

**FREIGHT LINES GROUP**  
**TERMS AND CONDITIONS**

**1. TERMS AND CONDITIONS**

- 1.1 These Terms and the Consignment Note form the contract between the Carrier and Sender. These Terms may be viewed online at [www.freightlinesgroup.com.au/terms](http://www.freightlinesgroup.com.au/terms).
- 1.2 These Terms apply in the format in which they are provided to the Sender or viewable online at the time of Consignment.
- 1.3 Subsequent contracts for Services will include the then current Terms published by the Carrier (which may be varied from time to time without notice).

**2. CARRIER**

- 2.1 The Carrier is Mattben Pty Ltd t/as Freight Lines Group (incorporating Albany Freight Lines, Esperance Freight Lines, Geraldton Freight Lines, and Kalgoorlie Freight Lines) and unless the context otherwise requires “Carrier” includes its servants, agents and subcontractors.
- 2.2 The Carrier is not a common carrier. The Carrier accepts no liability for goods transported and may refuse to provide Services to any person, or in respect of any goods, in the Carrier’s absolute discretion.

**3. SENDER AND OTHER PARTIES**

- 3.1 The Sender warrants that the Sender is the owner or authorised owner of the Consignment and has authority to engage the Carrier to provide the Services. The Sender accepts these Terms for the owner and the Receiver and all other persons for whom the Sender acts.
- 3.2 Where the Sender is not a natural person, the person signing the Consignment Note as Sender warrants that they are authorized to sign the Consignment Note for the Sender.

**4. CONSIGNMENT AND INDEMNITY**

- 4.1 The Sender agrees to pay for the Services and the Carrier agrees to provide the Services, subject always to these Terms.
- 4.2 The Sender warrants that:
- (a) the Consignment complies with the requirements of all applicable laws relating to the nature, condition and packaging of the Consignment; and
  - (b) the Sender understands and has fully complied with their responsibilities under the Chain of Responsibility provisions implemented under the *Road Traffic (Vehicles) Act 2012 (WA)*.

The Sender must reimburse the Carrier for any Loss arising from a breach of this warranty on demand.

- 4.3 If the Consignment includes:
- (a) Dangerous Goods; or
  - (b) goods that are noxious, hazardous, inflammable or otherwise capable of causing damage or injury or death to persons or property in the course of the provision of the Services,
- then the Sender must:
- (c) declare such matters in full on the Consignment Note setting out the nature and value of those goods;
  - (d) pay such additional freight charges as the Carrier reasonably determines; and
  - (e) indemnify the Carrier against all claims by the Sender and any third party and pay all Loss incurred by the Carrier which is directly or indirectly caused by the Sender

providing inadequate, incorrect or misleading information on the Consignment Note.

- 4.4 If the Carrier agrees to package goods for transport on behalf of the Sender, the Carrier will not be liable for any Loss incurred in relation to the goods, irrespective of whether the Loss is attributable to the packaging, the provision of the Services, or any other reason whatsoever.

## **5. METHOD AND ROUTE**

In providing the Services, the Carrier may use whatever method or route the Carrier wishes in the Carrier's absolute discretion, notwithstanding any instructions (express or implied) of the Sender.

## **6. CARRIER'S CHARGES**

- 6.1 The Sender must pay the Charges on the Due Date without any deduction, set off or counterclaim.
- 6.2 Charges are earned when the Consignment is accepted by the Carrier. No Charges will be refunded.
- 6.3 The Carrier may in the Carrier's discretion calculate Charges by weight, measurement or value. The Carrier may at any time re-weigh, re-value or re-measure the goods or require the goods to be re-weighed, re-valued or re-measured and adjust the Charges proportionally.
- 6.4 The Sender remains liable for payment of Charges. If the Sender specifies some other person is to pay the Charges and that person fails to do so, the Sender must pay the Charges (or so much of the Charges as remain outstanding) within seven (7) days of request by the Carrier.
- 6.5 Interest will accrue daily at the Interest Rate on any overdue Charges until paid. The Sender will be liable for all Losses arising from the Carrier's attempts to recover overdue payment.

## **7. CASH ON DELIVERY**

The Carrier will not collect payment on Delivery irrespective of any instructions given.

## **8. DELIVERY**

- 8.1 The Carrier will attempt to effect delivery of the Consignment at the Delivery Address or as otherwise specified in the Consignment Note.
- 8.2 Delivery occurs when:
- (a) the Carrier obtains from any person a receipt or signature on the Consignment Note or other delivery docket; or
  - (b) if the Delivery Address is unattended, the Carrier leaves the Consignment at the Delivery Address.
- 8.3 If the Delivery Address is unattended, the Carrier may in the Carrier's discretion store the Consignment and re-attempt delivery. The Carrier will be entitled to additional Charges in respect of storage and attempted or actual re-delivery until delivery is accomplished.
- 8.4 The Carrier will only deliver parts of the Consignment at intermediate points by special arrangement and subject to the provision of suitable facilities being made available at all hours at those points.

## **9. SUBCONTRACTING**

The Carrier may subcontract the Services or any part of them. The Carrier enters this contract as agent and trustee for the Carrier's subcontractors who have the benefit of these Terms as if the subcontractors were named as the Carrier.

## **10. STORAGE AND LIEN OVER CONSIGNMENT**

- 10.1 The Carrier has a general possessory lien over the Consignment and any other property of the Sender in the possession of the Carrier with respect to Charges due to the Carrier.
- 10.2 Where Charges are overdue, the Carrier may give the Sender fourteen (14) days written notice of its intention to sell the Consignment for the purpose of recovering Charges. If the Sender fails to pay the Charges within this period the Carrier may then proceed to sell all or part of the Consignment and apply the sale proceeds against the Charges and the costs of sale.
- 10.3 The Sender releases and indemnifies the Carrier in respect of all claims by the Sender or any other party arising out of the sale of all or part of the Consignment in accordance with this clause.
- 10.4 The Carrier may require the Sender to arrange collection of any Consignment which has been stored and pay all Charges relating to the storage of the Consignment at the time of collection (or at such other time as the parties may agree).
- 10.5 For the avoidance of doubt, the Carrier may at the Sender's expense destroy, dispose of or make harmless any Consignment which in the reasonable opinion of the Carrier poses a risk to person or property.

## **11. LOSS OR DAMAGE**

- 11.1 The Consignment is at all times at the risk of the Sender.
- 11.2 Subject to **clause 11.4**, the Carrier will not be liable to the Sender, the Receiver, the owner or any other person in tort, contract, equity or otherwise for any loss of or damage to or deterioration of goods, misdelivery, failure to deliver or delay in delivery of goods (including chilled, frozen, refrigerated or perishable goods), either in transit or in storage, whether caused by the negligence, wrongful act or default of the Carrier or by any other cause whatsoever, and the Sender indemnifies the Carrier for all Loss arising from any claim brought against the Carrier in respect of such matters.
- 11.3 To the maximum extent permitted by law, under no circumstances will the Carrier be liable for any indirect, incidental, special or consequential damages, including damages for loss of business or other profits, arising out of the provision of or failure to provide the Services or the Consignment of the goods, howsoever caused.
- 11.4 The liability of the Carrier for a breach of a condition or warranty implied by law and which cannot be excluded by law is limited, to the extent possible, at the Carrier's option to:
- (a) the supply of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.

## **12. CLAIM FOR DAMAGE**

- 12.1 If the Carrier has entered into an express written agreement with the Sender so as to become liable for loss of or damage to the Consignment, no claim for loss or damage will be accepted unless:
- (a) the Carrier is notified of that damage within forty-eight (48) hours of delivery; and
  - (b) the damage or loss is substantiated to the Carrier.
- 12.2 Failure to notify of damage strictly in accordance with this clause:
- (a) will be evidence that any damage or loss was not sustained whilst the Consignment was under the control or possession of the Carrier; and
  - (b) may void any insurance arranged by the Carrier in accordance with these Terms.
- 12.3 Time is of the essence in this clause.

### 13. INSURANCE

Insurance will not be arranged by the Carrier except with the express instructions in writing of the Sender, and then only at the Sender's expense and on lodgement of a declaration as to value prior to acceptance of the Consignment by the Carrier.

### 14. GENERAL

- 14.1 The parties agree that unless prohibited by law (and then only to the extent prohibited), no covenant, warranty or other provision is implied by statute into this contract and any express or implied warranty as to quality, fitness for purpose or otherwise of the Services is expressly excluded.
- 14.2 These Terms are governed by and construed in accordance with the laws of the State in which the Consignment Note is issued. Proceedings against the Carrier must be brought in that State.
- 14.3 A variation of a provision of these Terms is only effective if it is in writing and signed by the Carrier and the Sender.
- 14.4 These Terms and the Consignment Note comprise the sole and entire agreement between the Carrier and the Sender.
- 14.5 If any provision of these Terms is or becomes invalid or unenforceable, then the remaining provisions are not affected and are valid and enforceable to the fullest extent permitted by law. This clause has no effect if the severance alters the basic nature of this contract.
- 14.6 In relation to each of the indemnities in this contract:
- (a) the indemnity is a continuing obligation, separate and independent from the other obligations of a party and survives the termination of this contract;
  - (b) it is not necessary for a party to incur expense or make a payment before enforcing a right of indemnity conferred by this contract; and
  - (c) a party is liable to pay to the party to be indemnified an amount equal to any loss suffered or incurred by an employee, officer or agent of that party.

### 15. DEFINITIONS AND INTERPRETATION

- 15.1 Unless the context requires otherwise, the following words have the following meanings:
- (a) **Charges** means the charges payable to the Carrier for the provision of the Services, and includes:
    - (i) costs attributable to delay (other than delay attributable to the Carrier);
    - (ii) amounts payable to third parties as a result of the provision of the Services, including taxes, fines, customs duty, excise duty, licence or permit fees and levies;
    - (iii) GST; and
    - (iv) other charges referred to in these Terms;
  - (b) **Consignment** means the goods (and any ancillary materials including packaging) accepted by the Carrier for the purpose of providing the Services;
  - (c) **Consignment Note** means the consignment note containing the instructions for carriage of goods as agreed between the Carrier and the Sender;
  - (d) **Dangerous Goods** has the same meaning as set out in the *Explosives and Dangerous Goods Act 1961 (WA)* as amended;
  - (e) **Delivery Address** means the address of the Receiver as set out in the Consignment Note;

- (f) **Due Date** means the date on which the parties have agreed payment of the Charges are due, and failing agreement then at the time carrier accepts the Consignment;
- (g) **GST** means goods and services tax as described in *A New Tax System (Goods and Services Tax) Act 1999* (Cwth);
- (h) **Interest Rate** means 10% per annum;
- (i) **Loss** includes all claims, liabilities, damages, expenses, fees, charges, costs (including legal and other professional costs and expenses of whatsoever nature or description on a professional / client basis), taxes, duties, GST, fines, penalties and interest;
- (j) **Services** means the services provided by the Carrier from acceptance of the Consignment until Delivery, and includes the loading, unloading, carriage, transportation, delivery and storage of the Consignment; and
- (k) **Terms** means these terms and conditions of contract.

15.2 In these Terms, unless the contrary intention appears:

- (a) **including** and similar expressions are not words of limitation;
- (b) the word **person** includes an individual, a firm, a corporate entity, an unincorporated entity, a partnership, or government authority;
- (c) no rule of construction of documents applies to the disadvantage of the Carrier on the basis that that Carrier put forward these Terms.