



TRANSPORT TERMS AND CONDITIONS

1 Definitions in These Terms and Conditions:

"**Agreement**" means the agreement

between the Customer and SCT for the Carriage of the Goods by SCT upon the terms and conditions set out below.

"**Carriage**" means the Services performed by SCT for the Customer.

"**Customer**" includes the Customer's representatives, agents and employees.

"**Customer's Activities**" means all things or tasks which the Customer is, or may be, required to do to comply with its obligations under the Agreement

"**Consignment Note**" means the consignment note supplied by the Customer to SCT in respect to the Carriage.

"**Consignee**" means the receiver of the Goods, its servants, agents and employees.

"**Consignor**" means the sender of the Goods, its servants, agents and employees.

"**Dangerous Goods**" has the same meaning as in the most recent edition of the Australian Code for the Transport of Dangerous Goods by Road and Rail ("**ADG Code**").

"**Goods**" means the cargo under consignment by the Consignor to SCT and in any Rolling Stock accepted from and on behalf of the Customer.

"**Rolling Stock**" includes locomotives, rail wagons and vans.

"**Services**" means the collection, packaging, storage, transport and delivery of Goods.

"**SCT Dangerous Goods Policy**" means that which is posted on SCT's website from time to time.

2 Effect of These Conditions

(a) Carriage is performed by SCT subject to these terms and conditions.

(b) The Customer agrees that:

- (i) SCT employees, agents, subcontractors and each rail access authority and their employees, agents and subcontractors have the benefit of this Contract as if they were parties to it (Benefited Persons); and
- (ii) SCT holds the benefit on trust for them and can, if requested by them, enforce it on their behalf.

3 Sub-Contracting

(a) The Customer authorises SCT to at its absolute discretion engage a subcontractor to perform all or part of the Carriage without first obtaining the Customer's approval.

(b) The Customer and SCT agree that SCT's subcontractor is entitled to enjoy jointly and severally with SCT the benefit of all or any part of SCT's rights under the Agreement.

(c) SCT is authorised to assign, subrogate or novate (as the case may require) all or any part of SCT's rights and liabilities under the Agreement including without limitation SCT's right to indemnity hereunder.

4 Customer's Responsibility

The Customer will:

(a) be fully responsible for the Customer's Activities, the Goods and all risks associated with Carriage of the Goods despite authorising an agent, or subcontracting or arranging a third party, to carry out any part of the Customer's Activities; and

(b) be vicariously liable to SCT for all acts, omissions and defaults of its subcontractors and agents (and those of the employees and agents of its subcontractors and agents).

(c) comply with all reasonable directions given by SCT or a Benefited Person; and

(d) Notify SCT in writing in advance of any special exemption, examination, authority or permit required in relation to the Goods.

(e) If the Customer is responsible for loading the Goods, the Customer must:

- (i) ensure all Goods and any Rolling Stock or other equipment are loaded safely, securely and in accordance with any reasonable loading requirements (including any applicable rail corridor, station and siding loading gauges and dimensions);
- (ii) ensure that the mass of the Goods within the container or Rolling Stock is within the carrying capacity, is evenly and safely distributed and in accordance with any requirements (including limitations) of the relevant rail access authority; and

(iii) complete wagon tickets for each wagon or container and securely affix the wagon tickets in a visible place to the appropriate wagon (if required by SCT).

(f) Where the Customer is responsible for unloading, the Customer must ensure the Goods, containers and Rolling Stock are unloaded safely.

(g) If the Customer fails to comply with either paragraph 4(e) or 4(f), SCT may in its discretion at the Customer's cost:

- (i) reload the container or Rolling Stock, or require the Customer to do so;
- (ii) refuse to carry the Goods; or
- (iii) remove the Goods from SCT's Rolling Stock, or require the Customer to remove the Goods.

5 SCT's Responsibility

(a) (**Not Common Carrier**) The Customer acknowledges that SCT is not a common carrier.

(b) (**Release**) SCT shall not be liable for any loss or damage to the Goods or any other loss, expenses, claims, liabilities, damage (direct or consequential) or injury to property (real or personal) or persons (including death, bodily injury or illness). This release covers any kind of loss or damage arising due to missed delivery, delayed delivery, concealed damage, deterioration, contamination, evaporation, non-delivery, negligence or failure by SCT.

6 Goods

(a) The Customer must fully and accurately describe the Goods on the Consignment Note or separately and the Goods must conform to their description. The Customer must disclose, fully and accurately any Dangerous Goods or any other dangerous items or substances that are included in the Goods. SCT may on receipt of such description withdraw its offer to provide the Services for all or any part of the Goods and shall in the case of such withdrawal refund any payment made by the Customer to SCT in respect of those Goods.

(b) The Customer warrants that:

- (**As the Consignor**) it has complied with all Commonwealth, State and Territory laws, regulations, codes, standards and other relevant requirements ('**laws**') relating to the notification, description, consigning, nature, packaging or Carriage of the Goods applicable to the Customer including but not limited to the SCT Dangerous Goods Policy requirements.
- (**As the Consignee**) it has obtained written assurance from the Consignor that all laws relating to the notification, description, consigning, nature, packaging or Carriage of the Goods applicable to the Carriage, including but not limited to the SCT Dangerous Goods Policy requirements, have been complied with. A copy of such assurance must be supplied to SCT upon request.

(c) The Customer warrants that the Goods have been packed and prepared to withstand the risks of damage to the Goods by Carriage having regard to the nature of the Goods.

(d) The Customer authorises SCT to pay as it considers necessary any charges, customs duty, excise duty and other amount required pursuant to any law relating to customs or excise, or under an order or requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company. The Customer shall reimburse to SCT any such expenses and charges incurred by SCT.

(e) The Customer authorises SCT to take any action necessary to rectify the Customer's failure in respect of the requirements on the Customer under this clause 6 and shall indemnify SCT against all charges, expenses, liabilities, claims, losses, damages and statutory penalties suffered or incurred by SCT in relation to the Carriage where such liability arises in whole or in part out of a breach by the Customer of a warranty or undertaking set out in this clause 6.

(f) If in the opinion of SCT, any Goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Customer authorises SCT to deal with the Goods as it considers fit, including but not limited to destroying, disposing of, abandoning or rendering harmless the Goods without obtaining prior approval from the Customer. SCT will not be responsible to the Customer for any loss suffered by the Customer as a result of SCT exercising its discretion under

this clause and the Customer shall indemnify SCT for any expenses or liabilities incurred by SCT.

7 Inspection

Where the Consignment Note or other identifying document or mark has in SCT's opinion been lost, damaged, destroyed or defaced, SCT is entitled to open any document, wrapping, package or other container in which Goods are placed or carried and to inspect the Goods to determine their nature, condition, ownership or destination.

8 Containers and Packaging

- (a) The Customer shall be responsible for all container, packaging, pallet and platform requirements.
- (b) SCT will not pack Goods unless requested in writing by the Customer.

9 Delivery

- (a) SCT is authorised to deliver the Goods to the delivery address stated on the front of the Consignment Note or any other address nominated to SCT by the Customer. A receipt or signed delivery docket for the Goods obtained by SCT from any person at that delivery address shall be conclusive evidence of delivery of the Goods.
- (b) If the nominated delivery address is unattended or if delivery to a person cannot otherwise be effected by SCT, SCT may fulfil its obligations to deliver the Goods by leaving the Goods at that place or may at its discretion store the Goods. If the Goods are stored by SCT the Customer shall pay or indemnify SCT for all costs and expenses incurred in or arising from such storage and SCT shall have liberty to deliver the Goods to the Customer from the place of storage at the Customer's expense.
- (c) SCT will deliver Goods at intermediate points only by special arrangement and provided suitable facilities are available at all hours.
- (d) Every reasonable effort will be made to complete Carriage by the quoted date however SCT does not guarantee delivery by that date. The Customer must accept the Goods notwithstanding any delay.
- (e) SCT will not be obliged to provide copies of signed delivery dockets to a Customer upon the expiration of 120 days from the date of delivery of the Goods.

10 Pallets

If the consignee does not have a pallet account with Loscam, Chep or other pallet provider (the Pallet Provider) SCT may, on delivery of the Goods, at its option either;

- (a) transfer the pallet back to the Customers pallet account, or
- (b) require the Customer to deliver to SCT the same number of pallets as SCT shall have delivered.

If the Customer has a pallet account with a Pallet Provider, it agrees that it will remain liable to pay the Pallet Provider for any pallets received by SCT from the Customer for 45 days from the date of receipt of the pallets by SCT after which time SCT will become liable to the Pallet Provider until the pallets are transferred off SCT's pallet account with the Pallet Provider

11 Rates

- (a) **(Profile)** the rate or rates charged by SCT for the Carriage will be determined according to the weight, measurement or value of the Goods (i.e. the profile of the Goods). SCT may at any time weigh, value or measure the Goods for the purpose of determining the rate applicable to the Carriage.
- (b) **(Up-rate)** The Customer acknowledges that the rate or rates quoted by SCT for its Services are not fixed and may change (increase or decrease) depending on the profile of the Goods.
- (c) **(Up-rate notification)** SCT will notify the Customer of any change to the rate or rates quoted by SCT for its Services as soon as reasonably practicable.

12 Payment Terms

- (a) SCT shall be entitled to payment for its Services as soon as the Goods are despatched to SCT by or on behalf of the Customer. The total payment for the Services is non-refundable.
- (b) The Customer must pay the full amount of SCT's invoice (including any GST) for the Services within seven days of the invoice being issued, without deduction and without the need for a demand.
- (c) **(Default interest)** Should there occur any delay in payment in accordance with this clause, the Consignor shall pay interest on the outstanding amount at the rate of 16% per annum calculated on a daily basis assessed from the due date until payment is received by SCT.
- (d) **(GST)** Unless otherwise stated the total charge for the Services does not include Goods and Services Tax (GST) and SCT reserves the right to increase any charge by an amount equal to the GST payable in respect of any taxable supply.

13 Confidentiality

The Parties must ensure that the terms of this agreement are kept confidential

14 Delay in Loading or Unloading

- (a) SCT may request the Customer to pay an additional charge in respect of any delay in loading or unloading the Goods except to the extent that the delay is caused by an act or omission of SCT or a person for whom SCT is responsible.
- (b) A delay shall be deemed to occur where loading or unloading takes longer than 60 minutes starting from the time that SCT reports for loading or unloading.
- (c) Labour to load or unload the vehicle shall be the responsibility and expense of the Customer.
- (d) In addition to freight, SCT may charge for:
 - (i) any additional expenses SCT incurs as a result of any incorrect declaration by the Customer of the weight, volume, description or packaging of the Goods;
 - (ii) any expense or loss incurred by SCT as a result of the Customer cancelling any Services;
 - (iii) any demurrage or detention charges (at SCT's standard rates) as a result of the Customer's act or omission which prevents SCT from using any Rolling Stock or other item of equipment;
 - (iv) any storage or other charges or expenses SCT incurs in relation to the Goods.

15 Handling of Goods

If the Customer expressly instructs SCT to use, or it is expressly agreed in writing that SCT will use, a particular method in performing any Service SCT will give priority to the method designated but if that method cannot in SCT's opinion conveniently be adopted by SCT, the Customer authorises SCT to perform the Service by another method at SCT's absolute discretion.

16 Lien and Sale

- (a) SCT shall have a lien on the Goods and any documents relating to them and on any other property or documents of the Customer in the possession of SCT for all charges payable to SCT pursuant to the Agreement.
- (b) If after demand of SCT the Customer fails to pay the charges due to SCT in respect of Carriage, SCT may at its option and without notice sell (or appoint a nominee to sell) by public auction, or privately, on any terms all or any of the Goods, property or documents contemplated by this clause.
- (c) From the net proceeds of a sale conducted by SCT (or its nominee as the case may be) under this clause SCT shall be entitled to keep an amount equal to the sum payable by the Customer in respect to the Carriage as well as any expenses incurred by SCT in storing the Goods and conducting the sale. Once the total amount of all such charges and expenses payable to SCT have been satisfied SCT shall deal with any surplus money arising from the sale and any unsold Goods, property or documents at the Customer's direction.
- (d) Any sale conducted by SCT (or its nominee as the case may be) pursuant to this clause shall not affect SCT's right to recover from the Customer any deficit between the net proceeds of sale and the total amount or any other debt due by the Customer to SCT.

17 Authority

The Customer authorises SCT to:

- (a) use any method for handling, transporting or storing the Goods. SCT will give priority to any instructions given by the Customer, but if those instructions cannot be followed, SCT will use another method;
- (b) deviate from any usual route of transport or place of storage;
- (c) weigh or measure the Goods where SCT's charges are based on weight or measurement;
- (d) open any container or inspect the Goods to determine their nature, conditions, ownership or destination.

18 Agreement between Parties

- (a) **(Authority)** The Customer warrants to SCT that:
 - the Customer is the owner of the goods or authorised to enter into the Agreement on behalf of the owner of the Goods, and
 - the person delivering the Goods to SCT for Carriage (or who is holding the Goods for collection by SCT) has authority to sign the Consignment Note for or on behalf of the Customer.
- (b) **(Indemnity)** The Customer will indemnify SCT against all loss suffered and/or liabilities, expenses or penalties incurred by SCT arising from or in connection with:
 - The Customer's failure to perform under the Agreement;
 - Any claim relating to personal injury or death or loss or damage (direct or consequential) to property (real or

personal) of SCT or of a third party including loss of business or profits or revenue, which results from any act or omission by the Customer under the Agreement.

This indemnity covers, without limitation, damage arising from the act or neglect of the Customer in performing its obligations under the Agreement. The Customer's responsibility to indemnify SCT will be reduced to the extent that an act or omission of SCT contributed to the loss, damage, injury or death.

- (c) **(Costs of default)** All costs, expenses or other liability incurred by SCT to remedy any breach by the Customer shall be recoverable from the Customer upon demand in addition and without prejudice to SCT's right to damages for breach of the Agreement. The sum of any liability of the Customer arising under the Agreement shall be a liquidated debt payable by the Customer without reduction

19 Insurance

- (a) The Customer acknowledges that the goods have been insured by SCT for SCT's benefit only and that it will be the Customer's responsibility to protect the Goods against the risk of loss or damage and, at its own cost, to take out and keep current all available and adequate insurances to cover the Goods upon such terms and in such amounts as are reasonable in the circumstances.
- (b) The Customer warrants that it will take out and maintain all available and adequate insurances to cover the Goods against the risk of loss and damage by Carriage.

20 Claims for Damage or Loss

Subject always to clause 5, any claim the Customer has in respect of damage or loss to Goods as a result of Carriage must be submitted in writing to SCT within 7 days of delivery. Any claim received will be processed in accordance with SCT's Customer Freight Damages policy which may be found on SCT's website www.sctlogistics.com.au. The Customer will be responsible for any damage arising out of its delay, and will indemnify SCT against all costs, losses or other liability suffered by SCT as a result of any delay.

21 FreightSafe Warranty Claims

Any claim under the FreightSafe Warranty for damage to or loss of Goods ("Claim") must be made in accordance with the terms & time limits listed below. Any claims that are not made in accordance with the terms and/or do not comply with the below time limits, will be rejected.

The Customer must lodge its claim directly with FreightSafe. To be able to successfully lodge a claim the customer must provide a copy of its marked Proof of Delivery Form (POD) and the Transport Exception Report which has been issued by SCT. The lodgement must be made within the following time limits.

- (a) Where the Receiver has indicated in writing on the consignment note / POD that loss or damage has occurred in respect of the Goods, within fourteen (14) days from the date of delivery of the Goods to the Delivery Address; or
- (b) In respect of Claims for complete non-delivery of goods that were in the possession of SCT, within fourteen (14) days after the date of dispatch specified for that consignment.

Please note, if there is no indication on the consignment note / POD, made at the time of delivery, that loss or damage has occurred, then the customer will not be entitled to make a claim under FreightSafe, except for scenario (b) above. Under all circumstances, if the customer does not possess a Transport Exception Report provided by the SCT, it will not be able to lodge a claim.

Once a claim is lodged, then the Customer will have an additional 30 days from this date to provide all necessary documentation requested by FreightSafe as part of its claim assessment process.

The Customer may only make one (1) Claim per consignment.

Where the customer makes a valid Claim and there are outstanding amounts owed by the Customer to SCT, SCT reserves the right to pay the Claim either directly to the Customer or as a credit to the Customer's account. All settlements will be exclusive of GST.

Claims will only be paid by SCT in respect of any consignment after the Customer has paid all outstanding Freight Charges in respect of that consignment.

22 FreightSafe Warranty Limitations

- (a) The FreightSafe Warranty is subject to the following limitations: Claims are limited to loss of or damage to the Goods only. For the avoidance of doubt, the FreightSafe Warranty does not cover any consequential loss or damage suffered by the Customer as a result of loss or damage to the Goods.
- (b) The maximum amount that may be claimed from the Carrier under the FreightSafe Warranty is the lesser of:
 - (i) the FreightSafe Warranty Limitation Amount (for the avoidance of doubt, where no FreightSafe Warranty has

been selected by the Customer the Freight Safe Warranty Limitation Amount shall be zero); and

- (ii) the cost price of the Goods, as supported by documentary evidence acceptable to SCT (for example receipt, valuation or tax invoice from the seller of the Goods).
- (c) GST and freight charges relating to the consignment covered by the FreightSafe Warranty shall not be included in the calculation of any amount payable under the FreightSafe Warranty in respect of the Goods and any payment by SCT arising out of any Claim made by the Customer will be exclusive of GST.
- (d) Where a claim has been settled in full for goods damaged, SCT reserves the right to take possession of the goods as salvage and to dispose of such goods as it sees fit. If by mutual agreement with SCT, the customer retains the goods or a part thereof, SCT will have the right to deduct the value of the goods retained from the approved claim amount.

23 FreightSafe Warranty Exclusions

SCT will not be liable for any Claims made by Customers in any of the following circumstances:

- (a) Where the Customer has not paid the FreightSafe Warranty charge;
- (b) Where the Customer fails to comply with the above time limitations or any other term, including the lack of providing all the documentation requested by FreightSafe;
- (c) Where the Customer has not marked the POD at the time of delivery to denote the damage or loss of goods, except for when the entire goods were lost under the possession of SCT and hence the delivery was physically never made;
- (d) Where the Goods consigned are Excluded Goods; "Excluded Goods" means Dangerous Goods and each of the following items: currency; negotiable instruments; jewellery; gemstones; wrought or unwrought metals; antiques; works of art; securities; drugs; weapons; living animals or plants; household and personal effects; second hand goods, cigarettes, tobacco and tobacco products; and any valuable documents;
- (e) Where SCT in its reasonable opinion considers the Packaging of the Goods to be inadequate for rail or road transportation;
- (f) Where the Goods are determined by SCT to have been defective prior to the Carriage;
- (g) Where damage, mechanical failure or other operational defect in the Goods could not, in the reasonable opinion of SCT, have been caused by the Carriage;
- (h) Where SCT fails, delays or is unable to carry out its obligations under this contract due to strikes and / or lockouts (whether of SCT own employees or those of others and whether or not SCT could have avoided the same by acceding to the demands of the employees responsible for such action), acts of God, war, terrorism, fire, flood, embargo, litigation, acts of government or any agency instrumentality or any political subdivision thereof or any other cause beyond the control of SCT;
- (i) Where the goods have been lost or damaged as a result of derailments, collisions, overturning;
- (j) Where the Goods have been returned to SCT without a bar-coded consignment note and label from SCT or otherwise than in accordance with the controlled returns procedure of SCT;
- (k) Where the Goods returned to SCT have not been scanned into the pickup depot of SCT;
- (l) Where SCT has not been responsible for the total Carriage of the Goods to the Delivery Address;
- (m) Where the Goods have not been packed in the original manufacturer's packaging or the equivalent;
- (n) Where the Delivery Address is a post office box, a roadside drop or postal mail box.
- (o) Where the Customer has not complied with and satisfied in full any part of the freight safe process.
- (p) If SCT refuses to provide the Customer with a Transport Exception report for any reason that may be inline with the above terms.

24 FreightSafe Fees and Limitation of Cover

FreightSafe fees are charged in form of a fixed fee per consignment. These are communicated in writing by SCT at the time of creating a trading account with the customer. Please note these fees may change from time to time to reflect increases in cost of conducting business. These increases will be at the discretion of SCT and communicated to the Customer in advance. The limitation of cover will be communicated by SCT at the time the customer will create an account with SCT.

25 Applicable Legislation

- (a) Nothing in these conditions shall be read or applied so as to exclude, restrict or modify or have the effect of excluding,

restricting or modifying any condition, warranty, guarantee, right or remedy implied by law (including the Trade Practices Act 1974) and which by law cannot be excluded, restricted or modified.

- (b) Notwithstanding the preceding clause, all representations, statements, terms and conditions and warranties (whether implied by statute or otherwise) not embodied in the Agreement are expressly excluded to the fullest extent permitted by law.

26 No Responsibility for Collection of Cash

The Services under the Agreement do not include collection of cash and SCT may decline any instruction by the Customer to collect cash on delivery or other payment on behalf of the Customer or any other person. Carriage of cash shall be for the same purpose and on the same terms as the Agreement.

27 Terms and Conditions have Full Force in all Circumstances

- (a) All the rights, immunities and limitations of liability in these terms and conditions in favour of SCT shall have their full force and effect to the maximum extent permitted by law in all circumstances.
- (b) Failure by SCT to insist upon strict performance of any of the terms and conditions of the Agreement shall not be deemed a waiver thereof or of any rights SCT may have and shall not (and nor shall any express waiver) be deemed to be waiver of any subsequent breach of any term or condition of the Agreement.
- (c) The Customer's liability under the Agreement shall not be affected by any variation, waiver, forbearance or indulgence of any kind.

28 Variation of Terms and Conditions

SCT shall not be bound by any agreement purporting to vary these conditions or in respect to the Goods unless such agreement is in writing and signed by an authorised officer of SCT.

29 Provisions Severable

If any part of these Terms is declared unenforceable, all other provisions will continue to apply.

30 Assignment

The Customer must not assign, transfer, encumber or deal with any of its rights or obligations under the Agreement without SCT's prior written consent. The Agreement will bind and benefit any successors or permitted assigns of the parties.

31 Termination of Services

- (a) **(With notice)** If either party breaches any of the provisions of these Terms the other (non-defaulting) party may give written notice to the offending party specifying the alleged breach and that unless the offending party rectifies that breach within seven (7) days then the other (non-defaulting) party will terminate this agreement.

- (b) **(Immediately)** SCT may, without prejudice to any other remedy that may be available to SCT, at its option withhold or cancel any Services without notice if:

- the Customer fails in whole or in part to perform or observe any term or condition hereunder relating to Dangerous Goods; or
- a receiver, liquidator, trustee in bankruptcy or official manager or administrator of the Customer or any of its business or property is appointed.

32 Force Majeure

Every reasonable effort will be made to complete the Carriage in the manner contemplated by the Agreement, but the performance of it is subject to variation or cancellation owing to an act of God, outbreak of hostilities (whether or not accompanied by any formal declaration of war), riot, civil disturbance or acts of terrorism, strikes, lock outs, fire, flood, drought or any cause beyond SCT's control or that affects SCT's ability to carry out the Carriage.

33 Notices

Any notice or other communication required under the Agreement must be in writing and forwarded to the other party at that other party's published address or such other addresses as may be substituted by written notice to the other party from the party wishing to alter its address.

34 Jurisdiction

Any claim arising under the Agreement must be instituted, heard and determined in a court of competent jurisdiction in Victoria.

35 Interpretation

Unless the context requires otherwise, references anywhere in the Agreement to: "**SCT**" and "**Customer**" will include their respective agents, representatives, related entities, successors and permitted assigns; persons will include corporations; the singular will include the plural and vice versa; any gender shall include all genders; and two or more persons will bind them jointly and severally.