

HPS TRANSPORT

CONDITIONS OF CARTAGE

1. **THIS AGREEMENT** is made with **HPS TRANSPORT PTY LTD ABN 840 828 07690** of 33 Naweena Road Regency Park in the State of South Australia which expression includes its servants, agents, subcontractors and assigns (hereinafter collectively referred to as “the Carrier”) by the entity whose name appears on the front of and/or at the foot of this document herein described as the “Sender”, “Receiver”. “Consignor” or “Consignee” or who is otherwise referred to as such and/or who is referred to as “the Customer” and/or “the Guarantor” (hereinafter jointly and severally referred to as “the Customer”)
2. **INTERPRETATION**
 - 2.1 Headings are inserted for ease of reference only and shall not affect the interpretation of this Agreement.
 - 2.2 These terms and conditions are governed by the laws of the State of South Australia and any proceedings against the Carrier must be brought within one month of the making of the complaint. The Courts of the State of South Australia shall have jurisdiction in all matters.
 - 2.3 If any of these terms and conditions or part thereof are unenforceable, it must be severed from and does not affect the rest of the Contract.
 - 2.4 These terms and conditions do not exclude or limit the application of any laws including the Competition and Consumer Act 2010 (Commonwealth) where to do so would contravene those laws and cause any part of these terms and conditions to be void.
3. **HPS TRANSPORT IS NOT A COMMON CARRIER**

The Parties hereto agree that the Carrier is not a common Carrier and will not accept liability as such and will accept goods for cartage only on the terms and conditions appearing herein. The Carrier may at its discretion refuse to transport any goods for any person and to transport any class of goods or any particular goods.
4. **CUSTOMER'S WARRANTIES, OBLIGATIONS, UNDERTAKINGS & LIABILITY**
 - 4.1 The Customer warrants that the Goods are fully and adequately described and are suitable for carriage and have been packed and prepared by the Customer so as to withstand the rigors of carriage and storage and are at a temperature which is optimum for their preservation, transport and delivery. The Carrier may refuse to carry any Goods which are inadequately packaged or whose packaging has been damaged prior to it receiving the same.
 - 4.2 The Customer warrants that the Goods are not explosive, inflammable or otherwise dangerous and that their carriage by the Carrier will not give rise to any unusual danger or hazard. The Carrier may refuse to carry any goods which are or may become explosive, inflammable or dangerous.
 - 4.3 If in the Carrier's opinion the Goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature the Carrier may, at the Customer's expense, at any time destroy, dispose of or abandon or render the Goods harmless without compensation to the Customer and without prejudice to the Carrier's right to payment from the Customer.
 - 4.4 The Customer shall package the Goods so that they fit within the dimensions of a Chep Wooden Pallet Australian Standard and will be liable for any costs or damages resulting from or arising out of their failure to comply with this requirement.
 - 4.5 If the Carrier accepts pallets or other packing devices from the Customer the Carrier shall do so on the basis that all charges pertaining to the pallets, packing devices or other material shall be paid by the Customer. In the event of the Carrier acknowledging receipt of the pallets, packing devices or material the Carrier shall do so on behalf of the Customer provided the Customer accepts full responsibility for them and freight charges thereon.
 - 4.6 The Customer will complete the Carrier's consignment note in a clear and legible manner, and correctly enter the description, quantity and weight. The Carrier can refuse to carry any goods where the consignment note is not fully completed and legible or does not appear to comply with the goods to be carried. The Carrier may increase the price charged for carriage if the weight of the goods exceeds the amount stated on the consignment note.
 - 4.7 The Consignor/Sender shall label each component of freight with the Consignee/Receiver name and address that is the end destination of the freight. A component of freight is defined as unit of goods that can be separated from other components of goods that can be received, loaded, linehailed, unloaded, cross docked or delivered separately. Labels must be no less than 20cm x 14cm and be completed in a clear and legible manner. The Carrier has the right to refuse to carry any goods that are not labelled or where the information on each label is not legible.
5. **PARTIES BOUND**
 - 5.1 Where this Agreement is made with the Consignor and/or Sender, they warrant that the Consignee or Receiver shall also be bound by the terms and conditions herein;
 - 5.2 Where this Agreement is made with the Consignee and/or Receiver they warrant that the Consignor or Sender shall also be bound by the terms and conditions herein;
 - 5.3 The Customer warrants that where any document or instruction, whether verbal or written is given to the Carrier by a person purporting to act on behalf of the Customer then the Carrier can accept and act upon such document or instruction and the Customer shall be bound thereby without the Carrier being required to enquire into the bone fides of such person.
6. **LIABILITY**
 - 6.1 The Goods are at the risk of the Consignor from the time that they are received by the Carrier until such time as they are delivered to the address of the Receiver of the Goods as stated on the front of the consignment note.
 - 6.2 Subject only to clause 2.2 herein the goods are at the risk of the Sender and not the Carrier, and the Carrier shall not be responsible to the Customer or any other person whatsoever in tort or contract or bailment or otherwise for any, and the consequences of any loss of or damage to or deterioration of goods or mis-delivery or failure to deliver or delay in delivery of goods including chilled, frozen, refrigerated or perishable goods either in transit or in storage for any reason whatsoever including without limiting the foregoing the negligence breach of contract or wilful act or default of the Carrier or any person acting under authority of the Carrier or others and this clause shall apply to all, and the consequences of all, such loss

of or damage to or deterioration of goods or mis-delivery or failure to deliver or delay in delivery of 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 foreseeable by them or either of them or in events which could constitute a fundamental breach of a fundamental term thereof.

6.3 Insurance of goods will not be effected for the benefit of the Consignor.

6.4 Where the Carrier assists in loading or unloading of the Goods at premises other than the Carrier's premises, the Customer warrants that all equipment provided by it is suitable for loading and unloading in a safe manner and the Customer shall indemnify the Carrier against all claims and actions arising out of any injuries suffered by the Carrier and/or its employees, agents and subcontractors during such loading and/or unloading.

6.5 The Customer shall indemnify the Carrier against:

- (a) All claims and demands whatsoever by whomsoever made in respect of any loss, damage or injury however caused, whether or not by the negligence or wilful act or omission of the Carrier, its servants, agents or subcontractors;
- (b) Any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of the Agreement;
- (c) Any loss or damage to the Carrier's containers or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the Goods in such containers, including loss resulting from the Customer's detention of any containers or other equipment;
- (d) All costs, demands, claims or expenses whatsoever and by whomsoever made arising as a result of the Customer making an incorrect description or advising of incorrect quantity, weight and/or volume of the Goods;
- (e) All loss (including consequential loss), damage or injury however caused arising out of the carriage of any Dangerous Goods, whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.

7. ROUTE, DEVIATION, DELAY & SUBCONTRACTORS

7.1 The Customer authorises the Carrier to arrange with any other person, firm or company (hereinafter refer to as "the Subcontractor") to undertake the carriage and/or storage of goods hereby contracted for and the Carrier shall be deemed to act as the agent for such subcontractor which shall be entitled to the benefit of these terms and conditions to the same extent as the Carrier.

7.2 The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be necessary.

7.3 If the Customer instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air, the Carrier will give priority to the method designated but, if that method cannot be conveniently adopted by the Carrier the Customer shall be deemed to authorise it to carry or have the Goods carried by another method or methods.

7.4 If the Carrier is for any reason unable to deliver the Goods, the Carrier may without notice return the Goods to the Customer at the Customer's expense or store the Goods and such return to the Customer or storage shall be deemed to constitute delivery and any

responsibility that the Carrier has in respect of the Goods shall cease and the Customer shall be liable to reimburse the Carrier for any additional carriage and/or storage costs incurred.

8. CARRIER'S CHARGES

8.1 The Customer acknowledges and agrees that charges for freight/storage are payable by it to the Carrier as soon as the Goods are delivered to the Carrier, or picked up by the Carrier whether or not they are delivered to the Receiver or Consignee and whether damaged or not.

8.2 The Customer will pay cash on or before delivery unless a current trading account has been established in which case payment must be in accordance with the terms thereof.

8.3 In addition to the charges negotiated between the parties for the carriage of goods, the Customer will also pay or reimburse the Carrier such expenses or charges payable to any government, semi-government or other regulatory body to comply with any law or regulation applicable to the carriage of the goods in question or any impost in relation to carbon usage and any fuel surcharges.

8.4 The Consignor/Sender will be and shall remain responsible to the Carrier for all its charges without prejudice to the Carrier's rights against the Consignee/Receiver or any other person. Provided that where it is stated on the consignment note that charges are payable by the Consignee/Receiver COD or "freight called" (and the Carrier accepts the goods for carriage on that basis) the Consignor/Sender shall not be required to pay such charges unless the Consignee/Receiver refuses to pay or does not pay within 30 days from the date of invoice.

9. COMPLAINTS

9.1 The Customer must ensure that the consignee/receiver of the Goods inspects the same immediately upon delivery.

9.2 Any complaints about short delivery, unacceptable condition (including temperature), mis-delivery or for any other reason must be made immediately in writing to the driver delivering the Goods with a copy of the said complaint immediately emailed to the Carrier at adelaide@hpstransport.com or faxed to (08) 8244 3792. Failure to immediately notify a complaint is evidence of satisfactory performance by the Carrier of its obligations.

10. DEEMED DELIVERY BY CARRIER

The Customer shall take delivery of the Goods as soon as the Carrier is ready to deliver them. If the Consignee fails to take delivery of the Goods, the Carrier shall be deemed to have delivered the Goods in accordance with this Agreement if the Goods are delivered to the address specified for delivery. The Carrier may without notice unload the Goods and/or store them in the open or under cover and with or without refrigeration.