

1. Definitions

- 1.1. "Dangerous" means dangerous or liable to be dangerous in fact or law, including without limitation volatile, flammable, explosive, corrosive, chemically reactive, radioactive, or otherwise potentially damaging to property or people; and illegal substances, firearms, and live animals of any description.
- 1.2. "Goods" means any and all goods that the Consignor engages the Carrier to transport from time to time (including all containers, pallets and packaging used or hired in relation to the Goods).
- 1.3. "Services" means any transport and carriage services provided by the Carrier from time to time and the services incidental thereto (such as loading, unloading, storage, removal and assembly).
- 1.4. "Carrier" means Exodas Pty Ltd (ACN 102 448 868), Genesis Nursery Pty Ltd (ACN 130 759 803), Evergreen Freight Pty Ltd (ACN 604 741 399), and where interpretation permits, their associated entities and related bodies corporate (as defined in the *Corporations Act*), and the employees, agents, officers, and contractors of the above.
- 1.5. "Consignor" means the person or entity that has consigned Goods for transport by the Carrier, and where interpretation permits, the Consignor's employees, agents, officers, and subcontractors.

2. Transport Services

- 2.1. **THE CARRIER IS NOT A COMMON CARRIER AND ACCEPTS NO LIABILITY AS SUCH. THE CARRIER RESERVES THE RIGHT TO REFUSE TO PROVIDE THE SERVICES AND ANY OTHER CARRIAGE OR TRANSPORT SERVICES TO ANY PERSON OR ENTITY WHATSOEVER.**
- 2.2. The Carrier gives no acknowledgement of the condition or quality of the Goods notwithstanding the collection of Goods or the signing any document.
- 2.3. The Carrier is authorised to deliver the Goods to any person at the delivery address and the signature of such person is conclusive proof of due delivery.
- 2.4. If the Carrier attempts to effect delivery but the consignee is not available, is not ready willing and able to accept delivery, or delays delivery, or if delivery is otherwise not reasonably possible, then the Carrier may (a) make further attempts to deliver the Goods, (b) return the Goods to the Consignor, (c) store the Goods pending delivery, collection, return or disposal, and/or (d) dispose of the Goods. The Carrier may charge the Consignor reasonable additional fees for the above and may apply any proceeds from the Goods against the Consignor's account.
- 2.5. The Carrier will deliver the Goods at intermediate points only by special arrangement and then only provided suitable facilities are available at all hours.
- 2.6. The Consignor authorises the Carrier to contract as principal or as agent for the Consignor for any other person to provide the Services (including the lease or use of any container used to store, transport or package the Goods, and to give any receipt of the Goods for any container), on terms that the Carrier considers desirable.
- 2.7. The Carrier may carry the Goods and provide the Services in any way it sees fit and is not bound to use any particular method of transport or storage unless otherwise agreed in writing. If the Carrier does so agree, then the Carrier is only bound to make reasonable efforts and may change the method if convenient to the Carrier without incurring any liability. Without limiting the foregoing, the

Carrier may take any route and deviate from any route as it considers desirable in its absolute discretion.

- 2.8. The Carrier may open any document, wrapping, package or other container to
- 2.9. inspect the Goods as desirable.
- 2.10. The Carrier may sell, dispose, store, unpack, re-pack or otherwise deal with the Goods as it sees fit in its absolute discretion (all at the Consignor's cost and risk) without incurring any liability towards the Consignor or any other person if (a) clause 2.4 applies; (b) the Carrier reasonably believes that the Goods are or are likely to be Dangerous and (i) this has not been fully declared on the consignment note or (ii) the Carrier reasonably believes that the applicable laws and regulations for such goods have not been complied with; or (c) the Carrier enforces its lien under clause 4.7. The Consignor indemnifies the Carrier for any action taken under this clause. This clause does not limit the Carrier's rights under the *Disposal of Uncollected Goods Act 1967 (Qld)* or otherwise.

3. Consignor Warranties and Obligations

- 3.1. The Consignor warrants that the Goods are fully described on the consignment note and that all information provided is accurate. The Carrier does not verify such information despite any signature or representation.
- 3.2. The Consignor warrants that the Goods are (a) not Dangerous Goods (except to the extent declared on the consignment note); (b) properly and fully sealed, packaged, stored, labelled and described in a manner that is appropriate to protect and identify the Goods in the ordinary course of transport having regard to their nature; and (c) properly packaged, labelled and described in accordance with, and otherwise comply with, all applicable laws and regulations (including but not limited to the Australian Code for the Transport of Dangerous Goods by Road and Rail, the International Maritime Dangerous Goods Code, and the Civil Aviation Regulations).
- 3.3. The Consignor warrants that it owns the Goods or has authority to deal with the Goods, and the Carrier will not incur any civil or criminal liability by dealing with the Goods, as contemplated by this agreement.

4. Charges and Payment

- 4.1. The Consignor is principally liable for all charges and fees incurred pursuant to this Agreement.
- 4.2. The Carrier may charge freight by weight, measurements or value, and at any time may (or may arrange for another party to) re-weigh or re-measure or re-value and charge additional fees accordingly.
- 4.3. The Consignor must also pay all costs and charges incurred by the Carrier in the performance of the Services, including but not limited to customs excise and duties, taxes, demurrage, storage fees, tolls, and any amount imposed by or incurred to comply with any law or regulation, or any requirement of any dock, railway, port, warehouse or other such authority or organisation. The Consignor indemnifies the Carrier against the above.
- 4.4. The Carrier may charge reasonable additional fees for any delay incurred by reason of the Consignor, including any delay in the collection and delivery and loading and unloading of the Goods.
- 4.5. The Carrier is deemed to have earned its charges, and the Consignor is liable for such charges, upon the Carrier taking possession of the Goods. No refunds are

permitted under any circumstances unless

required by law.

4.6. The Consignor must pay all invoices without any deduction or set-off whatsoever. The Consignor must notify the Carrier of any dispute within 14 days of an invoice or the Consignor will be deemed to have accepted it.

4.7. The Consignor grants a general lien to the Carrier over all goods and

documents in the Carrier's possession from time to time to secure the payment of all amounts payable by or on behalf of the Consignor from time to time.

4.8. Overdue amounts payable by the Consignor shall accrue overdue interest at the rate of ten percent (10%) per annum. Interest shall compound monthly and bear interest in accordance with this clause. Interest may be recovered from the Consignor as a liquidated debt. However, the Carrier may claim a higher interest rate if permitted by law.

5. Limitation of Liability

5.1. To the extent permitted by law, all guarantees and warranties not expressly contained in this Agreement are excluded. The Carrier shall not be liable for, and the Consignor releases and indemnifies the Carrier from and against, any loss, cost, damage, liability, and personal injury (including death) arising from the Goods or Services, including without limitation the damage, loss, theft, misdelivery, non-delivery, delayed delivery, deterioration, devaluation, expiry, contamination, loading, unloading, packaging or mishandling of the Goods or any part thereof at any time, even if caused by the negligence, gross negligence or wilful act or omissions by the Carrier.

5.2. **THE CONSIGNOR IS SOLELY RESPONSIBLE FOR ADEQUATELY INSURING THE GOODS AGAINST ALL RISKS INCLUDING THOSE LISTED ABOVE. THE CARRIER IS UNDER NO RESPONSIBILITY TO INSURE THE GOODS AND SHALL NOT BE LIABLE TO THE CONSIGNOR FOR ANY FAILURE TO INSURE NOTWITHSTANDING ANY PROMISE OR REPRESENTATION TO THE CONTRARY.**

5.3. The Carrier shall not be liable for any pallets, containers or other packaging, including but not limited to any loss or damage, hire fees or exchange, and the Consignor indemnifies the Carrier in respect thereof.

5.4. Nothing in this Agreement shall be construed to exclude any warranty or guarantee that cannot lawfully be excluded. To the extent permitted by law, the Carrier's liability for a breach of any guarantee or warranty that cannot be excluded shall be limited to, at the Carrier's option, replacing or repairing the Goods, re-supplying the Services, or paying the cost of either of the aforementioned.

5.5. The Carrier will not in any circumstances be liable for any claim for consequential loss, loss of opportunity, revenue, profit or anticipated profit, accommodation costs, removal or storage fees, or legal fees.

5.6. Any proceedings against the Carrier must be commenced within six (6) months of the last date on which the relevant Services were provided and must be commenced in the registry nearest to Brisbane, Queensland.

5.7. The Consignor indemnifies and shall keep indemnified and hold harmless the Carrier against all loss, costs, damage, expense (including legal and debt recovery costs on an indemnity basis) and claims suffered in connection with: (a) the Carrier's dealings with the Goods, (b) any non-payment or other breach of these conditions by the Consignor, and (c) damage or injury to people or property

caused by the Goods.

6. General

- 6.1. The Carrier is authorised to make all reasonable enquiries into the Consignor's personal, consumer and commercial creditworthiness from, and disclose or exchange information about the Consignor's creditworthiness with, trade referees, accountants or financial institutions, and any credit provider or credit reporting agency.
- 6.2. Unless otherwise specified, consideration under this Agreement is exclusive of GST. If the Carrier is liable for GST in respect of a supply, the consideration shall be increased by the amount of the GST liability.
- 6.3. This Agreement supersedes all prior agreements, arrangements and undertakings between the parties. Any terms contained on a receipt, invoice, or other document issued by the Consignor to the Carrier shall be of no effect.
- 6.4. This Agreement may be varied only by agreement in writing signed by an authorised officer of the Carrier.
- 6.5. This Agreement shall be governed by the laws of Queensland and, where applicable, the Commonwealth of Australia, for the time being in force. The parties submit to the jurisdiction of the courts of Queensland.
- 6.6. If any term or part of a term of this Agreement is or becomes legally ineffective, invalid or unenforceable, it will be severed and the effectiveness, validity or enforceability of the remainder will not be affected.
- 6.7. If the Carrier is not able to comply with an obligation due to an act, cause or event outside its reasonable control (including but not limited to a transport delay or accident, adverse weather, action or inaction of a government authority, or breakdown of machinery) then such obligation shall be suspended until such cause ceases.

Any release, indemnity or limitation of liability given in favour of the Carrier is held by the Carrier on trust for each other person that has the benefit of the release, indemnity or limitation (pursuant to clause 1.4 or otherwise), and such beneficiaries will be entitled to rely on and enforce that release, indemnity or limitation in their own right.