

## TERMS AND CONDITIONS

By accepting the quotation attached to these Terms and Conditions (**the "Quotation"**) you agree that the Quotation is governed by the following terms and conditions:-

1. In these terms and conditions, unless the context otherwise requires:-

**"Carrier"** means **National Heavy Haulage Pty Ltd** and its servants and agents.

**"Sub-Contractor"** includes -

- (i) Each Company which is at any time and from time to time a subsidiary or related entity of the Carrier within the meaning of the Corporate Law of the State of Incorporation of the Carrier.
- (ii) A railway operator
- (iii) Any person firm or company with whom the Carrier may arrange for the carriage of any of the goods; and
- (iv) Any person who is from time to time and at any time a servant, agent, employee or Sub-Contractor of any of the persons referred to in paragraphs (i), (ii) and (iii) above.

**"carriage"** means such of carrying, lifting, handling, transporting and storage of goods as are contemplated by the quotation or the contract and "carried", "carry" and other similar parts of speech shall have corresponding meanings.

**"goods"** means all wares, merchandise, plant, machinery and articles of any description and includes crates, cases or packages and the contents thereof of whatsoever kinds the carriage of which is the subject matter of the quotation or the contract and also includes all pallets (if any) delivered with goods to the Carrier.

**"owner"** means the person described on the face of this document as Owner or Customer, or if no person is so named then the person there described as consignor is deemed to include the servants and agents of the Owner of the goods, and also includes any consignment consignee, shipper or agent for the sale or custody of the goods and any other person entitled to make any claim in respect of the goods.

**"services"** means, but is not limited to, the services detailed at the 'Scope of Works' section of the Quotation.

**"the quotation"** means, where the document on the face hereof is a quotation, the quotation contained thereon.

**"the contract"** means, where the document on the face hereof is a consignment note or other contractual document, the contract for the carriage of goods arising there from and, where that document is a quotation, the contract arising there from.

## STANDARD TERMS AND CONDITIONS

2. (1) The Carrier is not a common carrier and does not accept the obligations or liability of a common Carrier.
  - (2) The Carrier may at its absolute discretion refuse the carriage of goods for any person firm or company or of any class of goods.
  - (3) All goods are accepted for the purpose of carriage and such carriage is undertaken solely upon the terms and conditions herein stated.
3. (1) All goods are carried entirely at the Owner's risk.
- (2) The Carrier shall not be responsible in tort, contract or otherwise for any loss of or damage to or deterioration of goods or mis delivery or failure to deliver or delay in delivery of goods for any reason whatsoever (including but without limiting the generality of the foregoing the negligence or wilful act or default of the Carrier, a Sub-Contractor or any other person) and whether or not the loss of or deterioration of goods or misdelivery or failure to deliver or delay in delivery of goods occurs in the course of performance by the carrier of the Contract or in events which are in the contemplation of the Carrier or the Owner or in events which are foreseeable by them

or either of them or in events which would constitute a fundamental breach of the Contract or a breach of a fundamental term thereof.

4. The Carrier is at liberty to arrange with any Sub-Contractor to undertake the carriage of any goods and the Sub-Contractor is entitled to the benefit of these conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that the Sub Contractor shall be so entitled the carrier shall be deemed to enter into the Contract for its own benefit and also as agent for the Sub-Contractor and the Owner shall be deemed to have ratified the sub-contracting arrangement upon delivery of goods by the Carrier to the Sub- contractor.
5. If the Owner expressly or by implication instructs the Carrier to use or if it is agreed that the Carrier will use a particular method of carriage whether by road, sea, rail or air the Carrier will give priority to that method but if in the Carrier's opinion it cannot conveniently adopt that method the Owner authorises the Carrier to carry or arrange carriage of the goods by any other method or methods.
6. Any deviation from the usual route or manner of cartage of goods which may in the absolute discretion of the Carrier be deemed reasonable or necessary or desirable in the circumstances shall be deemed to have been authorised by the Owner.
7. The Carrier is authorised to deliver goods to the address for delivery appearing on the face of this document or if no address appears, the address subsequently notified to the Carrier by the Owner and the Carrier shall be deemed to have delivered the goods in accordance with the Contract if the Carrier obtains from any person at that address a receipt or signed docket for the goods.
8. The quotation is made on the basis that the goods of a noxious, offensive, volatile, inflammable, hazardous, dangerous or explosive nature will not be tendered to the Carrier. If the Owner requires goods of that nature to be carried the Owner shall make full disclosure of the nature of the goods and the same will be carried only if special agreement is made between the Carrier and the Owner in relation to the carriage thereof. The owner warrants that except as specified in the Contract the goods which are tendered to the carrier will not be of a noxious, offensive, volatile, inflammable, hazardous, dangerous or explosive nature and will be goods the carriage of which by the carrier will not be illegal or prohibited by the law of the Commonwealth or of any State or Territory of the Commonwealth whether by reason of their nature, packaging, labelling or otherwise and the Owner hereby indemnifies the Carrier in respect of the Carrier's liability for death, bodily injury, loss and /or damage incurred and shall be liable to the Carrier for any loss or damage occasioned either directly or indirectly to the Carrier wholly or in part out of the Owner's failure to comply with this warranty.

## **INSURANCE**

9. Insurance of the goods will not be effected by the Carrier for the benefit of the Owner except upon the written instructions of the Owner and then only at the Owner's expense and upon receipt of a declaration of value a reasonable time prior to the goods being loaded.

## **TERMS OF PAYMENT**

10. The Carrier does not accept responsibility for the collection of cash on delivery payments on behalf of the Owner or any other person and where goods are tendered by the Owner or any other person with instruction for the Carrier to collect cash on delivery payment the Carrier shall not be bound by those instructions notwithstanding that the Carrier may accept the goods as tendered for carriage and may carry the goods.
11. The Carrier's charges for the carriage of the goods are payable as soon as the goods are loaded and despatched from the Owner's premises.
12. The Carrier's payment terms are strictly payment in full without any deductions whatsoever within thirty (30) days of the date of the Carrier's invoice. Past due amounts plus any unpaid interest will bear interest at a rate equal to the Carrier's bank overdraft rate from time to time plus a margin of 4%. In addition in the event of late payment of any invoice the Carrier is entitled to charge and recover all costs incurred as a result of the late payment

including administration charges in relation to recovery of the outstanding invoice and legal costs on a full indemnity basis.

13. If the Owner or any other person liable to make any payment to the Carrier in respect of the carriage of the goods or any other services rendered by the Carrier fails to make payment in accordance with the terms of payment stipulated in clause 14 the Carrier may retain and sell all or any of the goods which are in its possession and out of the moneys arising from the sale retain all sums so payable and all charges and expenses of the detention and sales and shall render the surplus if any of the moneys arising from the sale and any of the goods as remain unsold to the person whom to the Carrier appears to be entitled thereto and any sale by the Carrier of the goods or any of them shall not prejudice or affect charges due or payable in respect of the carriage of the goods or any services rendered by the Carrier or the detention and sale of the goods.

#### **DAMAGE**

14. If by express agreement between the Carrier and the Owner the Carrier accepts responsibility for damage to, loss of or deterioration of goods no claim for that damage loss or deterioration will be allowed or binding on the Carrier unless lodged in writing at an office of the Carrier in the State in which delivery is effected (or where no such office exists then at an office of the Carrier in the State from which the goods were despatched) within seventy-two (72) hours after delivery was effected.

#### **RESPONSIBILITIES OF THE OWNER**

15. The owner is liable to the Carrier for all its proper charges incurred for any reason and in relation thereto the Owner agrees and acknowledges that:-
  - (a) quoted charges or contract charges make no allowance for waiting time and all extra costs arising from waiting time shall be an additional charge to the Owner;
  - (b) quoted charges or contract charges are based upon prompt availability of goods for loading and facility to make prompt delivery and a charge will be made by the Carrier in respect of any delay in excess of one hour (commencing at the time the Carrier reports for loading or unloading) in loading or unloading occurring otherwise than by default of the Carrier and that charge will be the extra costs to the carrier arising as a result of the excess delay. Demurrage charges shall apply (without limiting the generality of the foregoing) if the delay is due to industrial disputes beyond the control of the Carrier (the Carrier not being required to settle any such dispute in any manner which the Carrier does not regard as appropriate) and those costs shall include demurrage of all men and equipment, including escorts, as may be affected by the delay, and fares and accommodation where necessary;
  - (c) quoted charges or contract charges are subject to the vehicle, haulage equipment and equipment required for loading and unloading having clear access for manoeuvring into loading or unloading site positions and the ground surface being firm and consolidated to withstand wheel loadings of the vehicle, haulage equipment and the equipment for loading or unloading and the Carrier's costs involved in any site preparation shall be borne by the Owner.
  - (d) If a vehicle is delayed by any cause beyond the control of the Carrier or is delayed in consequence of the Carrier obeying instructions given by the Owner the Carrier's costs incurred in consequence of the delay shall be borne by the Owner;
  - (e) Where a vehicle is bogged whilst the Carrier is obeying instructions given by the Owner the cost of recovering the vehicle from the bog and any damage to the vehicle, equipment or plant caused by the bogging or the recovery shall be borne by the Owner;
  - (f) Unless otherwise stated on the face of this document quoted charges or contract charges do not include the Cost of obtaining or operating cranes to load or unload and those costs shall be borne by the Owner;
  - (g) If the goods have not been loaded within thirty (30) days of the date of the quotation or the date of the contract and the delay in loading is due to any cause beyond the control of the Carrier (including but without limiting the generality of the foregoing the existence of any industrial dispute) the Owner shall be liable to pay to the Carrier in addition to the quoted charges or contract and all other amounts payable by the Owner an amount equal to the increase in the Carrier's costs of performing the carriage of the goods.
16. The Owner shall be responsible for complying with all applicable laws, customs and other government regulations of the Commonwealth or of any State or Territory of the Commonwealth including those relating to

the packaging, carriage and delivery of goods and shall furnish information and attach such documents to the consignment note as may be necessary to comply with those laws and regulations and the Carrier shall not be liable to the Owner or any other person for loss or expense due to the Owner's failure to comply with this clause.

17. The Owners are solely responsible for the conformity of all containers, packaging and pallets with any requirements of the consignee in relation thereto and for any expenses incurred by the Carrier arising from any failure so to conform.
18. The quotation and the Contract are subject to all necessary permits being issued by all relevant authorities.
19. If weights and dimensions of the goods exceed those stipulated on the face of this document then the quotation or the Contract is not binding on the Carrier. In the event that the weights and dimensions exceed those stipulated then the Carrier will be entitled to charge any reasonable additional costs arising from the increased weight or dimension. The Owner must ensure that they provide the correct weight and dimensions to the Carrier.
20. Where the Owner declares or has declared the weight of the goods and the Carrier relies or has relied upon that declaration then the Owner shall be responsible for all extra costs and risks incurred by the Carrier and shall be liable to the Carrier for any loss or damage occasioned either directly or indirectly to the Carrier by reason of the Carrier relying or having relied upon a declared weight. The Owner's liability in that event extends to any fine or other penalty incurred by the Carrier as a result of the Carrier reliance on the Owner's declaration as to the weight of the goods.
21. The person delivering the goods or any of them to the Carrier for carriage if not the Owner shall be deemed to be duly authorised by the Owner to sign all documents (including but not limited to an acceptance of these terms and conditions) for and on behalf of the Owner.
22. The Owner expressly warrants and represents to the Carrier that he is either the owner or the authorised Agent of the owner of the goods and by entering into the contract accepts these conditions for himself and all other persons described in the definition "Owner" contained in clause 1 and hereby indemnifies the Carrier from all actions, claims, demands, proceedings, costs, damages and expenses brought or recovered by any of those persons arising out of or in any way connected with the Contract or the Carriage of the goods.

## **LAW AND JURISDICTION**

23. Nothing in these conditions shall be read or construed or take effect so as to exclude, restrict, modify, alter or avoid:-
  - (1) the application of all or any of the provisions of the *Competition and Consumer Act 2010* which may be applicable or of the provisions of any other Act or Ordinance of a State or Territory of the Commonwealth of Australia which may be applicable and exclusion, restriction, modification, alteration or avoidance of which may be void, unenforceable or unlawful;
  - (2) the exercise of a right conferred by such provision; or
  - (3) any liability of the Carrier for a breach of a conditional warranty implied by such a provision.
24. To the extent permitted by *Competition and Consumer Act 2010* the Carrier hereby limits its liability for breach of a condition or warranty (if any) implied by that Act at the option of the Carrier to either:-
  - (1) the supply of the services supplied hereunder again; or
  - (2) the payment of the cost of having the services supplied hereunder supplied again.
25. This quotation is formed, made or created in the State of Queensland and the Owner hereby submits to the jurisdiction of the State of Queensland in any action concerning this quotation or its subject matter. Except as otherwise provided in this agreement, the laws of the State of Queensland shall govern such legal action. The venue shall be in Queensland. The carrier shall be entitled to reasonable professional costs, court costs and other costs of litigation any suit to enforce the terms of this quotation.

## **GOODS AND SERVICES TAX**

26. 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 1<sup>st</sup> July, 2000 will attract a Goods and Services Tax. This Tax will be added to each

and every invoice generated by the Carrier. The value of the Tax is not included in this quotation but will be an additional amount due and payable by the customer.

## **WAIVER**

27. Any failure on our part to insist upon the strict performance of these Terms and Conditions shall not be taken to be a waiver thereof of any rights.

## **IN CONSIDERATION of National Heavy Haulage Pty Ltd and any of its affiliates and associates (“THE Company”) at the request of the Guarantor (as is now acknowledged) supplying and continuing to supply goods and/or services to the Hirer, the following is agreed:**

I/WE (also referred to as the “Guarantor/s”) UNCONDITIONALLY AND IRREVOCABLY:

1. GUARANTEE the due and actual payment to the Company of all money's which are now owing to the Company by the Hirer and all further sums of money from time to time owing to the Company by the Hirer in respect of goods and services supplied or to be supplied by the Company to the Hirer or any other liability of the Hirer to the Company, and the due observance and performance by the Hirer of all its obligations contained or implied in any contract with the Company. If for any reason the Hirer does not pay any amount owing to the Company, the Guarantor will immediately on demand pay the relevant amount to the Company.
2. HOLD HARMLESS AND INDEMNIFY the Company on demand as a separate obligation against any liability (including but not limited to damages, costs, losses and legal fees (as defined hereunder in paragraph (b) hereof)) incurred by, or assessed against, the Company in connection with:
  - a) The supply of goods and/or services to the Hirer; or
  - b) The recovery of moneys owing to the Company by the Hirer including the enforcement of this Guarantee and Indemnity, and including but not limited to the Company's nominees' costs of collection and legal costs calculated on a solicitor and own Hirer basis; or
  - c) Moneys paid by the Company with the Hirer's consent in settlement of a dispute that arises or results from a dispute between, the Company, the Hirer, and a third party or any combination thereof, over the supply of goods and/or services by the Company to the Hirer.

I/WE FURTHER ACKNOWLEDGE AND AGREE THAT:

3. This guarantee and Indemnity shall constitute an unconditional and continuing Guarantee and Indemnity and accordingly shall be irrevocable and remain in full force and effect until the whole moneys owing the Company by the Hirer and all obligations herein have been paid satisfied and performed.
4. No granting of credit, extension of further credit, or granting of time and no waiver, indulgence or neglect to sue on the Company's part (whether in respect of the Hirer and/or any one or more of any Guarantor(s) or otherwise) and no failure by any named Guarantor to properly execute this Guarantee and Indemnity shall impair or limit the liability under this Guarantee and Indemnity of any Guarantor. Without affecting the Hirer's obligations to the Company, each Guarantor shall be a principal debtor and liable to the Company accordingly.
5. If any payment received or recovered by the Company is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor, and the Guarantor and the Company shall each be restored to the position in which they would've been had no such payment been made.
6. The term “Guarantor” whenever used in this Guarantee and Indemnity shall, if there is more than one person named as Guarantor, mean and refer to each of them individually and all of them together unless the context otherwise requires, and the obligations and agreements on the part of the Guarantor contained in this Guarantee and Indemnity shall bind them jointly and severally.
7. I/We have been advised to obtain independent legal advice before executing the Guarantee and Indemnity. I/We understand that I/we am/are liable for all amounts owing (both now and in the future) by the Hirer to the Company.

8. I/We irrevocably authorise the Company to obtain from any person or company any information which the Company may require for credit reference purposes. I/We further irrevocably authorise the Company to provide any third party, in response to credit references and enquiries about me/us or by way of information exchange with credit reference agencies, details of this guarantee and Indemnity being auctioned by the Company.
9. The above information is to be used by the Company for all purposes in connection with the Company considering the Guarantee and Indemnity and the subsequent enforcement of the same.

**AGREEMENT:** By signing or otherwise accepting this quotation you **AGREE** to the provisions of our Terms and Conditions (as above) and the rates contained in this document. This quotation replaces any earlier terms and conditions of contract between you and us.