



## **TERMS AND CONDITIONS OF SERVICE**

1. In these conditions The Carrier shall mean ECC Heavy Haulage carrying on business in its own name and under any Business Name and unless the context otherwise requires its officers, servants, agents and sub-contractors. THE CARRIER 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 person, corporation or company and the carriage or transport of any class of goods at its discretion.
2. The goods are accepted by the carrier subject to the following conditions (a) That they comply with the requirements of any applicable law relating to the nature, condition and packaging of the goods and the expenses and charges of the Carrier in complying with the provisions of any such law or with any order or requirement there under or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the Consignor. (b) If any of the goods are subject to the control of the Customs all customs duty, excise duty and costs which the Carrier becomes liable to pay and shall pay in respect of such goods pursuant to any law relating to customs or excise shall be paid by the Consignor. (c) That the goods are fully described in writing in the space provided hereon with the name and the nature and the value of all goods subject to special rates of carriage or of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods, or to any person or animals with which or to any store, vessel, vehicle, wagon, van, aircraft or other conveyance of any kind whatsoever in which they may be loaded, carried, packed or stored, or which are liquid or partly liquid, and additional freight charges shall be paid on such goods if deemed necessary by the Carrier. (d) The Carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement shall be in writing and signed on behalf of the Carrier by an officer or the Carrier. (e) In the event that the goods accepted by the Carrier do not comply with the conditions set out in this Clause, the Carrier may, in its sole discretion return the goods to the Consignor and refuse to transport same and terminate the Contract.
3. **DISCLAIMER** (a) The disclaimers set out in this Clause are subject to Clause 20 hereof. (b) The Carrier shall not be under any liability for any loss or damage to or mis-delivery of, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in their care custody or control, or any consequential loss arising there-from, which is caused by circumstances outside the control of the Carrier. (c) The Carrier shall not be under any liability for any loss or damage to or mis-delivery of, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in their care custody or control, or any consequential loss arising there-from, which is caused by a negligent act of the Carrier or its employees, agents and/or assigns. (i) For the avoidance of doubt, the Carrier shall not be under any liability for any loss or damage to or mis-delivery of, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in their care custody or control, or any consequential loss arising there-from, which is caused by a motor vehicle accident of any kind which occurs as a direct or indirect result of the negligence of the Carrier or its employees, agents and/or assigns. (d) The Carrier shall not be under any liability under any liability for any loss or damage to or mis-delivery of, delay in delivery, concealed damage, deterioration, contamination, evaporation, non-delivery of goods held in their care custody or control, or any consequential loss arising there-from, which is caused by the wilful misconduct of its employees, agents and/or assigns. (e) In the event of the Contract including handling, installation, removal, assembly or erection of any kind whatsoever, these tasks are undertaken on the strict basis that the Carrier does not hold it or its employees, agents or assigns out to have any particular expertise in this work and the Carrier accepts no liability for any loss, damage or injury of any kind whatsoever, howsoever arising, cause or incurred or occurring during any part of the movement. (f) All disclaimers contained in this Clause 3 extend to include not only loss of or damage to the itemised equipment itself, but loss, damage or injury to any person, property or thing damaged during the movement and to include loss consequently or otherwise arising from any loss, damage or injury aforesaid. (g) If any provision or sub-clause of this Clause 3, or a right or remedy of a party under this Clause 3 is invalid or unenforceable in a particular jurisdiction: (i) It is read down or severed in that jurisdiction only to the extent of the invalidity or unenforceability; (ii) It does not affect the validity or enforceability of that provision in another jurisdiction or the remaining provisions in any jurisdiction. This clause is not limited by any other provision of these terms in relation to severability, invalidity, or unenforceability.
4. The provisions of these conditions of carriage shall apply to the container or containers or other packaging containing the goods and to any pallet or pallets delivered with the goods to the Carrier. The Consignor shall be responsible for the conformity of such containers packaging and pallets with any requirements of the Consignee and for the expense incurred by the Carrier arising from any failure so to conform.
5. Freight shall be considered earned whether the goods are delivered to the Consignee or noted whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.
6. Every special instruction to the effect that charges shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the said charges within 7 days of the date set for payment or if no date is set for payment within 7 days of delivery or intended delivery of the goods then the Consignor shall pay the said charges.
7. The Carrier may charge freight by weight, measurement or value and may at any time re-weigh or re-value or re-measure or require the goods to be re-weighed, re-valued or re-measured and charge proportional additional freight accordingly.
- 7A. In addition, the Carrier, in its sole discretion, may determine that the goods are overweight and or oversized such that the Carrier's "Heavy Haulage and Over-Dimensional Transport Terms and Conditions of Service" ("the Heavy Haulage Terms") shall apply in addition to these terms.
8. These conditions shall be governed and construed in accordance with the laws of the State in which the consignment note is issued and any proceeding against the Carrier shall be brought in the State and not elsewhere within 12 months from the date of contract.
9. Should the Consignee of the goods described on the consignment note not be in attendance during normal trading hours or at the time specified, or if the Carrier arrives to effect delivery at the Consignee's premises and is delayed in effecting prompt delivery at the said premises for any reason whatsoever outside the Carrier's control then the Carrier reserves the right to make an additional charge for every call made or for the amount of time of any delay until delivery is effected.
10. The Carrier will deliver goods at intermediate points only by special arrangements and then only provided facilities are available at all hours.
11. The Carrier may carry all goods or have them carried or on forwarded by any method which the Carrier in its absolute discretion deems fit and notwithstanding any instructions verbal or otherwise that the goods are to be carried by a certain mode. The Carrier reserves the right to charge for demurrage at the rate charged to the Carrier directly or indirectly by a Railway or Shipping Authority or by any other person, firm or company.
12. The Carrier may arrange for the carriage of the goods by any independent contractor or sub-contractor of the Carrier.
13. In respect of any Clause herein which excludes or in any way limits the liability of the Carrier in respect of this carriage of goods the Carrier in addition to acting for himself is acting as agent of and trustee for each of his servants and also any other person or company with whom the Carrier may arrange for the carriage of the goods and the servants of such person or company so that his servants and such person or company and his or its servant are parties to this contract so far as the said clause or clauses containing exclusions or limitations of liability are concerned and if in so far as may be necessary to give effect to this clause the Carrier shall hold the benefit of these conditions for his servants and for any such person or company and his or its servants.
14. The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.

# ECC HEAVY HAULAGE

15. All the rights, immunities and limitations of liability in these conditions of carriage shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract of any conditions hereof by the Carrier.

16.(a) PACKING in regard to goods which the Carrier has been requested by the Consignor to pack and which are described on the face hereof the Carrier shall not be liable for any damage or loss whatsoever whether in the course of packing or in transit or otherwise and however occasioned to the said goods or any of them. (B) When the Carrier is required to load or unload any liquids, partly liquids, substance or any commodities or products into bulk tanks, or vessels, drums or containers it shall not be liable for any loss, damage or contamination of the product during any such loading or unloading operation or packing whilst such product is in transit by any means of transportation or whilst goods are held in store or bulk storage tanks for any reason whatsoever.

17. Carrier's lien (a) The goods are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier by the Consignor on any account whether in respect of the goods comprised herein or in respect of any other goods for which the Carrier provides transport or any other service. If the client is not satisfied and/or the goods are not collected the Carrier may at its option and without any notice in the case of perishable goods forthwith and in any other case upon expiration of one month either: (i) Remove such goods or part thereof and store them in such place and in such manner as the Carrier shall think proper and at the risk and expense of the Consignor or as the case may be or; (ii) Open any package and sell such goods or part thereof upon such terms as it shall think fit to apply the proceeds in or toward discharge of the lien and cost of sale without being liable to any person for any loss or damage thereby caused. (b) Until full payment in cleared funds is received by the Carrier as well as all other amounts owing to the Carrier by the Consignor under this or any other Contract, in addition to any rights the Carrier may have under Chapter 4 of *Personal Properties and Securities Act 2009* (Cth) ("PPSA"), the Carrier shall be entitled at any time to exercise its rights under this Clause 17. If there is any inconsistency with the Carrier's rights under this Clause 17 and its rights under the PPSA this Clause 17 prevails. (c) The Consignor acknowledges and warrants that the Carrier has a security interest for (the purposes of the PPSA) in the goods until full payment of all amounts owing by the Consignor to the Carrier is received in cleared funds by the Carrier. The Consignor must do anything reasonably required by the Carrier to enable the Carrier to register its security interest with the priority that the Carrier requires and to maintain that registration. (d) The security interest under this Clause 17 attaches to the goods when the Carrier obtains possession of the goods and the parties confirm that they have not agreed that any security interest arising under this Clause 17 attaches at any later time. (e) The Carrier's rights under this Clause 17 secure the Carrier's right to receive payment of all amounts owing to the Carrier by the Consignor under any this or any other Contract. (f) All payments received from the Consignor must be applied by the Carrier in accordance with section 14(6)(c) of the PPSA.

18. INSURANCE WILL NOT BE ARRANGED BY THE CARRIER EXCEPT WITH THE EXPRESS INSTRUCTIONS IN WRITING OF THE CONSIGNOR AND THEN ONLY AT HIS EXPENSE AND ON LODGEMENT OF A DECLARATION AS TO VALUE PRIOR TO COLLECTION. When insurance cover has been arranged by the Carrier transit damage must be notified within 48 hours otherwise claims will not be recognised. In the case of a claim for goods lost in transit all claims shall be notified within 14 days or claims will not be recognised.

19.1 The Company shall be discharged of all liability unless: (a) notice of any claim is received by the Company or its agent in writing within 14 days after the date specified in Clause 19.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify, and (b) suit is brought in the proper forum and written notice thereof received by the Company within 9 months after the date specified in Clause 19.2

19.2 For the purposes of Clause 19.1, the applicable dates are: (a) in the case of loss or damage to Goods, the date of delivery of the Goods, (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered, (c) in any other case, the event giving rise to the claim.

20. In respect of contracts made in Queensland these conditions shall be read subject to the Carriage of Goods by Land (Carriers Liability) Act 1967 of the State but except where repugnant to the provisions of that Act shall continue to apply.

21. The consignor authorises the Carrier (if the Carrier should think fit so to do) to contract either in the Carriers Name as principal or as agent for the carriage of the goods or for leasing or using any container in which the goods may be placed or packed and to give any receipt for the goods or any container whether subject to any terms and conditions or not and any such contract will be made upon the terms and subject to the conditions of any Bill of Lading or other forms or terms of contract of carriage whether by sea, rail, road or air or of any lease agreement equipment hand-over agreement, interchange receipt or any other document as the case may require.

22. NOTWITHSTANDING THE PROVISIONS HEREOF THEY SHALL BE READ SUBJECT TO ANY IMPLIED TERMS, CONDITIONS OR GUARANTEES IMPOSED BY THE COMPETITION AND CONSUMERS ACT 2011 (CMTH) OR ANY OTHER COMMONWEALTH OR STATE LEGISLATION INsofar AS SUCH MAY BE APPLICABLE AND PREVENTS EITHER EXPRESSLY OR IMPLIEDLY THE EXCLUSION OR MODIFICATION OF ANY SUCH TERMS, CONDITIONS OR WARRANTY. Notwithstanding any other provision in these conditions of carriage, but subject always to Clause 3, if any liability whatsoever, howsoever arising, is found to attach to the Carrier or any sub-contractor, the Carrier's liability shall be limited to the lesser of: (a) in the case of services supplied under this contract: (i) the supplying of the services again; (ii) the payment of the cost of supplying the services again; or (iii) the amount of AU\$500.00. (b) in the case of goods: (i) the replacement of the goods or the supply of equivalent goods; (ii) the repair of the goods; (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods; (iv) the payment of the cost of repairing the goods; or (v) the amount of AU\$500.00.

23. The company reserves the right to on charge any tax, levy, duty or other charge as prescribed by law.

24. Subject to section 275(7) of the PPSA, neither party will disclose the information of the kind mentioned in section 275(1) of the PPSA.

## QUOTATIONS

Unless otherwise agreed, all prices quoted will exclude the GST charge, which will be added to invoices at the rate in force at the date of the invoice.

Quotations which cover only those services specifically stated therein, remain available for acceptance for 28 days from the date thereon EXCEPTING

1. The Carrier reserves the right to adjust rates before or after acceptance of the quotation to meet any adjustment in charges imposed by an instrumentality outside the control of the Carrier.

2. Where out of gauge or overweight lifts are involved, the quotation on the face thereof is subject to the issue of the necessary permit and conditions by the relevant authority. The cost of any such permits and of compliance with such Conditions shall be additional to the amount quoted unless otherwise specifically stated.



#### **HEAVY HAULAGE AND OVER-DIMENSIONAL TRANSPORT TERMS AND CONDITIONS OF SERVICE**

Our offer is subject to our normal terms and conditions of trade as set out on the reverse side of our consignment notes, as well as the following:

1. Price includes all necessary pilots, police escorts and standard permit fees, but does not include supervision by the governing road authorities. Should the authorities introduce a "user pays" system, this cost would be to your account.
  2. Our offer is made subject to the granting of all necessary permits by the relevant authorities and is subject to all applicable laws at the time of quotation. Any change to legal requirements for the transport of your goods between the time of quotation and commencement of transport will apply at commencement of the job and may vary the price accordingly.
  3. Our offer is made subject to availability of equipment and any escorts deemed additional by relative authorities to those already noted in clause 1 will be to your account at cost plus 20%.
  4. Our offer excludes any costs or charges incurred by overhead escorts, bridge work or road works that may be deemed necessary by the authorities, or detours made necessary by inclement weather or change of route for any unforeseen reason.
  5. Clear accessibility must be provided and maintained by others at all times to ensure the efficiency and safety of our operation.
  6. Crane lift and/or forklift as and when required for the loading and/or unloading to be the responsibility of the consignor/consignee, unless specifically stated in our quotation.
  7. Level consolidated, all weather roadways and cranage areas would have to be provided and maintained by others for the safe and efficient operation of our vehicles.
- Any delays caused beyond our control would substantiate demurrage.
8. ECC Heavy Haulage have not completed a site inspection and we must stress that clear accessibility for unloading is made available.
  9. We do not carry an automatic "All Risks Cover" for the insurance of goods handled by us. If requested in writing by yourselves, we would arrange such a cover through our Insurance Brokers, the cost of which would be to your account. Otherwise, we strongly recommend that you notify your Insurance Brokers of this forthcoming move and ask them to incorporate the name of our company in your current policy for the duration of the move.
  10. Prices are based on given dimensions. Variations in the dimensions may vary the price.
  11. Our price will remain firm for 60 days.
  12. Our trading terms are net fourteen (14) days.
  13. Any payments made on behalf of your Company would incur a 20% administration fee. You do have the option of paying "out of pocket" expenses direct, thus avoiding this additional fee.
  14. Goods and Services Tax

In accordance with the requirements of the "A new Tax System (Goods and Services Tax) Act 1999", all supply of goods and services on or after 1st July, 2000 will attract a Goods and Services Tax. This tax will be added to each and every invoice generated by ECC Heavy Haulage. The value of this tax is not included in this quotation but will be an additional amount due and payable by the customer. All invoices generated by ECC Heavy Haulage on or after the 1st July, 2000 will be "Tax Invoices" as specified in "A New System (Goods and Services Tax) Regulations 1999".