

## Draft Terms and Conditions of Carriage and Storage

### Definitions:

- “The Carrier” shall be Hervey Bay Removals Pty Ltd A.C.N 140 645 763 trading as Hervey Bay Removals which in turn shall include its successors and assigns;
- “Customer” means the person or person’s on whose behalf or at whose request is arranging the carriage or storage of the goods;
- “Goods” means the goods accepted by the Carrier includes any container or packaging not supplied by or on behalf of the Carrier;
- “Sub Contractor” means any Sub-Contractor of the carrier that sub contractors, servants and/or agents, sub contractors, indirect and direct subcontractors;

1. Notwithstanding anything contained herein, the Carrier shall continue to be subject to any condition or warranty implied by the *Trade Practices Act 1974 (Cth)* if and to the extent that the said Act is applicable to this Agreement and prevents the exclusion, restriction or modification of any such condition or warranty.
2. This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
3. Where discretion is given to the Carrier by any provision hereof, the exercise of that discretion by the Carrier shall be absolute and unfettered, and may be unreasonable.

4. The Carrier agrees:
  - 4.1 to procure the carriage of the Goods from the pick up address to the delivery address; and/or
  - 4.2 to procure the storage of the Goods for the storage period
  
5. The Carrier shall not prepare any detailed inventory of the Goods, except on the prior instruction of the Customer, and at the Customer's sole expense.
  
6. The Customer warrants that:
  - 6.1 the Goods are fit for carriage and storage, and are not dangerous; and hazardous, flammable or toxic.
  - 6.2 the Customer has the authority of all persons owning or interested in the Goods to enter into this Agreement for them
  
7. The Customer acknowledges that no agent or employee of the Carrier can alter or vary these conditions.
  
8. This Agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions, or binding on the parties with respect to the storage and carriage or the matters to which this Agreement relates.
  
9. The Carrier may inspect the Goods, and for such purpose may open or remove any packaging.

10. At all times and in all circumstances and for all purposes, the Goods shall be and remain at the sole risk of the Customer, and the Carrier shall be under no liability whatsoever for any loss or damages whatsoever including consequential loss, whether arising in contract or in tort (including negligence of the Carrier) or otherwise.
11. Without limiting the generality of paragraph 12 hereof, the Carrier shall not be liable for any loss occasioned by any delay in delivery or non-delivery of the Goods.
12. The Customer authorises any deviation from the Carrier's usual route or manner of carriage, which may in the Carrier's discretion, be necessary.
13. The Customer shall indemnify the Carrier against any loss, including consequential loss, which may be suffered by the Carrier as a result of any breach by the Customer of the warranties and acknowledgements herein.
14. The defences and exclusions of liability provided for in this Agreement generally apply in any action against the Carrier for loss or damages to the Goods, whether in contract or in tort or otherwise.
15. Any payments required to be made under this Agreement to the Carrier shall be made in cash or in such other manner as may be directed by the Carrier.
16. Goods are received and held by the Carrier subject to a lien for monies due to the Carrier for the carriage and storage of the Goods, including all other proper charges or expenses incurred or to be incurred.
17. Freight shall be deemed fully earned by the Carrier upon receipt of the Goods by the Carrier, and is non-refundable in any event.
18. The Customer further agrees to pay to the Carrier:

- 18.1 all additional costs in respect of supply and delivery or packing materials;
- 18.2 all road, bridge or ferry tolls incurred by the Carrier in the carriage;
- 18.3 the costs of and incidental to:
  - 18.3.1 the taking down or putting up of fixtures, gas, electric or other fittings;
  - 18.3.2 the taking up, relaying or fitting of carpets or floor coverings;
  - 18.3.3 the re-fixing of blinds, mirrors or other fittings
  - 18.3.4 the re-hanging of pictures or curtains or the removal of heavy iron safes.
- 18.4 the cost of dismantling or re-fixing pianolas, billiard tables, television sets and other special articles of or any extraordinary packing which may be necessary to secure the safe transport of specially fragile articles, unless such packing is expressly mentioned in and quotation from the Carrier;
- 18.5 any other or additional costs which may be incurred by the Carrier incidental to the carriage or storage.
- 19 At the Carrier's discretion, the Goods may be stored at any place and at any time, and be removed from any place at which they may be stored or otherwise held to any other place to be stored.
- 20 Storage charges are due and payable monthly in advance, and do not include the costs of removal, packaging, unpacking, restoring or delivery, for all of which services the Carrier will be entitled to make a separate charge.
- 21 Any storage of Goods, pursuant to this Agreement shall be by the Carrier as agent of the Customer, and solely at the risk and expense of the Customer.

- 22 The Customer shall give the Carrier seven (7) days clear notice, prior to removal of Goods from the storage by the Carrier.
- 23 The Customer shall remove the Goods from the Carrier's storage within two (2) weeks of his being required to do so by the Carrier, by notice in writing. In the event that the Customer refuses or fails to remove the Goods within such two (2) week period, the Carrier shall be entitled to sell the Goods or any part thereof at public auction, or by private treaty, and the proceeds of sale applied in or towards the satisfaction of monies payable to the Carrier pursuant to this Agreement, together with all proper charges and expenses in relation thereto (including the expenses of the sale). The Carrier shall account to the Customer or the owner of the Goods for any surplus.
- 24 The Carrier will not effect any insurance of the Goods for the benefit of the Customer or otherwise and at all times the goods shall be carried and/or stored at the sole of the customer.
- 25 The Carrier at its discretion may sub-contract in any terms all or any part of its undertaking in this Agreement.
- 26 The Carrier enters into this Agreement for and on behalf of itself and its servants, agents and sub-contractors, all of whom shall be entitled to the benefits of the Agreement and shall be under no liability whatsoever to the Customer or anyone claiming through it in respect of the Goods, in addition or separately from that of the Carrier under this Agreement.
- 27 Where the Customer is not the owner of some or all of the Goods, the Customer shall be deemed for all purposes to be the agent of the owner.
- 28 The Customer undertakes that no claim or allegation shall be made against any servant, agent or sub-contractor of the Carrier which imposes or attempts to impose upon any of them and liability whatsoever in

connection with the Goods, 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 thereof.

29 Every such servant, agent and sub-contractor, shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit.

30 Any notice or other communication to be given to or served upon the Customer pursuant to this Agreement may be given or served to or upon the Customer personally, or by ordinary pre-paid post addressed to the Customer at the last address of the Customer known to the Carrier. If posted, any such notice or communication shall be deemed to have been received by the Customer on the day following the day on which it shall have been posted.

31 The Customer agrees to pay to the carrier the costs, charges and expenses for the carriage and/or storage of the goods at the rate set out on the front sheet of these terms and conditions of carriage and storage;

32 In the event that any monies payable to the Carrier pursuant to this Agreement shall not be paid forthwith upon completion of the carriage or storage, the Customer agrees to pay:

32.1 Interest of such monies at the rate of 1.5% per month from the date of completion of the carriage or storage, until payment;

32.2 an account handling fee of \$10.00 for each invoice or account rendered sent by the Carrier to the Customer in respect of such unpaid monies; and

32.3 any additional costs or charges incurred by the Carrier in respect of the recovery of such unpaid monies.

