

CONDITIONS OF CONTRACT

1. In these conditions:-

“Carrier” shall mean FCL TRANSPORT SERVICES PTY LTD, Its successors or assigns, its servants and agents.

“Sub-Contractor” shall mean and include-

- a) All companies which are now subsidiaries of FCL Transport Pty Services Ltd within the meaning of that expression as defined in The Companies (New South Wales) code, their respective successors or assigns and each of their servants and agents.
- b) Railways operated by the Commonwealth of Australia or by any State or Territory forming part thereof and each of their successors or assigns and each of their the servants and agents.
- c) Any other person, firm or company with whom the Carrier may arrange for the carriage of any goods the subject of this contract and each of their respective servants or agents.
- d) “Client” shall mean and include the persons firms or company or companies for whom or which the Carrier at anytime performs any service for reward.

2. The carrier is NOT A COMMON CARRIER and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions AND THE CARRIER RESERVES THE RIGHT AT ITS DISCRETION TO REFUSE THE CARRIAGE OR TRANSPORT OF ARTICLES FOR ANY PERSON FIRM OR COMPANY AND THE CARRIAGE OR TRANSPORT OF ANY CLASS OF ARTICLES. The carrier shall not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on its behalf by a Director or Secretary of the carrier or by a Manager of a trading division of the Carrier.

3. The Client hereby authorises the Carrier (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any goods the subject of this contract (ratified upon delivery of the said goods to any such Sub-Contractor) and such Sub-Contractor shall thereupon be entitled to the full benefits of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Carrier shall be deemed to enter into this contract for its own benefit and also as trustee for the Sub-Contractor.

4. If the Client instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method designated but if that method cannot conveniently be adopted by the Carrier (and as to this the

Carrier shall be sole judge) the Client shall be deemed to authorise him to carry or have the goods carried by another method or methods.

5. Unless expressly agreed in writing, no responsibility in tort or contract or otherwise including negligence will be accepted by the carrier for any loss of or damage to or deterioration of goods or misdelivery or failure to deliver or delay in the delivery of goods including chilled, frozen, refrigerated or perishable goods either in transit or in storage for any reason whatsoever.

- a) Goods shall be deemed to be in transit notwithstanding that the carriage of the goods may have been interrupted or the Carrier may have diverted from the usual route for such carriage.
- b) The Carrier is authorised to deliver the goods at the address given to the Carrier by the client for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the goods in accordance with this contract if, at that address, a receipt or signed delivery docket for the goods is given to the Carrier.

6. The Carrier will effect insurance of the goods as the Client's agent if the Client instructs the Carrier in writing so to do. Insurance of goods will not be effected for the benefit of the Client except upon written instructions and then only at their expense.

7. The Carrier's charges shall be considered earned as soon as the goods are loaded for the carriage or transport.

8. The Client will be and remain responsible to the Carrier for all its proper charges incurred for any reason. The Carrier may charge a fee in respect of any delay in excess of thirty minutes in loading or unloading other than from the default of the Carrier. Such permissible delay period shall commence upon the Carrier reporting for loading or unloading. Labour to load or unload shall be the responsibility and expense of the client.

9. If any Client fails to pay charges in accordance with this contract due to the Carrier in respect of any service rendered by the Carrier on reasonable demand therefore being made, the Carrier may detain and sell all or any of the goods of the Client which are in possession and out of the monies arising from the sale retain charges so payable and all charges and expenses of the detention and sale and shall render surplus, if any, of the monies arising from the sale of and such of the goods as remain unsold to the Client, or as the Client, may in writing to the Carrier, direct any such sale shall not prejudice or affect charges due or payable in respect of such services or of the said detention and sale.

10. The Client by themselves or their servants shall not tender for carriage any explosive, inflammable or otherwise dangerous or damaging goods, without presenting a full description of those goods. Without presenting a full description of those goods and in default of doing so, the Client shall be liable for all loss and damage suffered by the Carrier and by any other person, firm or company as a consequence of the carriage or transport or attempted carriage or transport of any such goods.

11. The Client expressly warrants with the Carrier that the client is either the owner or the authorised agent of the owner or any goods or property the subject matter of this contract. The Client accepts these conditions for themselves and as well, for all other persons the Client is or may be representing.

12. The Carrier reserves the right to re-quote the price and/or rates fixed under this Contract, should there be in the future, any increase or increases in the cost of any one or more of the items of the cost to carrying on its operations, howsoever arising which take effect at any time prior to completion of the work involved under this Contract.

13. If the Client declares that all weight and dimensions or states a specific make or model or other identification details of any goods to be true and correct at the time of contracting the Carrier for the job. The client shall be responsible for any consequential losses or costs arising from any error or discrepancy in such information. Also, should any error or discrepancy in such information be declared by the Client, the Carrier reserves the right to re-quote the price and/or rates under this contract.

14. Notwithstanding anything herein contained the Carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this Contract and prevents the exclusion, restriction or modification of any such warranty. In particular if the Client of the Carrier is a consumer for the purposes of the Act the Carrier shall for all purposes be responsible to be re-performed where the Carrier is responsible so to do, subject to the provisions of "Dangerous Goods (Road Transport) Regulations 1983" and any amendments.