

Please see the below terms and conditions

HiSpec Heavy Haulage Pty Ltd - SERVICE TERMS AND CONDITIONS

1. General

- 1.1 A Contract is formed if:
- you accept a Quote in writing or by email;
 - you accept a Supply from us; or
 - we otherwise form an agreement with you to make a Supply (including by accepting an order from you).
- 1.2 None of our employees, agents or contractors may vary or add to these terms without the prior written authority of one of our directors.
- 1.3 We in our sole and absolute discretion may refuse to deal with any Cargo without assigning any reasons.
- 1.4 These terms and conditions must be read having regard to the provisions of the Australian Consumer Law (set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth)) to the extent that those provisions are applicable to consumers as defined under Section 3 of that Schedule 2.
- 1.5 These terms and conditions do not have the effect of excluding, restricting or modifying rights under the Australian Consumer Law which cannot be excluded, restricted or modified by agreement.
- 1.6 Except as required by the mandatory operation of law all implied terms and conditions are excluded.
- 1.7 If you enter into a Contract as a trustee you agree that you enter into the Contract in both your own capacity and as trustee of the trust.
- 1.8 We are not a common carrier under general law or otherwise and reserve the right as to whether to offer or provide any Supply to you from time to time.

2. Definitions and interpretation

- 2.1 These terms:
- apply to each Contract;
 - together with our Quote (if any) are the sole terms of each Contract;
 - do not apply to a Contract to the extent they are inconsistent with an applicable Quote; and
 - prevail over any terms or conditions issued or provided by you including in any order, unless we expressly agree in writing.
- 2.2 A reference to:
- "we" or "us" is a reference to HiSpec Heavy Haulage Pty Ltd and any officer, employee, contractor or agent of the same and a reference to "our" has a corresponding meaning; and
 - "you" is a reference to the person(s) engaging our services together with any associated trading entity identified on the Quote and any other trading entity subsequently operated by the person(s) engaging our Services. If there is more than one person, then a reference to the You is a reference to those persons jointly and severally. Any reference to "your" has a corresponding meaning.
- 2.3 The following definitions as capitalised apply to in these terms and condition:
- Cargo** means physical items of any type which you or any other person on your behalf provides to us in respect of a Supply together with any container packaging pallets or other storing device;
- Claim** means, in relation to a party, a demand, action or proceeding made or brought by or against the party, however arising (including in contract or negligence) and whether present, unascertained, immediate, future or contingent;
- Contract** means any contract for a Supply from us to you;
- Heavy Vehicle National Law** means the Heavy Vehicle National Law and Heavy Vehicle National Regulations as enacted and in force in various States and Territories of Australia and as administered by the National Heavy Vehicle Regulator and including but not limited to the Chain of Responsibility laws and regulations.
- Law** means any enacted legislation, statute, regulation, order, instrument, by-law, code, judgement or common law of the Commonwealth of Australia or any State or Territory of the Commonwealth of Australia;
- Liabilities** means a claim, losses, liabilities, costs or expenses of any kind and however arising, including penalties, fines and interest and including those which are prospective or contingent and those the amount of which for the time being is not ascertained or ascertainable;
- PPSA** means *Personal Properties Securities Act 2009* (Cth);
- Quote** means any written quote or written offer from us to you;
- Services** means the services we agree to supply to you (including but not limited to the provision of transportation, shipment, carriage, clearing and storage services) and other incidental goods and services provided to you
- Supply** means our provision of the Services;
- Third Parties** means any person (other than us) that is an agent, consignee, contractor or sub-contractor of you, any person on whose behalf you act (whether or not as agent) including the owner of Cargo, any person who has an interest in the Cargo or any person authorised to deal with the Cargo.

Note: any other grammatical form of any of the above defined terms will have a corresponding meaning.

3. Services and Goods

- 3.1 We may alter the manner in which we supply the Services without notice to you.
- 3.2 If we agree to supply goods (including packaging) which subsequently are not readily available we may use substitute goods of comparable functionality and quality.
- 3.3 We reserve the right to determine how we provide the Supply and in particular the method of or route for transporting the Cargo to the delivery destination. We may use agents or contractors to provide all or any part of the Supply.

4. Quotes and Orders

- 4.1 An order you give us is subject to our acceptance and we may decline an order. You may not cancel an order once we accept your order unless we agree in writing.
- 4.2 Quotes are valid for 30 days from their date unless withdrawn or varied by us by notice prior to our receipt of your notice of acceptance.

5. Prices

- 5.1 Total prices quoted are exclusive of GST unless otherwise stated.
- 5.2 If we have provided a Quote our invoices will be calculated in accordance with the Quote subject to clause 6. For a Supply provided without a Quote, or outside the scope of a Quote, invoices will be prepared by applying our current pricing for like services and goods.

6. Price Adjustment

- 6.1 If a Quote is prepared on incomplete, misleading or incorrect information provided by you then on our request you must pay us an additional amount equal to the difference between the quoted price and what we would have quoted had the information supplied been accurate and complete.
- 6.2 We may increase our price (even if we have given a fixed price) to compensate us for any loss, expense or increased costs we incur in making that Supply as a result of any of the following:
 - (a) we are delayed for any reason from providing the Supply on the date stipulated in a Quote or if no date is stipulate within 30 days of the date of the Contract;
 - (b) the dimensions or specifications of any Cargo supplied by you varying from those specified in our Quote or Contract because you provided us with misleading or incorrect information;
 - (c) we agree to a request by you to make an additional Supply or to vary the Supply;
 - (d) any increase in the price of our Services required for the Supply from the price of such Services at the date of our Contract;
 - (e) any breach by you of your obligations under these terms; and/or
 - (f) any other cause beyond our control.
- 6.3 Notwithstanding the amount quoted, you are jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any Government or authority at any port or place in connection with the Cargo and for any payments, fines, expenses, loss or damage incurred or sustained by us in connection with the supply of Services and you shall indemnify us, our servants and agents from all Claims by third parties howsoever arising in connection with the Cargo.
- 6.4 If the Supply is subject to any tax, duty levy or other government or statutory charge which is imposed on a Supply (including import duties but excluding income and capital gains taxes) the price will be adjusted by the amount of the same. You must pay any import, export or clearance duties and charges.

7. Invoicing and Payments

- 7.1 Unless a Quote expressly provides otherwise you must pay us within 14 days' of our issuing you with an invoice which we can do any time after a Contract is formed.
- 7.2 You will also be liable to pay us for any freight duties, charges, or any other expenses we incur in making a Supply under a Contract and such expenses will be included in any invoice we render to you.
- 7.3 Unless a Quote provides otherwise you must pay our invoices in full within 7 days' of the date on which we issue the invoice to you.
- 7.4 All payments will be made in full and you may not deduct from any amount due to us under a Contract any amount (including a liability) you allege we owe you unless we agree in writing. An invoice is payable by you alone and under no circumstances may you withhold payment on the basis you are awaiting payment from any third party or request we seek payment directly from any third party.
- 7.5 If you pay an invoice by credit card you must also pay us a credit card administration fee of 1.5%.
- 7.6 We may set off any amount we owe you under or in respect of any Contract against any amounts you owe us under or in respect of any Contract.
- 7.7 If payment is overdue, we may charge you interest at Westpac's indicator rate plus 2% from the date of the default until we receive payment in full. We may apportion any part payments you make against any outstanding principal or interest as we may decide. We may also apportion any payments you make under one Contract to amounts due under another Contract.
- 7.8 If payment is overdue under any Contract, we may in respect of any Contract cancel or suspend the delivery or performance of any Supply. You must still pay us for any Supply (or part thereof) delivered or performed under any such Contracts.

8. Your Obligations and Insurance

- 8.1 You must provide us with all instructions and information reasonably required to enable us to properly perform our obligations under any Contract.
- 8.2 You agree to promptly respond in full to any queries or directions we require to carry out the Supply.
- 8.3 You must insure your Cargo against loss or damage for the full replacement or repair value in respect of such Cargo and risk in the Cargo remains with you. We are not required to insure your Cargo. You must indemnify us against any liability we incur because you fail to comply with this clause.

9. Liability for Collection of Expenses

If you instruct us to collect freight, duties, charges or other expenses from a consignee or any other person you will remain responsible for those expenses if they are not paid by such consignee or other person.

Instructions to collect payment on delivery (COD) in cash or otherwise are accepted by us upon the condition that we in the matter of such collection will be liable for the exercise of reasonable care only.

10. Delivery of Cargo

- 10.1 Cargo is deemed to have been delivered to you when they are delivered at the place agreed in writing at which you have agreed to accept that Cargo.
- 10.2 Cargo is deemed to have been delivered by us where the Cargo is delivered by us or our agent or personnel at the place specified by you (whether or not there is a person to take delivery of the Cargo).
- 10.3 We shall not be liable for non-delivery where you have not provided sufficient details to enable delivery.
- 10.4 Subject to any Law, Cargo shall be deemed to have been delivered in the condition as described unless notice of loss or of damage to the Cargo indicating the general nature of such loss or damage is given in writing to us or to our representative at the place of delivery before or at the time of removal of the Cargo by a representative of the person entitled to delivery thereof or if the loss or damage is not apparent, within three consecutive days thereafter.

11. Perishable Cargo and Undeliverable Cargo

- 11.1 Cargo which is of a perishable in nature and to which is
- (a) not collected by you immediately upon its arrival at the destination point stated in a Contract;
 - (b) insufficiently addressed so as to make it impossible for us to be able to make a Supply, or
 - (c) not readily identifiable,
- may be sold, stored or disposed by us without notice. Where we sell such Cargo, we are entitled to keep the net proceeds from the sale to offset such amounts against amounts you owe to us under any Contract. You will be liable for all costs, charges and expenses we incur in selling, storing or disposing of the Cargo under this clause 11.
- 11.2 Subject to the Law, you acknowledges that the Services provided in relation to the Cargo are subject to the provisions of the *Australian Consumer Law and Fair Trading Act (2012)* (Vic) or equivalent legislation in the relevant State or Territory and that these terms serve as notice to you of this fact.

12. Warranties

- 12.1 Before entering into any Contract, you warrant to us that:
- (a) you
 - (i) are the legal and beneficial owner of the Cargo you provide to us; or
 - (ii) have authority or permission of all persons having a legal or equitable interest in the Cargo to enable us to provide a Supply under a Contract without incurring any liability;
 - (b) you have properly and fully described the nature of the Cargo and expressly told us of whether the same is a dangerous or restricted good under any applicable Law. We will not carry dangerous goods unless we have expressly agreed in writing and we reserve our right to refuse to carry Cargo if we reasonably believe it to be dangerous.
 - (c) you have complied with all applicable Laws and applicable industry standards relating to the nature, packaging, labelling, storage and carriage of the Cargo;
 - (d) you have packed the Cargo in a sufficient manner and taken reasonable measures to protect the Cargo against the usual risks of loading, transport and unloading of the same;
 - (e) the Supply involving the Cargo will not cause us to breach any Law; and
 - (f) you have complied with all of the instructions of any third party who has authorised or directed you to engage us to make a Supply and to deal with the Cargo and disclosed the same to us.

13. Performance

- 13.1 We may refuse to commence any work on a Supply without your prior written acceptance of our Quote.
- 13.2 We will make every effort to fulfil orders and to comply with any delivery or completion date provided in the Quote, but if our ability to do so is affected by circumstances or events beyond our control then we may:
- (a) elect to extend the time for fulfilment of the order or compliance with any such delivery or completion date; or
 - (b) terminate the Contract without liability for breach of the Contract or for any antecedent breach.

- 13.3 In any event we will be entitled to full payment for Services which have been performed and goods provided. We will not be liable for any liability, including consequential loss and loss of profits, arising from any delay in making the Supply or the early termination of any Contract.
- 13.4 Where we or our agents issue a bill of lading or an airway bill in respect of carrying out the Supply (being the transport of your Cargo) the terms of such bill of lading or airway bill will not impose any additional obligation on us in respect of the Contract and our carrying out of the Supply will be subject to the terms in such bill of lading or airway bill.
- 14. Sale of Non-perishable Goods**
- Subject to the law relating to uncollected goods, non-perishable Cargo which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee may be sold or returned at our option at any time after the expiration of 21 days from a notice in writing sent to the address which you gave to us on delivery of the Cargo. You are liable for all charges and expenses arising in connection with the sale or return of the Cargo. A communication from any of our agents or correspondents to the effect that the Cargo cannot be delivered for any reason will be conclusive evidence of that fact.
- 15. Lien and Chattel Mortgage**
- 15.1 You acknowledge that we have a general law possessory lien over the Cargo in respect of any amounts you owe to us under any Contract or otherwise. In addition, you grant us as security for the performance of your obligations under any Contract, a chattel mortgage in our favour against the Cargo to secure all amounts payable by you to us under any and all Contracts.
- 15.2 If we determine that a Contract or the chattel mortgage is or contains a security interest for the purposes of the PPSA you agree to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which we ask and consider necessary for the purposes of:
- (a) ensuring that the security interest is enforceable, perfected and otherwise effective;
 - (b) enabling us to apply for any registration, or give any notification, in connection with the security interest so that the security interest has the priority required by us; or
 - (c) enabling us to exercise our rights in connection with the security interest.
- 15.3 You agree that nothing in sections 130 or 143 of the PPSA will apply to any Contract, or the security under a Contract.
- 15.4 You agree to waive your right to do any of the following:
- (a) receive notice of removal of an accession under section 95 of the PPSA;
 - (b) receive notice of an intention to seize collateral under section 123 of the PPSA;
 - (c) receive notice of disposal of collateral under section 130 of the PPSA;
 - (d) receive a statement of account if there is no disposal under section 130(4) of the PPSA;
 - (e) receive notice of retention of collateral under section 135 of the PPSA;
 - (f) redeem the collateral under section 142 of the PPSA;
 - (g) reinstate the security agreement under section 143 of the PPSA;
 - (h) object to the purchase of the collateral by the secured party under section 129 of the PPSA; and
 - (i) receive a statement of account under section 132(3)(d) of the PPSA following a disposal showing the amounts paid to other secured parties and whether security interests held by other secured parties have been discharged.
- 16. Confidential Information**
- 16.1 A party may use or disclose confidential information about the other party only:
- (a) to perform its obligations under a Contract;
 - (b) as required by the mandatory operation of Law;
 - (c) to its professional advisors (bankers, accountants, lawyers) for a proper purpose; or
 - (d) with the other party's prior written consent.
- 16.2 You agree that we own all confidential information that we provide to you (including in respect of a tender or our pricing). You agree to return all of our confidential information on demand.
- 16.3 The obligations imposed under clauses 16.1 and 16.2 survive the termination of a Contract.
- 16.4 In this clause **confidential information** means any confidential or proprietary information (in any form including copies and notes) obtained in connection with a Contract (including in negotiating a Contract). It however excludes:
- (a) information which is or becomes a matter of public record other than by a breach of this clause;
 - (b) information which the discloser certifies in writing as not being confidential information; and
 - (c) information which the recipient proves it lawfully possessed before obtaining it in connection with a Contract.
- 17. Instructions and Communications**
- 17.1 Unless you give us notice to the contrary, you agree that:
- (a) all of your employees, directors and officers who give us instructions are authorised to do so and we may act on those instructions whether they be written or verbal;
 - (b) we may communicate with you by e-mail. We cannot guarantee that such electronic communications will be secure or free from infection and we will have no liability for any loss or damage caused by electronic communications.
- 17.2 We are not liable to you for any damage or loss suffered by you which results from us following your directions or specifications in making, manufacturing, designing or installing goods or in performing the Services.

18. Liability

18.1 Except as provided in this clause 18:

- (a) we disclaim and exclude all conditions and warranties, expressed or implied (including any rights and remedies) imposed or conferred by statute, common law, equity, trade custom or usage; and
- (b) we are under no liability to you for any loss (including consequential loss and loss of profits), injury or damage suffered or caused as a result of or arising from any defect in or failure of or unsuitability for any purpose of any Supply, howsoever the same may arise.

18.2 We have no liability to you for any loss of profit or reputation, economic loss, indirect, consequential or special loss, cost, damage or expense incurred by you in respect of or in connection with any Contract or Supply in respect of the same.

18.3 Clause 18.1 is subject to any contrary provisions of any applicable statute, the operation of which cannot be excluded.

18.4 If goods or services we supply are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then our liability for a breach of a condition, warranty or guarantee of supply (including any liability imposed or implied under Schedule 2 (The Australian Consumer Law) of the *Competition and Consumer Act 2010* (Cth)), is limited to (as we may decide):

- (a) in the case of goods we supply:
 - (i) the replacement of the goods or the supply of equivalent goods,
 - (ii) the repair of the goods, or
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods, or (iv) the payment of the cost of having the goods repaired; and
- (b) in the case of services we supply:
 - (i) the supplying of the services again; or
 - (ii) the payment of the cost of having the services supplied again.

18.5 Our liability to you for all Claims not subject to clause 18.4 is limited to a maximum amount equal to the total amount you have paid to us for the applicable Supply to which the Claim relates. You agree that:

- (a) this is a genuine pre-estimate of your likely liability arising from a breach by us of a Contract, our acts or omissions or negligence;
- (b) if this clause was not included then the terms of the Contract on which we would have agreed to provide the Supply would have been substantially different (including an increase in price).

18.6 In no circumstances will the amount of our liability to you exceed the amount stated in the applicable insurance policy (if any) held by us for that type of Claim.

18.7 We have no liability to you if you suffer damage, loss or expenses due to the provision of false, misleading or incomplete information to us or due to the acts or omissions of any person other than us. All international treaties, conventions and applicable Laws which seeks to impose terms on the supply of goods or services which are capable of exclusion are excluded from each Contract.

19. Indemnity and Costs

19.1 Subject to these terms, you will indemnify us and keep us indemnified and hold us harmless from and against all Liabilities, losses, damages, costs or expenses incurred or suffered by us, including legal costs on an indemnity basis), and from and against all actions, proceedings, Claims or demands made against us, arising from any of the following:

- (a) your failure to:
 - (i) ensure that any Cargo is properly packaged or ensure that any safety markings on the Cargo are adequately displayed;
 - (ii) comply with any legislation as to the labelling or marking of Cargo;
 - (iii) take any other reasonable precautions either to bring to the attention of any persons that may handle or use the Cargo any dangers associated with Cargo, or to detect any matters in relation to which we may become liable;
 - (iv) comply with your warranties in clause 12;
 - (v) otherwise comply with any Laws, rules, standards or regulations applicable in relation to the Cargo;
- (b) complying with and reliance on the your instructions;
- (c) any liability we may be under to any servant, agent or sub-contractor, or any haulier, carrier, warehouseman, or other person involved with the Cargo arising out of any Claim made directly or indirectly against any such party by you or third parties;
- (d) as a result of your negligence, recklessness, or wilful act or omission, or any other breach of duty.

19.2 You must pay us all our costs (on an indemnity basis) incurred in the recovery of monies owing by you or in otherwise enforcing our rights against you under a Contract.

20. Termination

20.1 We may terminate all or any Contracts by notice to you if:

- (a) you fail to pay any amount in full within the due date under a Contract;
- (b) you breach any term or condition in a Contract and fail to remedy that breach within 14 days of notice from us or the breach cannot be remedied;
- (c) you breach any of the warranties provided under clause 12;
- (d) you are a natural person and you commit an act of bankruptcy under the *Bankruptcy Act 1966* (Cth) or become an insolvent under administration within the meaning of section 9 of the *Corporations Act 2001* (Cth);

- (e) you become an externally-administered body corporate (within the meaning of section 9 the *Corporations Act 2001* (Cth)) or a party takes action to make you an externally-administered body corporate or you otherwise become insolvent or bankrupt or subject to any analogous event or process;
- (f) a party seeks to enforce a security against the whole or substantial part of your assets; and/or
- (g) there is, in our opinion, a material adverse change in your financial position that gives us reasonable grounds for believing that you may be unable to fully and promptly perform your obligations under a Contract.

20.2 Termination does not affect any of our rights or remedies existing before termination or arising from termination.

21. Force Majeure

- 21.1 We will not be liable for delay or failure to perform any of our obligations under a Contract to the extent that such delay or failure is caused by a force majeure event.
- 21.2 A **force majeure event** means any circumstance not within our direct or reasonable control including labour disputes, obtaining labour, materials or goods, destruction or damage to our premises or a relevant work site, malfunction, breakdown or damage to our plant or equipment, breach of contract, default or insolvency of any third party, an act of government or governmental authority, terrorism, disruption to the supply of power, gas, water, electronic or telecommunication services, civil disorder, the weather or other natural events.
- 21.3 We may terminate a Contract thirty business days after the occurrence of a force majeure event if in our opinion we are unable to perform the Contract or can only perform the Contract at a loss due to the effects of the force majeure event.

22. Heavy Vehicle National Law

- 22.1 You warrant that you are aware of the principle of shared responsibility and your obligations as a party in the chain of responsibility under the Heavy Vehicle National Law.
- 22.2 You warrant that you will at all times comply with your obligations under the Heavy Vehicle National Law and will not require Us to do anything that may be in contravention of your or our obligations under this law.
- 22.3 We are committed to ensuring as far as reasonably practicable that any carriage of goods by road as part of the Services is performed safely and in accordance with the National Heavy Vehicle National Law. We will not comply with any directive or instruction by you that might amount to or have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing us from taking all steps we considers necessary to prevent a breach of the Heavy Vehicle National Law or otherwise comply with our duties under that law.

23. Assignments and Amendments

- 23.1 You may not assign your rights under a Contract with us without our prior written consent.
- 23.2 We may use sub-contractors and agents to perform any part of the work without notifying you or obtaining your consent. No sub-contractor or agent has authority to agree to any variation of the Contract or any Supply under it on our behalf. Subject to clauses 18 and 19, we are not liable for any Liabilities you suffer from a failure by us or our sub-contractors to provide the Supply.

24. Storage

Pending forwarding and delivery Goods may be warehoused or otherwise held at any place or places at our sole discretion and at your risk and expense.

25. Recovery Against Third Parties

Without prejudice to any other condition, we will have the right to enforce any liability incurred by you under these conditions or to recover any sums to be paid by you under these conditions not only against you or from you but also against or from any Third Parties.

26. Variation

Subject to the law, we may vary these terms at any time by giving you 10 business days' notice, which may be published on our website.

27. No Authority to Depart from Terms

No agent or employee of ours has the authority to depart from or vary these conditions unless they have been amended in accordance with clause 1.2.

28. No Merger of Terms

All the rights, immunities and exemptions from liability in these terms will continue in full force and effect notwithstanding any breach of these terms us or any other person entitled to the benefit of such provisions.

29. Severance

If any provision of these terms is void, inconsistent with the law or unenforceable, that provision must be read down to the extent necessary to ensure that it is not invalid, inconsistent or unenforceable. If that clause cannot be read down, then that provision will be severed without affecting the validity or enforceability of the remaining part of that provision or the other provisions in these terms.

30. Law and Jurisdiction

These terms and each Contract are governed by South Australian law and any dispute arising in connection with a Contract or these terms is subject to the non- exclusive jurisdiction of the courts of South Australia (and the Federal Court of Australia (Adelaide Register))

31. Notices

- 31.1 A notice under these terms is effective if it is in writing and sent to the other party by ordinary pre-paid post or email address as set out in the Quote, or subsequently notified by the other party in writing.
- 31.2 If sent by pre-paid post, a notice is deemed to be received 3 business days after post within Australia (or 7 days outside of Australia). If sent by facsimile or email during the hours 9 am to 5 pm Australian Central Time on a business day in Australia and a confirmation receipt or delivery receipt is produced, a notice is deemed to be received on that day.
- 31.3 If sent by facsimile or email at all other times and a confirmation receipt or delivery receipt is produced, a notice is deemed to be received on the next business day in Australia.