



CONDITIONS OF CARRIAGE AND STORAGE

These Conditions of Carriage and Storage will apply to all Services which the Carrier is engaged to provide and may not be varied or amended unless by written agreement signed by an authorised officer of the Carrier.

1. Definitions

"Carrier" means Canny Carrying Co Pty Ltd (ABN 82 005 201 089) and its officers, employees, agents and Subcontractors.

"Customer" means the legal entity who requests the Carrier to provide the Services and where two or more entities they will be jointly and severally the Customer.

"Goods" means the property accepted from time to time from the Customer and includes any container, trailer, wagon, transportable tank, flat, pallet, flat rack or other unit or device used to consolidate Goods which is not supplied by or on behalf of the Carrier.

"Place of Receipt" means the place at which Goods are received by the Carrier for the provisions of Services.

"Place of Delivery" means the address to which Goods are delivered after the provision of Services.

"Services" means the whole of the operations and services undertaken by the Carrier (whether gratuitously or not) including, but without limiting the generality of this term, carriage, storage, packaging, loading, unloading or handling of Goods or provision of other services where this is applicable.

"Subcontractor" means any subcontractor of the Carrier and that subcontractor's employees, agents or subcontractors.

2. Provision of services

2.1 The Carrier agrees to provide or arrange the provision of the Services.

2.2 The Carrier is not a common carrier and reserves the right to refuse the provision of Services in relation to any Goods at its discretion.

2.3 The Carrier undertakes to:

- (a) arrange the carriage of the Goods from the Place of Receipt to the Place of Delivery; and/or
- (b) if requested, to arrange the storage of the Goods.

3. Customer Warranties

3.1 The Customer warrants that:

- (a) the Goods are fit for the contracted Services and have been suitably packaged for those purposes and are in compliance with all applicable laws and regulations;
- (b) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied to the Carrier are correct;
- (c) the Customer has the authority of all persons owning or interested in the Goods to engage the Carrier to provide the Services on their behalf; and
- (d) the person delivering any Goods to the Carrier for provision of Services is authorised to and does accept these conditions for the Customer and for any other person owning or interested in the Goods.

3.2 The Customer acknowledges that:

- (a) no representations has been made by any employee or agent of the Carrier to the Customer that is relied upon by the Customer.
- (b) the Carrier enters into the contract for provision of Services for and on behalf of itself and its employees and subcontractors, all of whom shall be entitled to the benefit of these conditions and shall be under no liability whatsoever to the Customer or anyone claiming through it in respect of the Goods or the provision of the Services, in addition to or separately from that of the Carrier under this agreement.
- (c) the Carrier has no responsibility for collection of cash or any other payment on behalf of the Customer or any other person.

3.3 The Customer will indemnify the Carrier against:

- (a) any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of any warranty or acknowledgment in this agreement;
- (b) any loss of 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;
- (c) all costs, demands, claims or expenses whatsoever and by whomsoever made arising as a result of the Customer providing an incorrect description or advising an incorrect weight of the Goods;
- (d) any loss or damage suffered by the Carrier resulting from the Customer's unreasonable detention of any containers or any other equipment;

For the purposes of this clause, "loss" expressly includes:

- (i) consequential loss, which includes, but is not limited to, loss of profits, loss of business, special damages or pecuniary loss; and
- (ii) any fine, levy, charge or other monetary imposition to which the Carrier may become liable as an incident to the provision of the Services, and resulting from any breach by the Customer of these conditions.

4. Subcontractors

- 4.1** The Carrier at its discretion may subcontract on any terms all or part of the Services.
- 4.2** The Customer undertakes that no claim or allegation shall be made against any employee, agent or Subcontractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission on the part of any of them, and if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences of the same.
- 4.3** Every such employee, agent and Subcontractor shall have the benefit of all provisions in these conditions benefitting the Carrier as if such provisions were expressly for their benefit 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 be or be deemed to be parties to the contract to provide Services.

5. Means of carriage

- 5.1** The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to use any means of carriage whatsoever. The Customer authorises the Carrier at its discretion to arrange specialist carriage which may require the use of the services of other organisations or subcontractors.
- 5.2** The Customer authorises any deviation from the Carrier's usual route or manner of carriage which may in the Carrier's discretion be considered necessary or desirable.
- 5.3** If the receiver fails to take delivery of the Goods at the place of delivery for any reason, the Carrier shall be deemed to have delivered the Goods if they are left at the Place of Delivery. In circumstances where the receiver refuses to accept delivery of the Goods, the Carrier may at its option without notice unload the Goods at the Place of Delivery or store the Goods at any other location and in any manner deemed appropriate by it or return the Goods to the Customer and any responsibility the Carrier has or had in respect of the Goods shall cease and the Customer will be liable for any additional carriage and storage costs incurred.

6. Liability

- 6.1** To the maximum extent permitted by law, the only warranties or guarantees that are binding on the Carrier in respect of the Services to be provided to the Customer are those imposed and required to be binding by the Australian Consumer Law (being Schedule 2 of the Competition and Consumer Act 2010) or any other applicable law. All other warranties or guarantees (express or implied) are expressly excluded. If the Carrier fails to comply with any applicable guarantee under the Australian Consumer Law, the Carrier's liability (at its option) is limited to either:
- (a) the supplying of the Services again, or
 - (b) the payment of the cost of having the Services supplied again.
- 6.2** Without limiting clause 6.1, the Carrier shall not be liable for any loss or damage to the Goods or any loss, damage (including indirect, economic or consequential loss), death or personal injury in connection with:
- (a) any misdelivery, delayed delivery or non-delivery of the Goods, or any part or portion of the Goods;
 - (b) packing or unpacking or loading or unloading any Goods;
 - (c) the storage of the Goods,

regardless of whether such loss, damage, death or personal injury occurred during carriage or storage and howsoever it was caused, including whether by any negligence or breach of contract or wrongful act or default of the Carrier.

- 6.3** The Customer shall notify the Carrier in writing of any claim intended to be made within 5 days of the date of delivery of the Goods or in the case of storage within 5 days of the date of removal of the Goods from storage or in the case of non-delivery of Goods, within 5 days after the date on which the Goods should have been delivered.
- 6.4** Unless the Australian Consumer Law is applicable, the Carrier shall in any event be discharged from all liability whatsoever in connection with the Goods or the provision of the services unless suit is brought within 6 months after delivery of the Goods or in the case of non-delivery, the date upon which the Goods would in the ordinary course of business have been delivered, or the provision of the Services, whichever shall first occur.

7. Carrier's charges

- 7.1** The Customer must pay all the Carrier's charges for the Services which shall be due and payable and shall be deemed fully earned on receipt of the Goods by the Carrier.
- 7.2** Where the Customer stipulates that the charges for the Services will be paid by the receiver or another third party, the Customer agrees that if or insofar as any charges are not paid by the receiver or other third party, the Customer will on demand pay the same to the Carrier.
- 7.3** The Carrier may charge freight or storage (or both) by weight, measurement or value at its absolute discretion and may at any time reweigh, remeasure, revalue or require the Goods to be reweighed, remeasured or revalued and charged proportional additional freight and storage costs accordingly.
- 7.4** Should the Carrier be delayed by the Customer for a period in excess of 30 minutes in loading, unloading or for any other reason beyond the control of the Carrier, the Customer shall pay to the Carrier the Carrier's reasonable charges and costs incurred by the Carrier due to such delay.

8. Lien

- 8.1** The Customer:
- (a) acknowledges and agrees that the Carrier has a particular or general lien over the Goods (and any documents relating to the Goods) for all amounts owing to the Carrier on any account including in respect of Goods for which the Carrier has previously provided Services.
 - (b) irrevocably waives its right to receive any notice under the *Personal Property Securities Act 2009 (Cth)* (**PPSA**) including notice of a Verification Statement or any other notice under the PPSA (unless a requirement for notice cannot be excluded under the PPSA);
 - (c) acknowledges and agrees that if the lien is not satisfied by payment of all monies owing by the Customer to the Carrier or the Goods are not collected, the Carrier may at its option and without notice, in the case of perishable goods immediately and in any other case upon the expiration of 1 month, either:
 - (i) remove the Goods or any part of them and store them in such place and manner as the Carrier thinks proper at the Customer's risk and expense, or
 - (ii) open any package and sell the Goods or part of them upon such terms as the Carrier thinks fit and apply the proceeds of sale towards discharge of

the Carrier's lien and the costs associated with the sale without being liable to any person for any loss or damage caused.

8.2 Any sale of the Goods by the Carrier shall not prejudice the Carrier's right to recover from the person or persons liable to pay the same any charges due or payable in respect of the Services.

8.3 This right of sale is additional to any other rights conferred upon the Carrier by statute or general law.

9. Dangerous Goods

9.1 If the Carrier accepts dangerous goods, being those which are or may become dangerous, inflammable, noxious or damaging, including radioactive material(s) or which are or may become liable to damage any property whatsoever, for the provision of Services, such Goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed in accordance with statutory obligations applicable to those Goods.

9.2 The Customer shall indemnify the Carrier against all loss (including consequential loss, which includes but is not limited to loss of profit, loss of business, special damages or pecuniary loss), damage or injury however caused arising out of the carriage of any dangerous goods or the provision of the Services in relation to such Goods whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.

9.3 Where dangerous goods are delivered to the Carrier without written consent or where they are not distinctly marked to indicate their nature and character or if in the opinion of the Carrier the Goods are liable to become of a dangerous, flammable, noxious or damaging nature, they may be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Carrier's right to its charges.

10. Governing law

10.1 These conditions are governed by and to be construed in accordance with the laws of Victoria and each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Victoria.