

# CONDITIONS OF CARTAGE - GENERAL USE

- 1. DEFINITIONS**

In these conditions "the carrier" means Porters Mt Isa Carriers carrying on business in its own name and under any business name and its officers, servants, agents and sub-contractors. The Carrier is not a common carrier and accepts no liability as such. The Carrier may 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. COMPLIANCE WITH LAWS**

The Carrier accepts the goods subject to these conditions including the following:

  - (1) The consignor has complied with all applicable laws, by-laws and regulations relating to the notification, description (on the consignment note or separately) consigning and packing of the goods and the expenses and charges of the Carrier in complying with any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs, warehouse or other authority or company shall be paid on such goods if deemed necessary by the Carrier.
  - (2) 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.
  - (3) That the consignor has full and adequately described the goods on the consignment note.
  - (4) The Carrier shall not bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised of the Carrier.
  - (5) The Carrier is entitled to open any document wrapping package or other container in which the goods are placed or carried to inspect the goods either to determine their nature or condition or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damage, destroyed or defaced.
- 3. LIMITATION OF LIABILITY**
  - (1) Subject to clauses 18 and 20 hereof the Carrier shall not be under any liability whether in tort or in contract for any loss of or damage to or misdelivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, no-delivery of goods held in its care, custody or control, or any consequential loss arising therefrom howsoever caused including but not limited to any negligence or breach of contract by the Carrier.
  - (2) In the event of this contract of carriage including any handling, installation, removal, assembly or erection of any kind whatsoever it is undertaken on the strict basis that the Carrier accepts no liability whether in tort or contract for any loss damage or injury of any kind whatsoever howsoever arising (including but not limited to any negligence or breach of contract by the Carrier) caused or incurred or incurring during any part of the movement. The disclaimer extends to include not only loss of a damage to itemised equipment itself but, loss damage or injury to any person property or thing damaged during the movement and to include any loss consequentially or otherwise arising from any loss damage or injury aforesaid howsoever caused including but not limited to any negligence or breach of contract by the Carrier.
- 4. CONTAINERS**

These conditions 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 any expenses incurred by the Carrier arising from any failure so to conform.
- 5. FREIGHT**

Freight shall be considered earned whether the goods are delivered to the consignee or not, and whether damaged or otherwise. Under no circumstances will any payment for freight be refunded.
- 6. CHARGES**

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 seven (7) days of the date set for payment or, if no date is set for payment, within seven (7) days of delivery or tendered delivery of the goods, then the consignor shall pay the said charges.
- 7. ADDITIONAL FREIGHT CHARGE**

The Carrier may charge freight by weight, measurement or value, and may at any time reweigh or remeasure or require the goods to be reweighed, revalued or remeasured and charge proportional additional freight accordingly.
- 8. PROCEEDINGS AGAINST CARRIER**

These conditions shall be governed and construed in accordance with the laws of the State in which the consignment note is issued and any proceedings against the Carrier shall be brought in that State and not elsewhere within twelve (12) months from the date of contract.
- 9. DELAY IN DELIVERY**

Should the consignee named 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. DELIVERY AT INTERMEDIATE POINTS AND DEVIATION**
  - (1) The Carrier will deliver goods at intermediate points only special arrangement and then only provided suitable facilities are available at all hours.
  - (2) The consignor authorizes any deviation from the usual route or manner of carriage of goods which may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.
- 11. METHOD OF CARRYING GOODS**

The Carrier may carry all goods or have them carried or onforwarded by any method which the Carrier in its absolute 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 any railway or shipping authority or by any other person firm or company.
- 12. CARRIAGE BY INDEPENDENT CONTRACTOR OR SUB-CONTRACTOR**

The Carrier may arrange for the carriage of the goods by any independent contractor or sub-contractor of the Carrier.
- 13. EXCLUSION OF LIABILITY EXTENDS TO SERVANTS**

In respect of any clause herein which excludes or in any way limits the liability of the Carrier in respect of the 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 servants 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. CONDITIONS TO HAVE FULL FORCE IN ALL CIRCUMSTANCES**

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 contract or of any conditions hereof by the Carrier.
- 15. PACKING**
  - (1) 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 whatever whether in the course of packing or in transit or otherwise and howsoever occasioned to the said goods or any of them.
  - (2) When the Carrier is required to load or unload any liquids, pan liquids, substance or any commodities or products into bulk tanks or vessels, drums or containers the Carrier shall not be liable for any loss, damage or contamination of the product during any such loading or unloading operation or packing, whilst goods are held in store or bulk storage tanks for any reason whatsoever
- 16. LIEN**

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 lien 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 the expiration of one (1) month either: -

  - (1) remove such goods or pan thereof and store them in such place and manner as the Carrier shall think proper and at risk and expense of the consignor or as the case may be; or (2) open any package and sell such goods or pan thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person of any loss or damage thereby caused.
- 17. INSURANCE**

Insurance will not be arranged by the Carrier. It is the responsibility of the consignor to ensure that adequate insurance cover is arranged in view of the application of all clauses hereof upon which the Carrier accepts goods for carriage.
- 18. AUTHORISATION OF CARRIER**

The consignor authorises the Carrier (if the Carrier should think fit so to do) to contract either in the Carrier's 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 for carriage whether by sea, rail, road or air or any lease agreement, equipment hand-over agreement, interchange receipt or any other document as the case may require.
- 19. APPLICABLE LEGISLATION**

Notwithstanding the provisions hereof they shall be read subject to any implied terms, conditions or warranties imposed by the Trader Practices Act 1974 (Commonwealth) or any other Commonwealth or State legislation in so far as such may be applicable and prevents either expressly or impliedly the exclusion or modification of any such term, condition or warranty.