



## 1. Definitions

In these conditions;

- 1.1 “Charges” means the fee for Services payable pursuant to any agreement between the Company and the Customer, including for the Carriage of Goods.
- 1.2 “Company” means KIS Transport Australia Pty Ltd ABN 75 155 179 972 and/or KIS Corporate Pty Ltd ABN 86 617 236 352 and its related body’s corporate (as defined under the Corporations Act (Cwlth) 2001).
- 1.3 “Customer” means the party entering into the contract for carriage with the Company and, without limitation includes the sender or receiver of the Goods, any party requesting the Third Party Provider to provide the Services and any agent, representative or employee of the Customer.
- 1.4 “Dangerous Goods” means goods of a hazardous, noxious, offensive, volatile, inflammable or explosive nature or goods the carriage of which is illegal, prohibited or restricted by any law of the Commonwealth of Australia or any State or Territory therein by reason of the content, packaging, labelling or other feature of the Goods.
- 1.5 “Goods” means the goods the subject of the Services and includes any container, packaging, pallets or handling equipment supplied by or on behalf of the Customer.
- 1.6 “Person” includes natural persons, companies, limited partnerships, government or other statutory authorities or instrumentalities and any other legal entity known at law.
- 1.7 “Quotation” means any quote for undertaking the Services provided to the Customer by the Company.
- 1.8 “Services” means all of the services undertaken by the Third Party Provider for the Customer in connection with the Goods as set out in the Quotation or as otherwise agreed between the parties and, without limitation, may include carriage and/or storage of the Goods.
- 1.9 “Third Party” means any Person who, pursuant to a contract or arrangement with any other person (but excluding a contract of employment) performs or agrees to perform the Services or any part thereof.
- 1.10 “Platform” means the software supplied by the Company to access Services provide by the Third Party Providers.

## **2. Exclusion as Common Carrier**

2.1 The Company and the Third Party Providers are not a common carrier and accept no liability as such. The Company and the Third Party Providers reserve the right to refuse the carriage of Goods for any Person and for the carriage of any classes of goods, at its discretion.

## **3. Third Party Provider**

3.1 The Customer authorises the Company (at the Company's discretion) to sub-contract the whole or any part of the Services and this authorisation extends to any such Third Party Provider.

3.2 Any provision in these terms and conditions excluding or limiting the liability of the Company or providing any relief or exemption from liability, to the Company, shall also extend to all Third Party Providers.

3.3 Where the Company subcontracts the whole or part of the Services the Customer covenants and agrees that for the period of performance of the Services and for a period of 12 months after the Services are provided it will not, without the written consent of the Company engage the Third Party Provider to perform like or similar services to the Services. The Customer acknowledges that this covenant is provided to protect the reasonable commercial interests of the Company and that it will suffer loss and damage if the Customer breaches this covenant.

## **4. Carriage and Delivery**

4.1 The method or methods of undertaking the Services shall be at the discretion of the Company or Third Party Provider and the Customer authorises the Company or Third Party Provider to adopt any method irrespective of whether the Customer has otherwise instructed the Company or Third Party Provider to undertake the Services by a particular method.

4.2 The Company or Third Party Provider is authorised to deliver the Goods at any address nominated by the Customer to the Company or Third Party Provider for that purpose.

4.3 If any such nominated place of delivery is unattended when delivery is attempted, or if for any other reason the Third Party Provider is unable to effect delivery of the Goods or is delayed in so doing, the Third Party Provider shall be entitled to handle and store the Goods in such manner as it may in its reasonable discretion determine, and shall be entitled to make a reasonable charge in respect of such handling and/or storage and subsequent delivery of the Goods, and the Customer shall meet such reasonable charge as the Company or Third Party Provider may make and indemnify the Company for any other costs or expenses incurred as a result thereof.

4.4 Without limiting the generality of this clause 4:-

4.4.1 If the delivery method for the Services is rail and the delivery address is a location where the Third Party Provider does not have depot or other infrastructure, the Company or Third Party Provider will be taken to have delivered the Goods if left at the nearest railhead.

4.4.2 The Third Party Provider may consolidate the Goods for transport, with other Goods, including by the use of containers, pallets or rail wagons.

4.4.3 If any identifying document or mark on the Goods is lost, damaged or destroyed the Third Party Provider may open the Goods or any container or other method of conveyance utilised to inspect.

4.5 The Company or Third Party Provider shall be entitled to make reasonable charge in respect of any delay in loading or unloading occurring otherwise than from fault on the part of the Company or Third Party Provider.

4.6 The Company acts as agent on behalf of the applicable Third Party Providers in providing access to facilitate freight bookings. The Service is provided by the Third Party Provider selected at the time of finalising the booking. The Company is not responsible for subsequent changes to the Third Party Providers scheduled ETAs etc.

## **5. Qualification to Quotations**

5.1 No Quotation will bind the Company unless it is given to the Customer, in writing.

5.2 The parties acknowledge that in respect of the charges;

5.2.1 Quoted Charges for the provision of the Services are dependent upon the information provided by the Customer.

5.2.2 Customers must check all information on quotes before accepting said quote.

5.2.3 Where the Customer provides information which is materially inaccurate, the Third Party Provider will be entitled to charges based on its standard rates for the Services actually provided, even if this results in the invoicing of Charges in excess of those contained in any quote.

5.3 The provisions of this clause shall continue to apply even if the Company has billed the Customer and been paid before the inaccuracies are ascertained by the Company or conveyed to the Company by the Third Party Provider and in any such circumstances the Company may render a further Charge to the Customer.

5.4 In the event that an agreement for the carriage of the Goods is not based on a fixed amount (subject to variation in accordance with this agreement) then the following shall apply (subject to agreement to the contrary);

5.4.1 Freight will be paid at the hourly rate specified in the Third Party Providers then standard rate schedule at the time of provision of Services.

5.4.2 Demurrage (if applicable) will be charged at the rate charged to the Company directly or indirectly by any railway or shipping authority or other freight provider.

5.4.3 If any of the Goods are or become under custom's control, all custom's duty, excise duty and costs (including any fines or penalties) the Company or Third Party Provider becomes liable to pay or pays will be paid by the Customer or reimbursed by the Customer to the Company at cost.

5.5 Where, in the course of providing the Services, the applicable rate or rates of the Third Party Provider are increased (or discounted rates offered to the Company by the Third Party Provider are reduced) the Company will be entitled to pass on the direct extra cost of such increase to the Customer without first obtaining its agreement.

## **6. Condition of Goods**

- 6.1 The Goods must not be Dangerous Goods unless the Customer has expressly declared so in writing before provision of the Services.
- 6.2 Any Quotation provided is made on the basis that the Goods are not Dangerous Goods unless otherwise expressly agreed in writing.
- 6.3 The Customer warrants and assures the Company and Third Party Providers that;
- 6.3.1 The Goods are fit for carriage and have been suitably packaged for such purposes;
  - 6.3.2 The customer has their own marine insurance for all freight;
  - 6.3.3 The Customer has the authority of all persons owning or having any interest in the Goods to enter into this agreement on their behalf;
  - 6.3.4 The details of description, items, pallets base, quantity, weight, quality value and measurements supplied by the Customer (as applicable) are accurate and correct;
  - 6.3.5 The customer is not sending their household and personal effects that are not related to a commercial venture;
  - 6.3.6 There is suitable practical road and approach access to the place from which the Goods are to be collected to the place in which the Goods are to be delivered (where applicable);
  - 6.3.7 It accepts responsibility for loading and unloading of any Goods that consist of machinery for which a license to operate is required;
  - 6.3.8 The Third Party Provider delivering Goods for carriage is authorised to do so by the Customer.
- 6.4 The Third Party Provider is authorised to open any document or container (of whatever description) in which the Goods are placed or carried to determine the nature or condition of the Goods or their ownership or destination.
- 6.5 If, in the Third Party Provider's reasonable opinion the Goods are or are liable to become Dangerous Goods, the Third Party Provider may at the Customer's cost destroy, dispose of or render harmless the Goods without a requirement to compensate the Customer.

## **7. Dangerous Goods**

- 7.1 Except in the circumstances shown in conditions 7.2 and 7.3 below we do not carry, nor perform other services regarding, goods which are or are in our sole opinion dangerous goods including, but not limited to, those specified in the International Civil Aviation Organisation (ICAO) technical instructions, the International Air Transport Association (IATA) dangerous goods regulations, the International Maritime Dangerous Goods (IMDG) code, the European Agreement concerning the international carriage of Dangerous goods by Road (ADR) regulations or any other national or international rules applicable to the transport of, or the performance of other services regarding, dangerous goods (collectively referred to as 'dangerous goods').

7.2 The Third Party Provider may at their discretion accept some dangerous goods for carriage. The Customers Dangerous Goods will only be accepted by the Third Party Provider if they comply with the applicable regulations, codes and technical instructions (as referred to in condition 7.1) and the Third Party provider's requirements. Details of our requirements together with the procedure for applying for approved customer status are available from <https://kiscorporate.com.au/training/dangerous-goods/>.

7.3 Whether or not the Customer has declared that the shipment contains Dangerous Goods the Customer agrees that if the Third Party Provider considers on reasonable grounds that the shipment may cause injury or damage, they may do anything appropriate to minimize or avoid such injury or damage, including disposing of or destroying such dangerous goods, at the Customers cost unless the Third Party Providers actions were required due to their negligence. The Company will not be liable to you for any loss or damage you may incur by reason of the Third Party Providers actions under this condition.

7.4 The Customer must ensure and hereby certify by completing our consignment note or tendering a shipment to us that your shipment does not contain a prohibited article as specified in ICAO Annex 17 or other national or international regulations that govern aviation security. You must give us a full description of the contents of the shipment on the consignment note and other accompanying document, and your responsibilities and liabilities are not extinguished by providing this information.

7.5 Shipments carried, or handled, by a Third Party Provider may be subject to security screening which could include the use of X-ray, explosive trace detection and other security screening methods and you accept that your shipment may be opened and the contents of your shipment may be examined in transit.

7.6 The Customer declares that they have prepared the shipment for carriage, in secure premises using reliable staff employed by the Customer and that the shipment has been safeguarded against unauthorised interference during preparation, storage and transportation immediately prior to acceptance for carriage of the shipment by the Third Party Provider.

7.7 Third Party Providers do not accept shipments that contain prohibited items.

7.8 The Third Party Provider may be required to and the Customer hereby authorise the Company to share information, including your personal data for your shipment with the shipment destination country authorities or transit country authorities for customs and / or security reasons.

7.9 Unless you have received prior written approval from the Company, the Third Party Providers do not accept shipments that contain firearms and/or ammunition and the Customer warrant, represent and guarantee to the Company that the shipment does not contain firearms and/or ammunition.

## **8. Trading Terms and Payment**

8.1 The Company's trading terms are strictly seven (7) days from the date of invoice. Payment of the Charges must be made by the Customer to the Company in cleared funds and in full without any deduction or set off within the nominated timeframe.

8.2 Payment of the Charges must be made to or at the direction of the Company to its nominated bank account.

8.3 Where the Customer has supplied an account number of a third party for a Service to be charged to, the Customer confirms that they have written authorisation form the account holder to use the account number.

8.3.1 Where it is agreed that the Charges will be paid by a third party on behalf of the Customer, the Customer remains principally liable for charges incurred and will indemnify the Company against any loss resulting from non-payment of the Charges by the third party and, without limiting the generality, the Customer agrees that if or in so far as the Charges are not paid by the third party, they will be payable by the Customer on demand.

8.4 If Charges are not paid on the due date for payment, interest will accrue on the unpaid Charges at a rate equal to the overdraft rate of the Company's principal financier for overdrafts above \$100,000.00 plus a margin of 3%.

8.5 The following additional amounts will be payable where the circumstances described arise and will form part of the Charges;

8.5.1 Credit card payments incur a payment surcharge. Please refer to [www.kiscorporate.com.au/card-fees/](http://www.kiscorporate.com.au/card-fees/)

8.5.2 Where the Customer requests a copy of the contract or some other relevant document or information from the Company, a \$5.50 administration fee will be payable. Such fee will increase to \$80.00 if the request is made more than one year after the document was first created to offset the cost of archive retrieval.

8.5.3 All costs incurred by the Company in pursuing the recovery of overdue debts will be payable including, but not limited to debt collection fees and all other legal and administrative costs incurred (on an indemnity basis).

8.5.4 Where a person other than the Customer is nominated or agreed as paying the Charges but does not do so, the Customer will incur a \$10.00 administrative fee to the Company in addition to the Company's other rights hereunder.

8.5.5 Where the provisions of clause 9.2 are triggered a further administration fee of \$5.50 will apply to each such event.

8.6 Where the Customer overpays an account or is otherwise provided a credit, any such overpayment or credit will, in the first instance, offset any amount owing on a Customer's account and thereafter, will be available, only, as a credit against future Services to be provided by the Company to the Customer. Any such credit must be used within 12 months of the date it is granted but will thereafter lapse.

8.7 Claims by a Customer for an account credit must be made in line with the Third Party Providers Terms and Conditions. All time restrictions must be met. See 11.5 for further details.

8.7.1 Damages – must be lodged within 24 hours of the delivery. The POD must have a note stating the freight was damaged. Photographs must be supplied with the claim.

8.7.2 Check Weight and Cube - photographs of the consignments with tape measure/scales must be supplied.

8.8 In addition to these terms, Third Party Providers may impose (and you must comply with) their own terms and conditions in relation to their services. These are available on the Third Party Providers website or by contacting them via their support line.

## **9. Risk**

9.1 All Goods are carried at the Customer's risk.

9.2 If the Services include or result in the storage of the Goods by the Third Party Provider then all Goods are stored at the Customer's risk.

## **10. Insurance**

10.1 The Customer shall be responsible for obtaining its own insurance for the Goods whilst they are in the possession or control of the Third Party Provider and any expense of such insurance shall be borne by the Customer.

10.2 The Company will not effect any insurance of the Goods unless otherwise expressly agreed in writing. Without limiting the generality of this clause the Company will not effect insurance whilst Goods are in storage.

## **11. Loss or Damage**

11.1 The Company and/or Third Party Provider shall not be liable for any loss or damage to or failure to deliver or delay in delivery or mis-delivery of the Goods or any such loss arising from storage of the Goods howsoever caused and irrespective of the circumstances in which such loss, damage, failure to deliver, delay in delivery or mis-delivery may have occurred and notwithstanding that the same may have been due to or arisen as a result of any breach of contract or negligence or willful act or omission or misconduct on the part of the Company and/or the Third Party Provider or any of its servants or agents or any other person.

11.2 This exclusion of liability extends to include not only loss of or damage to the Goods themselves, but loss, damage or injury to any person, property or thing damaged during or in the course of the provision of the Services, and to any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or mis-delivery.

11.3 All the rights, exclusions and limitations of liability in these conditions shall continue to have full force and effect notwithstanding any breach of this contract by the Company or any other person entitled to the benefit of such provisions.

11.4 Notwithstanding the foregoing, where legislation implies in these terms any condition or warranty, in that legislation prohibits provisions in a contract modifying or excluding the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in these terms. However, the liability of the Company for any breach of such condition or warranty shall be limited to one or more of the following in the sole and absolute discretion of the Company;

11.4.1 Supplying of the Services again; or

11.4.2 Payment of the costs of having the Services supplied again.

11.5 Your right to a credit of a Service booked on the Platform is governed by the terms and conditions of the Third Party Provider the Customer chooses or agreed to use at the time of booking and is as determined by the applicable Third Party Provider. These are available on the Third Party provider's website or by contacting them via their support line.

11.5.1 The Company shall only be liable to provide a credit to you to the extent that it actually receives a credit from the relevant Third Party Provider. Where refunds are due to you from a Third Party Provider, the Company will provide reasonable assistance to you in claiming such funds from the Third Party Provider. In that situation, the Company is authorised (but not obliged) to seek such credits from the Third Party Provider directly and on its own behalf.

11.5.2 Where a credit is approved by the Third Party Provider, the turnaround time from the date of your request for a credit to the date you are provided with your credit may take up to 12 weeks. This is beyond the control of the Company.

## **12. GST**

12.1 To the extent that a supply of Services provided by the Company, or any other supply made under or pursuant to these terms, is a taxable supply as defined in the A New Tax System (Goods and Services Tax) Act 1999 (Cwlth), the Company will increase its price in respect of the supply it makes by the amount of GST payable on the supply.

## **13. Lien**

13.1 Goods are received and held by the Third Party Provider subject to;

13.1.1 A lien for money due to the Company for the Services or any proper Charges or expenses upon or in connection with the Goods; and

13.1.2 A general lien for all money or charges due to the Company from the Customer for any services rendered by the Company to the Customer.

13.2 The parties agree that the lien referred to in this clause attaches to the Goods when the Goods are accepted by the Company to provide the Services.

## **14. General**

14.1 Words importing the singular include the plural, and words importing one or more genders include all genders.

14.2 The Company and/or Third Party Provider will not be or be deemed to be in default or breach of this agreement as a result of the effects of force majeure. Force majeure will include (but is not limited to) any fire, flood, strike, civil disturbance, theft, crime, act of war or other matter beyond the control of the Company and/or Third Party Provider.

14.3 Any part of these terms being the whole or a part of a clause shall be capable of severance without affecting any other part of these terms.

14.4 Waiver by the Company of any breach by the Customer of any of these terms shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other contractor subsequent breach.

14.5 A statement by any officer of the Company shall be prima facie evidence of any fact, matter or thing contained in such statement.



14.6 Any notice required to be given by one party to the other may be given in writing and delivered personally, posted to the address last notified by the other party, sent by facsimile to the facsimile number last notified to the other party or sent by electronic communication to the email address last notified to the other party. A notice so delivered will be deemed to have been received by the other party;

14.6.1 upon receipt of the written notice delivered personally;

14.6.2 At the time when in the ordinary course of postage it should have been delivered;

14.6.3 if sent by facsimile, at the time indicated in the sender's record of transmittal; and

14.6.4 if sent by electronic communication immediately after transmission unless the sender receives a notice of non-delivery or delayed delivery; and

If notice by facsimile or electronic communication is sent on a non-business day or after 4:00pm on a business day, it shall be deemed received at 9:00am on the next following business day.

14.7 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 this agreement or binding on the parties with respect to the Services or the matters to which this agreement relates. The Company will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Company.

14.8 The Customer agrees that the Company can make any enquiries it deems necessary to investigate the Company's credit worthiness including undertaking enquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers (the sources). The Customer authorises the sources to disclose any information concerning its credit worthiness in their possession to the Company. The Customer agrees that the Company may disclose any information in its possession concerning the Company's credit worthiness to the solicitors.

## **15 Liability**

### **15.1 Non Excludable Obligations**

15.1.1 Certain laws imply terms (Non-excludable Obligations) into contracts for the supply of goods or services that cannot be excluded.

15.1.2 Except in relation to Non-Excludable Obligations:

15.1.2.1 The Company makes no representations, warranties or guarantees in relation to the Services; and

15.1.2.2 All warranties and other terms which are not expressly included in these terms and conditions are excluded to the maximum extent permitted by law.

### **15.2 Exclusions**

15.2.1 To the maximum extent permitted by law, the Company excludes all liability (including for negligence) for direct, indirect, consequential or incidental damages, lost profits or savings or damages for disappointment.

15.2.2 To the maximum extent permitted by law, the Company is not responsible or liable (including for negligence) to the Customer for:

15.2.2.1 Any technical errors, corruption of data, unauthorised access to your personal data, inaccuracies in information supplied by Third Party Providers, or failure by the Company to complete Services (including if the Services are not available for any reason) where that failure is due to circumstances beyond its control;

15.2.2.2 The quality of service, or any inconvenience caused or expense incurred to you or any third party as a result of any unsuitability of service for your needs;

15.2.2.3 Any failure or delay on the part of any Third Party Provider in providing a service to you where your consignment has been properly processed;

15.2.2.4 Any acts or omissions of Third Party Providers in the course of delivery of any Service, except to the extent that responsibility for those matters may be imposed on the Company by legislation that cannot be excluded.

## **16 Fees**

16.1 The following fees may apply to your Service, but are not limited to. These fees are determined and charged by the Third Party Provider:

16.1.1 Redelivery Fee, Redirection Fee, Reprocessing Fee, Futile Pick Up Fee, Futile Delivery Fee, Timeslot Fee, Manual Handling Fee, Manual Consignment Fee, Residential Fee, Hand Unload Fee, Pallet Transfer Fee, Dangerous Goods Fee, Demurrage, Tailgate Fee, Remote Fee, Over length Surcharge.

## **17. Changes to the Terms**

17.1 The Company may amend these Terms from time to time to comply with any regulatory requirements or if there are changes to our business practices. The Company will try where reasonably possible to notify the Customer of any material changes to these terms, however, every time the Customer uses the Platform, please check these Terms to ensure you understand the terms that apply at the time. The Customers use of the Platform will be subject to the most recent version of the Terms available on the Platform. The Company recommends that the Customer reads through the Terms available on the Platform regularly so that the Customer can be sure they are aware of any changes that may apply to them.