
      - any services provided pursuant to this contract, or a variation thereof, or any warranties or any representations made in respect there of or any subsequent contract between Hunter United Transport and the owner, sender or receiver or any other persons in relation to the vehicle and whether or not the same shall be due or alleged to be due to the misconduct or negligence and whether or not the same was caused by an act or omission which was authorised or permitted by or within scope of this contract: in the act omission whether wilful, reckless, negligent or other wise of the carrier, or its servants or agents or sub contractors, or
      - any act or neglect of the customer including a failure to take delivery or any handling, loading, storage or unloading of the vehicle.
  - 5.2 the defence and exclusions or liability in these conditions generally including 5.1 applied in any actions (whether based on contract, tort, bailment or any other cause of action how soever arising) against the carrier even if it resulted from an act or omission of the carrier done wilfully or recklessly with knowledge that the damage would or would probably result.
  - 5.3 nothing what soever done or omitted to be done or other conduct by the carrier in breach of the conditions or other wise how soever lawfully or unlawfully, shall under any circumstances constitute either a breach going to the root of the agreement, or deviation or departure there from or a repudiation there of such as to have the effect of disentitling the carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other like protections herein which shall continue to have full force and effect in any event whatsoever.
  - 5.4 subject to clause 2 but without prejudice to any other provision hereof, this contract and any contract the carrier makes under its authority and any contract made by any person to whom the carrier has delegated such authority, shall be made by the customer or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the vehicle or the carriage including storage therefore by any port, harbour, dock, railway, shipping, airways, or other lawful authority or person into whose hands it may become necessary to entrust the vehicle or to whose control the vehicle become subject in transit. All further or addition charges which may become payable on the vehicle or its carriage as a result shall be payable in the manner as provided by clause 6
6. FREIGHT & OTHER CHARGES  
Freight shall be considered earned whether the goods are delivered to the consignee or not and whether damaged or otherwise. In the event delivery address is unattended goods will be taken to holding yards and charges will be applied accordingly or left at the specified place of delivery whether unattended or not at the carriage option. In which case delivery would be presumed to be completed
  - 6.1 the customer is and remains liable for all the carriages proper chargers incurred for any reason. Freight is deemed earned as soon as the vehicle is loaded and dispatched. any invoice for any charges (including cost incurred by the carrier on the customers behalf) is payable within 30 days of invoice date without further demand, failing which the customer must pay.
    - interest thereon at the rate of 18% per annum accruing from the invoice date until payment, and all cost (including solicitors cost on a solicitor and on own clients base) incurred by the carrier in recovering the outstanding monies.
  - 6.2 any additional charge will be made by the carrier:
    - for any delay over 30 minutes in loading or unloading (from when the carrier reports for such loading or unloading) and / or any overnight or extend storage of the vehicle occurring other then from the carriers default.
    - to provide any services required by the customer which differ from the carriage on which the carrier quoted (whether as to the nature of the vehicle, nature and location of the collection or delivery address, facilities for loading or unloading, delivery times or date or other wise)
  - 6.3 the customer shall in addition to any charges here under reimburse the carrier for any goods and services tax payable or assessable against the carrier for the supply here under and for any other applicable duties and or charges imposed by any lawful authority.

##### 7. INSURANCE

- 7.1 insurance will not be arranged by the carrier except with the express instructions in writing of the consignor and then only at the consignor expense and on lodgement of a declaration as the value prior to collection.

##### 8. LIEN FOR UNPAID FREIGHT AND CHARGES

- 8.1 vehicles are received and held by the carrier subject to a lien for all charges due to the carrier here under, and a general lien for all moneys due to the carrier from the customer from any other services rendered at any time by the carrier to the customer.
- 8.2 if any lien remains unsatisfied after 7 days from the date when the carrier notified the customer of such lien, the vehicle may, at the discretion, be sold by public action or private treaty and the sale proceeds applied in or towards the satisfaction of every such lien and all proper expenses in relation there to (including sale and legal expenses) and the carrier shall account to the customer for surplus then remaining, any such sale not prejudice or affect the carrier right to recover from the customer any charges due or payable in respect of the carriage or such detention and sale.

##### 9. FORCE MAJEURE

- 9.1 were the carrier is unable, wholly or in part, by reason of any fact, circumstances, matter or thing beyond the reasonable control of the carrier (force majeure), to carry out any obligation under this agreement and the carrier:
  - (a) gives the customers prompt noticed of such force majeure with reasonably full particulars there of and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation, and
  - (b) uses all reasonable diligence to negate or remove that force majeure as quickly as possible, that obligation is suspended, so far as it is affected by force majeure, during the continuance there of.
- 9.2 the requirement that any force majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lock outs or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the carriers

##### 10. LAW

This contract shall be governed by the laws for the time being in force in the state of NSW

##### 11. JURISDICTION

The parties to the agreement consent to any dispute arising under or out of this agreement being subject to the exclusive jurisdiction of the courts in and of the state of NSW and courts having jurisdiction to here appeal from such courts.

##### 12. ENTIRE AGREEMENT

These terms and conditions together with any printed on the reverse side hereof contain the whole of the agreement between to customer and the carrier in relation to carriage of the vehicle and any previous agreement are hereby negated.