

Terms and Conditions ("T&C")

T&C between Ezy Express Freight Pty Ltd ACN 639 320 479 (ABN 49 639 320 479) of 17 Broadsound Road, City Gates, Mackay, Queensland ("Supplier") and the client ("Client")

1. Definitions and Interpretation

In these T&C, unless the context otherwise requires:

- (a) "Claim" includes a claim, demand, notice, investigation, action, proceeding, suit, judgment, damage, loss, cost (including legal expenses on a full indemnity basis), charge, fine, penalty, expense or liability of any description, however based (including whether based in contract, tort or statute) and however arising (including whether present, future, unascertained, or contingent);
- (b) "Contract" has the meaning to it given in clause 2.4.
- (c) "Delivery Address" means the address for delivery of the Goods as specified in the Schedule;
- (d) "Force Majeure Event" means any event or circumstance or combination of events and circumstances which is beyond the reasonable control of the party affected and causes or results in delay in, or prevention of, the performance by the party affected of any of its obligations under a Contract;
- (e) "Goods" means and includes those goods, plant, equipment products, parts, consumables and/or further items (as the case may be) requested by the Client to be transported by the Supplier pursuant to a contract formed between the Supplier and Client in accordance with the Quote, including those specified in the Schedule;
- (f) "Law" includes statute, regulation, by-law, proclamation, ordinance, code and rule;
- (g) "Loss" means any loss (including loss of rent and/ or profit), cost, damage, expense, liability, diminution in value or deficiency of any kind, or character or description, however based (including whether based in contract, tort or statute) and however arising (including whether present, future, unascertained, or contingent);
- (h) "Payment Date" means the date specified in the Schedule.
- (i) "PPSA" means the *Personal Property Securities Act 2009* (Cth) and its regulations, as amended and in force from time to time;
- (j) "PPSR" means the Personal Property Securities Register as established under the PPSA;
- (k) "PMSI" means a 'Purchase Money Security Interest' as that term is defined in the PPSA;
- (l) "Price" means the price for the Services as set out in the Schedule or otherwise quoted by the Supplier from time to time;
- (m) "Security Interest" means a security interest as defined in the PPSA;
- (n) "Services" means the provision of handling, transportation or freight services, which were the subject of the request by the Client;
- (o) "Quote" means the quotation provided by the Supplier to the Client for the Services, which incorporates these T&C;
- (p) Where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (q) All amounts are in Australian dollars (AUD).

2. Quote

- 2.1. The Client warrants that it has carefully read the Quote.
- 2.2. Unless the Quote is on a fixed-price basis, any estimate of the Price is a non-binding approximation only.
- 2.3. The Supplier reserves the right to adjust the Quote due to any changes in federal or state government legislation. The Supplier may adjust the Quote at any time without first needing to obtain the Client's prior consent. The Supplier shall endeavour to provide written notice to the Client of any changes to the Quote within a reasonable time.
- 2.4. The Client may accept the Quote by any form of overt acceptance (verbal and/or written) ("Acceptance"). For clarity, the Acceptance of a Quote qualifies to acceptance of these T&C in full. On Acceptance, a contract is formed between the Supplier and the Client (and any guarantor) on the terms of the Quote and these T&C ("Contract").
- 2.5. The Acceptance must not contain any terms or conditions that are contrary to the Quote (which includes these T&C). Any terms or conditions that are contrary or supplementary to the Quote are not accepted by the Supplier unless the Supplier specifically acknowledges and agrees to such terms in writing.
- 2.6. The Client must notify the Supplier of the details of any of the Client's staff that do not have authority to provide Acceptance, or only have some limited authority. If the Supplier does not hear from the Client, the Supplier is entitled to assume that all of the Client's staff have full authority to provide Acceptance.

3. Payment

- 3.1. The Supplier may send the Client accounts for specific contracts and/or for the payment of all outstanding amounts charged to credit account.
- 3.2. In consideration of the Services that the Supplier is to provide to the Client under the Contract, the Client must pay the Price, in cleared

funds by the Payment Date.

- 3.3. Tax invoices will be posted or emailed to the address (or to any address otherwise notified to the Supplier). This is sufficient notice of the amount due under the tax invoice.
- 3.4. A statement setting out details of the amount owing and any other matters relating to the Account signed by the Supplier is sufficient evidence (in the absence of any manifest error) of the provision of the Services by the Supplier to the Client. This statement may be used in court proceedings.

4. GST

- 4.1. The parties agree that unless otherwise specified, the consideration for the supply of goods and services under any Contract is exclusive of GST (goods and services tax under *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended or replaced).
- 4.2. The party making the supply shall provide to the recipient of that supply a valid tax invoice at or prior to the time for payment of the GST amount.

5. Services

5.1. Performing the Services

- (a) All Goods are carried, handled and transported, and all other services are performed by the Supplier, subject to these T&C.
- (b) The Client must promptly provide the Supplier with all necessary documents and information to enable the Supplier to quote on the Services and to provide the Services, including to precisely and accurately state its requirements with respect to the Services.
- (c) If the Client becomes aware of any matter that will change the scope or timing of the Services, then the Client shall promptly notify the Supplier of the matter. Any changes are at the discretion of the Supplier and the Client will be liable for any further costs that are incurred by the Supplier in providing the Services due to the change.

5.2. Delivery

- (a) The Client requests and authorises the Goods to be delivered to the Delivery Address.
- (b) The Supplier must deliver the Goods to the Delivery Address and must make reasonable efforts to make delivery by the Delivery Date. However, the Delivery Date is only an estimate and the Supplier does not guarantee delivery by that date. The Supplier will not be liable for any delays in supply or late delivery and will not be liable for any Loss, damage or delay occasioned by the Client or any other persons arising from the late supply, completion or delivery.
- (c) Prior to delivery, the Client must have paid in cleared funds all amounts under the Contract that are said to be due to the Supplier on or before the Delivery Date. If not, then the Supplier may refuse to deliver the Goods until full payment is made.
- (d) Any receipt or signed delivery docket obtained by the Supplier for the Goods from any person at the Delivery Address shall be conclusive evidence of delivery of the Goods to the Delivery Address and their acceptance of the Goods.
- (e) The Supplier at no time assumes risk of the Goods. The risk of the Goods remains with the Client at all times.
- (f) If the Delivery Address is unattended or if the Supplier is otherwise unable to effect delivery to a person, then the Supplier may leave the Goods at the Delivery Address. The Client agrees that this will fulfil the Supplier's obligations to deliver the Goods.

5.3. Insurance

- (a) Where the Services are to be carried out on a site nominated by the Client, the Client shall effect and maintain whilst the T&C remain in force and whilst any Services are being carried out by the Supplier public liability insurance for a minimum of \$20,000,000 and any insurance policy (to the required value) required by the Supplier or by Law.
- (b) The Client should have all appropriate insurance for the Goods prior to engaging the Supplier and prior to the Goods being transported.
- (c) The Client will provide to the Supplier, if requested, evidence of such insurance policies being maintained by the Client.

5.4. Sub-Contracting

- (a) The Supplier reserves the right to sub-contract the Services or any part thereof to a third party.

6. Client Warranties

The Client warrants and covenants to the Supplier that:

- 6.1. It has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations (inclusive of the Australian Code for Transport of Dangerous Goods by Road and Rail and Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and

- packaging of the Goods and that, given their nature, the Goods are packed in a proper way to withstand the ordinary risks of transport.
- 6.2. It is either the owner or the authorised agent of the owner of the Goods, who has full power and authority to deal with the Goods.
 - 6.3. It has in place (whether prior to or at the time of entering into these T&C) adequate insurance coverage over the Goods for the carriage and/or handling of the Goods, and acknowledges and agrees that the Supplier does not take responsibility for such insurance.
 - 6.4. Neither it nor any other person will make an allegation or claim against the Supplier or any other person about the transport, handling or storage of the Goods, and the Client indemnifies the Supplier from any Loss arising from a breach of these warranties, the Client's obligations or these T&C.
 - 6.5. The person requesting the Goods to be carried, handled and stored is authorised to do so for and on behalf of the Client.
 - 6.6. Before or at the time of entering into these T&C, the Client will provide to the Supplier in writing the precise details of the class, volume and packaging type of dangerous or hazardous Goods so that the Supplier in its absolute discretion may accept or decline to proceed with the transaction, and should it proceed, accordingly notify all parties as required to ensure compliance in the transport and handling of dangerous class Goods.
 - 6.7. It will not tender for the Supplier's Services any explosive, dangerous or volatile Goods without prior consent and will not tender for the Supplier's Services any Goods which are or may become dangerous, inflammable or offensive.
 - 6.8. It will comply with all Law applicable to the nature, condition or packaging of the Goods and warrants that the Goods are packed in a manner, having regard to their nature, which is adequate to withstand the ordinary risk of carriage and the Client has correctly declared the weight and dimensions of the Goods.
 - 6.9. It will promptly comply with all reasonable requests from the Supplier for information and evidence in relation to the Client's compliance with relevant Law or to assist the Supplier to comply with relevant Law.

7. Default

- 7.1. If the Client fails to make any payment under the Contract when due then the Supplier is entitled to claim interest at the rate of the 12% per annum on the amount outstanding from time to time with interest calculated on daily balances outstanding and with any interest not paid at the end of each month added to the amount outstanding and attracting interest accordingly. The Client acknowledges that this rate is reasonable.
- 7.2. The Client must on demand reimburse the Supplier for all costs, charges, expenses, fees, disbursements (including all reasonable legal costs on a solicitor and own client basis) paid or incurred by the Supplier of or incidental to:
 - (a) Any breach, default or repudiation of the Contract by the Client (including the fees of all professional consultants properly incurred by the Supplier in consequence of, or in connection with, any such breach, default or repudiation;
 - (b) The exercise or attempted exercise of any right, power, privilege, authority or remedy of the Supplier under or by virtue of the Contract, including all amounts incurred in repossessing any Goods from the Client under the terms of the Contract and in enforcing the Contract generally;
 - (c) To pay the fees of a debt collector or solicitor in association with any debt collection services provided to the Supplier in association with the Client breaching the Contract.
- 7.3. If the Client considers or has reason to believe that the Services provided by the Supplier did not comply with the Contract, then the Client must give immediate written notice of this to the Supplier, with full particulars and details of same. The Client agrees to give the Supplier the first right to address the issue(s) in question.

8. Liability

To the extent permitted by law:

- 8.1. The Client indemnifies the Supplier from any Loss and/or Claim as a direct or indirect consequence/result of the Client breaching the Contract.
- 8.2. The Supplier accepts no liability to the Client for Loss or damage to or deterioration or contamination of the Goods, or any delay, non-delivery, misdirection of Goods, or other failure to supply the Goods, or supply the Goods in time, or arising out of the Goods, or these T&C.
- 8.3. The Supplier accepts no liability for, and the Client releases and indemnifies the Supplier from any Loss and/or Claim or otherwise for loss or damage to the Goods, any delay, non-delivery or other failure to supply the Goods, deterioration, damage, contamination or loss of Goods or any failure arising or delay or the storage of the Goods.
- 8.4. The Supplier, notwithstanding any right the Client may have at law or in equity or otherwise under the Contract, shall not be liable for any loss or damages suffered by the Client for any economic loss or consequential loss or damage including loss of profits, loss of opportunity or loss of use of any goods or site (where applicable) or of the benefit of the works or any part thereof.
- 8.5. The Client accepts without limitation that:
 - (a) The Services are provided, carried and handled at the Client's risk,

- and the Supplier is under no obligation to arrange insurance to cover Goods for the Client against any form of direct or consequential loss arising; and
- (b) No Claim may be made against the Supplier for failure to arrange insurance on behalf of a Client, or for not insuring Goods in transit and handling and storage.

9. Charge and Mortgage

- 9.1. In order to secure to the Supplier the performance of any and all of the Client's obligations, the Client hereby charges all legal and equitable interest in real and personal property (wheresoever situated) that the Client owns, holds or may acquire in the future. As further and better security, the Client mortgage and charge to and in favour of the Client all right, title, estate and interest which they own, hold or may acquire in the future in any real and personal property.
- 9.2. The Client consents to the registration of a Security Interest and the Client each expressly waive any entitlement to receive a verification or any other notice that the Client may have been entitled to receive pursuant to the PPSA.
- 9.3. The Client must, at the Supplier's request, sign execute and deliver in favour of the Supplier such mortgage, charge and/or Security Interest over real or personal property in such form as the Supplier may require, such document or documents incorporating such terms as determined by the Supplier solicitor, to protect the Supplier's interests herein, within ten (10) days of the Supplier requesting same of the Client.
- 9.4. For the avoidance of any doubt, the Client confirms that the Supplier has a caveatable interest in any real property of which the Client is the registered proprietor. The Client consents to the registration of a caveat over any such real property by the Supplier so as to note the Supplier's proprietary interest and grant to the Supplier power of attorney to sign and register on behalf of the Client any consent caveat in respect of such real property.

10. Force Majeure

- 10.1. If a Force Majeure Event occurs, the party affected by the Force Majeure Event ("Affected Party") must promptly give the other party a notice of same.
- 10.2. The obligations of the Affected Party are suspended, to the extent that they are affected by the Force Majeure Event, from the date the Affected Party gives the notice until cessation of the Force Majeure Event.
- 10.3. On the cessation of the Force Majeure Event, the Affected Party must give notice to the other party of the cessation and resume performance of the suspended obligations.

11. PPSA Definitions

- 11.1. In these T&C and any other associated or collateral documents (unless a contrary intention is stated):
 - (a) "Controller" has the same meaning as in the PPSA;
 - (b) "Personal Property" has the same meaning as in the PPSA as it relates to: all personal property of the Client, including without limitation present and after acquired property of the Client; any personal property provided by the Secured Party to the Client on a retention of title basis; any personal property leased or provided on bailment by the Secured Party to the Client; and including without limitation, any Proceeds associated with the above personal property.
 - (c) "Proceeds" has the same meaning as in the PPSA;
 - (d) "Secured Party" means the Supplier or any lawful assignee, transferee or successor of the Supplier in relation to the Security Interest, the Contract and any other related document(s);
- 11.2. The Client acknowledges that if the Supplier's interest under the Contract, any contract, and any other related document(s), is a Security Interest for the purposes of the PPSA then that Security Interest relates to the Personal Property and all Proceeds of any kind and the Contract are a security agreement for the purposes of the PPSA.
- 11.3. The Supplier may register its Security Interest on the PPSR (including, without limitation, as a PMSI). The Client must do anything (such as obtaining consents and signing documents) which the Supplier requires for the purposes of: ensuring that the Security Interest is enforceable, perfected and otherwise effective under the PPSA; enabling the Supplier to gain first priority (or any other priority agreed to by the Supplier in writing) for its security interest; and enabling the Supplier to exercise rights in connection with the Security Interest.
- 11.4. If Chapter 4 of the PPSA does apply to the enforcement of a Security Interest arising under or in connection with the Contract and to the maximum extent permitted by law, the Client agrees that sections 95, 96, 117, 118, 120, 121(4), 123, 125, 126, 128, 129, 130, 132(3)(d), 132(4), 134(1); 135, 142 and 143 and Division 6 of Part 4.3 of the PPSA will not apply to the enforcement of that Security Interest.
- 11.5. Where a person is a Controller in relation to the Personal Property, the parties agree, to the maximum extent permitted by law, that Part 4.3 of the PPSA will not apply to the enforcement of any Security Interest in the Personal Property by that Controller.
- 11.6. The Client waives its right (including, without limitation, under s 275) to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA

and cannot be excluded.

12. Privacy Policy

- 12.1. The terms of the Supplier's Privacy Policy (available at our website) form part of these T&C ("Privacy Policy"). The Privacy Policy sets out how the Supplier collects, uses, stores and discloses the Client's personal information.
- 12.2. The Client warrants that it has read and agrees with to the terms of the Privacy Policy.
- 12.3. If the Client defaults in the payment of any moneys owed to the Supplier under the T&C, the Client authorises the Supplier to provide information of that default to a credit reporting body and to obtain an up to date consumer credit report. Personal information may be used and disclosed by the credit reporting body in accordance with the Privacy Act to create or maintain a credit information file containing information about the Client, including defaults in excess of 30 days and the debt owed to the Supplier.

13. General

- 13.1. The Client consents to electronic communication, as does the Supplier. The Supplier may send any email to any address used by the Client in communicating with the Supplier. The Client must email the Supplier at freight@ezygroup.net unless the Supplier otherwise agrees.
- 13.2. The Client represents and warrants to the Supplier that:
 - (a) It is validly existing and, if a company, is registered and was duly incorporated;
 - (b) It has full capacity, power and lawful authority to enter into this Agreement;
 - (c) It has taken all action that is necessary or desirable to authorise the execution and performance of this Agreement;
 - (d) This Agreement and the matters which this Agreement concerns and contemplates is in its commercial interests and for its benefit;
 - (e) This Agreement constitutes the legal, valid, binding and enforceable obligations of the Client in accordance with the respective terms;
 - (f) It is not subject to any insolvency event; and
 - (g) There are no reasonable grounds to suspect that it will not be able to pay its debts, as and when they fall due.
- 13.3. The Client must not deduct from any payment any amount the Client claims the Supplier owes, or could in the future owe, the Client and cannot set off (or otherwise withhold or deduct) any such amount against any payment the Client must make under any Contract.
- 13.4. The Client will notify the Supplier immediately of any change in its address or contact details.
- 13.5. The Contract constitutes and embodies the entire understanding and agreement between the parties in respect of its subject matter and supersedes all prior agreements, representations, promises, statements and negotiations in respect of its subject matter.
- 13.6. If any provision of the Contract is void, voidable, unenforceable, or illegal in its terms, but would not be void, voidable, unenforceable or illegal if it were read down and, it is capable of being read down, that provision will be read down accordingly. In any other case, the provision is severed and the remainder of the Contract will be of full force and effect.
- 13.7. The Contract shall be governed by and construed in accordance with the laws of the State of Queensland and the parties agree to submit to the jurisdiction of the Courts of that State in all matters arising out of the Contract.