

1 GENERAL TERMS & CONDITIONS

1.1 Definitions

In these terms and conditions:-

- “Carriage” means and includes any carrying or other work performed or agreed to be performed in relation to the Goods;
- “Carrier” means an Ares Group company (including Ares Project Services Pty Ltd [ABN 45 643 587 115], Ares Heavy Haulage Pty Ltd t/a TJ Clark & Sons [ABN 84 669 989 780], Ares General Transport Pty Ltd [ABN 76 669 989 744], Ares Contract Services Pty Ltd [ABN 65 658 548 353]) or otherwise its servants and agents, sub- contractors and assigns;
- “Client” means and includes the person who engages the Carrier to carry the Goods;
- “Goods” means and includes goods of any type or description whatsoever whether originally contracted for, substituted for or added to the original contract;

1.2 Construction

In this document, unless the context otherwise requires:

- a) words importing:
 - i. the singular include the plural and vice versa;
 - ii. any gender include the other genders;
- b) an obligation of two (2) or more parties shall bind them jointly and severally;
- c) if a word or phrase is defined, cognate words and phrases have corresponding definitions;
- d) a reference to:
 - i. a person includes a corporation and bodies politic;
- e) a person includes the legal personal representatives, successors and assigns of that person;
- f) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

1.3 Negation of Liability as a Common Carrier

The Carrier is not a common carrier and does not undertake the obligations or liability of a common carrier. The Carrier reserves the right to refuse the Carriage or transport of Goods for any person, corporation or company and the Carriage or transport for any class of goods at its discretion.

1.4 Agreement Between Parties

- a) It is agreed that the person delivering the Goods to the Carrier for the Carriage is authorised to sign the consignment note for the Client.
- b) The Client warrants that in agreeing to the terms hereof, he is or has the authority of the person or persons owning or having any interest in the Goods or any part thereof.
- c) Without prejudice to the generality of the foregoing, the Client undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any person other than the Client who claims to have or has or may hereinafter have any interest in the Goods or any part thereof.

1.5 Right to Sub-Contract

- a) The Carrier and any sub-contractor shall be entitled to subcontract on any terms the whole or any part of the Carriage.
- b) The Client undertakes that no claim or allegation shall be made, whether by the Client or any other person who is or may hereafter be interested in the Goods, against any person (other than the Carrier) by whom (whether as sub-contractor, principal, employer, servant, agent or otherwise) the Carriage of

any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such person, and if such claim or allegation should nevertheless be made, to indemnify the Carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

1.6 Extension of Exemptions to Sub-Contractors

Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect:-

- a) all sub-contractors;
- b) every servant or agent of the Carrier or of a sub-contractor;
- c) every other person (other than the Carrier) by whom the Carriage or any part thereof is performed or undertaken;
- d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within a), b) or c) hereof and for the purposes of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

1.7 Entire Contract

The Goods shall be carried and the Carriage shall be performed subject only to these terms and conditions and any terms, conditions or warranties implied by statute which cannot be excluded.

1.8 Liability of the Carrier

- a) The Carrier shall be liable to the Client only for its willful neglect or default or default of that of its servants in respect of the Carriage of the Goods for physical loss of the Goods or damage to the Goods up to a limit of \$200.00 whether or not there has been a declaration of value of the Goods or any of them by the Client for the purposes of the Carriage or otherwise. The Carrier however will endeavor to effect an insurance on behalf of the Client against greater loss or damage provided it receives instructions from the Client in writing and the premium is duly paid by the Client prior to the commencement of the Carriage.
- b) In any event subject only to sub-clause a) and to clauses 1.23 and 1.24, the Goods are at the risk of the Client and not the Carrier and the Carrier shall not be responsible in tort or contract or otherwise for any loss or damage to or deterioration of the Goods or mis-delivery or failure to deliver or delay in delivery of the Goods either in transit or in storage for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or willful act or default of the Carrier or others and this clause shall apply to all such loss or damage to or deterioration of the Goods or mis-delivery or failure to deliver or delay in delivery of the Goods as aforesaid whether or not the same occurs in the course of performance by or on behalf of the Carrier of the contract or in events which are in the contemplation of the Carrier and/or the Client or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of the contract or a breach of a fundamental term thereof.

1.9 Indemnity by Client

The Client indemnifies the Carrier and shall keep it indemnified in respect of any liability to any person, corporation or company for:-

- a) any damage whatsoever including injury, delay or loss of any nature arising out of or incidental to the Carriage or any services incidental thereto whether due to misconduct or negligence on the part of the Carrier or not or whether or not the cause of the damage is known or unknown to the Carrier; or

- b) any other cause whatsoever under or arising out of or in relation to or incidental to the Goods or the Carriage or any services ancillary thereto.

1.10 Handling of Goods

If the Client expressly or impliedly instructs the Carrier to use or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of Carriage whether by road, rail, sea or air the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Client hereby authorises the Carrier to handle or store or to carry or to have the Goods carried by another method or methods.

1.11 Authorisation of deviation from usual route

Where the Carrier considers the mode of the Carriage or route quoted (if any) is not at the time the Goods are to be carried the most practical or feasible route or mode of the Carriage to be used it reserves the right to vary the same and charge any extra cost thereby incurred to the Client.

1.12 Delivery

- a) The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Client for that purpose and without prejudice to the foregoing it is expressly agreed that the Carrier shall be conclusively presumed to have delivered the Goods in accordance with this contract if at that address he obtains from any person a receipt or signed delivery docket for the Goods.
- b) If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier, the Carrier may at its option deposit the Goods at that place (which shall be conclusively presumed to be due delivery thereunder) or store the Goods and if the Goods are stored by the Carrier the Client shall pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Carrier the Carrier shall be at liberty to redeliver them to the Client from the place of storage at the Client's expense.

1.13 Carrier's Charges

- a) All charges, rates and prices quoted are based upon rates of wages and salaries; prices of fuel and oil, and rates or road taxes and other charges prevailing at the date shown on price lists published by the Carrier from time to time; and in the event of any increases between that date and the date when the Carriage is commenced in the cost of any of those items so far as such items are incurred by the Carrier in the performance of the Carriage or involved therein then the charges, rates or prices quoted are to be increased by amounts equivalent to the full amounts of all such increases in all such items so far as the same are so incurred or involved.
- b) Where the Carriage involves the performance of two or more separate items of work then for the purposes of the preceding sub-clause a) the date when the Carriage commenced shall be deemed to be the respective dates on which the said separate items of work are commenced.
- c) The Carrier's charges shall be considered earned as soon as the Goods are loaded and dispatched and the Client will be and remain responsible to the Carrier for all its proper charges incurred for any reason. Labour and the use of mechanical equipment to load and unload the Goods shall be the responsibility and expense of the Client.
- d) In addition to all other amounts payable pursuant to this contract and any other agreements contemplated by this contract, the client shall pay to the supplier, at the same time as the amount to which this payment is referable is payable to the supplier, all amounts for which the supplier is liable, or shall become liable, in relation to the contract or any other agreements contemplated by this contract, on account of any State or Federal goods and services tax or other consumption or similar tax, charge, assessments, duty or fees
- e) The Carrier reserves the right to rescind all discounted quoted rates and recalculate outstanding charges at the current advertised schedule should accounts fail to be finalised within the Carrier's trading terms published from time to time.

1.14 Carrier's Lien

- a) The Carrier shall have a lien on the Goods and any documents relating thereto and on any other Goods of the Client in the possession of the Carrier or any documents relating thereto for all sums payable by the Client to the Carrier and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to the Client.
- b) No claims levied against the Carrier will be considered unless all freight charges have been paid in full.

1.15 Dangerous Goods

- a) The Client shall not tender for Carriage any volatile spirits or explosive Goods or Goods which are or may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such Goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Client and without prejudice to the Carrier's right to any charges hereunder.
- b) The Client warrants that it has complied with all the laws and regulations relating to the nature, packaging, labelling or cartage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and hereby indemnifies the Carrier for any liability whatsoever as a result of or arising out of the Client's failure to comply with each of these warranties.

1.16 Variation of Terms

It is agreed that no servant or agent of the Carrier nor any other person has any power to waive or vary any of the terms hereof unless such waiver or variation is in writing signed by an executive officer of the Carrier.

1.17 Claim for Damage or Loss

If the Carrier is liable for damage to or loss of the Goods or any part thereof, no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing at an office of the Carrier in the State in which delivery was or ought to have been effected within seven (7) days after delivery was effected or would in the ordinary course of business have been effected.

1.18 Suit to be Brought Within Six Months

Notwithstanding any other provision hereof other than clauses 1.23 and 1.24 hereof, the Carrier shall in any event be discharged from all liability whatsoever in respect of the Goods unless suit is brought within six (6) months from their delivery or from the date on which in the ordinary course of business delivery would have been effected.

1.19 Conditions to Have Full Force in All Circumstances

All the rights, immunities and limitations of liability in these terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any of the conditions hereof by the Carrier or any other person entitled to the benefit of such provisions.

1.20 Provisions Severable

It is hereby agreed that if any provision or part of any provision of this contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.

1.21 Declaration of Weight

Where the Client has declared the weight and/or dimensions of the Goods and the Carrier has relied upon such declared weight and/or dimensions in making its arrangements for transportation and the actual weight and/or dimensions of the Goods differs from the declared weight and/or dimensions then in every such case the Client shall be responsible for all extra cost and risk incurred by the Carrier resulting from its reliance as aforesaid upon the declared weight and/or dimensions.

1.22 Other Documents

All Goods are carried subject and liable in every respect to the Bills of Lading issued by and/or conditions imposed by any steamship company, railway, port or harbor authority or other Carriers of the Goods and to the issue of permits or authorization's where required from Commonwealth and/or State Government authorities and the conditions and limitations stated in any such permits or authorization's.

1.23 Queensland Contracts

In respect of contracts made in Queensland and in any other case where the Carriage or any part thereof is subject to the Carriage of Goods by Land (Carriers' Liability) Act 1967 of that State, these conditions shall continue in full force and effect except to the extent that they are or any part thereof is void by operation of that Act.

1.24 Trade Practices Act

Notwithstanding anything herein contained the Carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this contract and prevents the exclusion, restriction or modification of any such warranty and the liability of the Carrier for breach of any such implied warranty shall be limited to the supply of the services of Carriage again or for the cost of having the services of Carriage supplied again whichever the Client may select.

1.25 Law of Contract and Jurisdiction

These terms and conditions shall be governed and construed by the laws of the State of Victoria wheresoever the contract was made and any proceeding in respect of any matter or thing against the Supplier shall be instituted or carried on in the State of Victoria only.

2 TERMS & CONDITIONS OF TRADING

2.1 Payment

Account Clients – Payment Terms for clients who have current and approved credit facilities with the Carrier are Nett 30 days – payment is to be made to the office of the Carrier by cash, cheque funds transfer or recognised credit card within 30 days of the end of the month of purchase. Non-Account Clients – all clients who not have current and approved credit facilities must make payment to the operator or driver not later than the conclusion of the work being performed, and in any event immediately upon receipt of an invoice or tax invoice requesting payment.

2.2 Withdrawal of Facilities

The Carrier reserves the right to withdraw credit facilities, refuse further supply of goods and/or services, or terminate any works in progress should trading not be conducted within these terms.

2.3 Service Fees

The Carrier reserves the right to impose a service fee on all amounts not paid within these trading terms at the rate of 2.5% per month of the amount exceeding these Terms and Conditions of Trading. This includes any and all amounts of GST charged or embedded in the amount owing. Service Fees are a taxable supply and subject to Goods and Services Tax at prevailing rates.

2.4 Lapsed Accounts

Account facilities not used in any twelve (12) month period will stand lapsed. Credit facilities will only be made available on the submission and approval by the Carrier of a fresh Application for Credit.

2.5 Credit Applications and Guarantees

Applications for Credit made by unlisted corporations must be supported by a properly executed Guarantee and Indemnity provided by the Director/s and/or Major Shareholder/s of such corporations. The Guarantee and Indemnity is a continuing Guarantee and Indemnity and Director who retire from office or major shareholders who cease to be shareholders must make arrangements with the Carrier for termination of the Guarantee and Indemnity.

2.6 Default

In the event of default in payment of any monies due in accordance with Clause 2.2, all outstanding monies are immediately due and payable.

2.7 Offers of credit

Offers of Credit facilities are the absolute discretion of the Carrier, and submission of an application does not constitute an offer of credit facilities.

2.8 Credit Limits

Amounts owed in excess of notified credit limits are immediately due and payable and shall be paid to the Carrier on demand.