

Equity Logistics Pty Ltd – Terms & Conditions of Cartage

1. Definitions	12. Charges Earned	(c) security agreement means the security agreement under the PPSA created between the Client and Equity by these terms and conditions; and
1.1 "Equity" shall mean Equity Logistics Pty Ltd and its successors and assigns or any person acting on behalf of and with the authority of Equity Logistics Pty Ltd.	12.1 Equity's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.	(d) security interest has the meaning given to it by the PPSA.
1.2 "Sub-Contractor" shall mean and include:	13. Demurrage	24.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
(a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or	13.1 The Client will be and shall remain responsible to Equity for all its proper charges incurred for any reason. A charge may be made by Equity in respect of any delay in excess of fifteen (15) minutes in loading or unloading occurring other than from the default of Equity.	(a) constitute a security agreement for the purposes of the PPSA; and
(b) any other person or entity with whom Equity may arrange for the carriage or storage of any Goods the subject of the contract; or	24.3 Such permissible delay period shall commence upon Equity reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.	(b) create a security interest in all Goods being transported by Equity.
(c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clauses 1.2(a) and 1.2(b).	14. Futile Pick-ups	The Client undertakes to:
1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.	14.1 Equity shall be entitled to charge a futile pick-up fee where the Client has not readied the Goods for collection when arranged or Equity is unable to pick up the Goods due to the non-attendance of the Client, its employees or agents, and Equity is required to re-visit the collection point to uplift the Goods.	(i) register a financing statement or financing charge statement in relation to a security interest on the Personal Property Securities Register;
1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of Equity's Services.	15. Dangerous Goods	(ii) register any other document required to be registered by the PPSA; or
1.5 "Guarantor" means that person (or persons) who agrees herein to be liable for the debts of the Client on a principal debtor basis.	15.1 Any other Goods agreed in advance in writing with Equity the Client or its authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies Equity for all loss or damage whatsoever caused by any Dangerous Goods.	(iii) correct a defect in a statement referred to in clause 24.3(a)(i) or 24.3(a)(ii);
1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of Equity's Services, or for storage by Equity.	16. Consignment Note	(b) indemnify, and upon demand reimburse, Equity for all expenses incurred in registering a financing statement or financing charge statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
1.7 "Services" shall mean all services supplied by Equity to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by Equity to the Client and includes any advice or recommendations.	16.1 It is agreed that the person delivering any Goods to Equity for carriage or forwarding is authorised to sign the consignment note for the Client.	(c) not register a financing charge statement in respect of a security interest without the prior written consent of Equity;
1.8 "Price" shall mean the cost of the Services as agreed between Equity and the Client subject to clause 5 of this contract.	17. Client's Responsibility	(d) not register, or permit to be registered, a financing statement or a financing charge statement in relation to the Goods in favour of a third party without the prior written consent of Equity.
2. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts	17.1 The Client expressly warrants to Equity that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.	24.4 Equity and the Client agree that sections 36, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.	18. Delivery	24.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.	18.1 Equity is authorised to deliver the Goods at the address given to Equity by the Client for that purpose and it is expressly agreed that Equity shall be taken to have delivered the Goods in accordance with this contract if at that address Equity obtains from any person a receipt or a signed delivery docket for the Goods.	24.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
2.3 Liability of Equity arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by Equity:	18.2 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then Equity shall be entitled to charge a reasonable fee for redelivery. Equity may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.	24.7 The Client otherwise agreed to in writing by Equity, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
(a) the supplying of the Services again; or	18.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.	24.8 The Client shall unconditionally ratify any actions taken by Equity under clauses 24.3 to 24.5.
(b) the payment of the cost of having the Services supplied again; or	18.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.	25. Security and Charge
(c) where the Client is a consumer as defined in the Competition and Consumer Act 2010 then the Client may also be entitled to a refund.	18.5 The failure of Equity to deliver shall not entitle either party to treat this contract as repudiated.	25.1 Despite anything to the contrary contained herein or any other rights which Equity may have however:
3. Acceptance	19. Loss or Damage	(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Equity or Equity's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that Equity (or Equity's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
3.1 Any instructions received by Equity from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.	19.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):	(b) should Equity elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Equity from and against all Equity's costs and disbursements including legal costs on a solicitor and own client basis.
3.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of Equity.	(a) Equity shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of Equity or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and	(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Equity or Equity's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 25.1.
3.3 These terms and conditions are to be read in conjunction with Equity's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by Equity to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.	(b) the Client will indemnify Equity against all claims of any kind whatsoever, however caused or arising brought by any person in connection with any matter or thing done, said or omitted by Equity in connection with the Goods.	26. Privacy Act 1988
3.4 The Client shall give Equity not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Equity as a result of the Client's failure to comply with this clause.	20. Insurance	26.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for Equity to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Equity.
4. Freight Forwarding	20.1 The Client acknowledges that:	26.2 The Client agrees that Equity may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
4.1 Except to the extent that any of the Services shall be actually performed by Equity, Equity shall act as a forwarding agent only. Equity shall be entitled, to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of Equity may be necessary or desirable to the performance of the Services. The Client hereby appoints Equity the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as Equity may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which Equity may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, Equity, or any other person.	(a) the Goods are carried and stored at the Client's sole risk and not at the risk of Equity; and	(a) to assess an application by the Client; and/or
5. Price and Payment	(b) Equity is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and	(b) to notify the Client of a default by the Client; and/or
5.1 At Equity's sole discretion the Price shall be either;	(c) under no circumstances will Equity be under any liability with respect to the arranging of any such insurance and no claim will be made against Equity for failure to arrange or ensure that the Goods are insured adequately or at all.	(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(a) as indicated on invoices provided by Equity to the Client in respect of Services supplied; or	21. Conditions of Storage	(d) to assess the creditworthiness of the Client.
(b) Equity's quoted Price (subject to clause 5.2 & 5.3) which shall be binding upon Equity provided that the Client shall accept in writing Equity's quotation within fourteen (14) days.	21.1 Equity will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from Equity, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case Equity will be entitled to make a reasonable additional charge.	The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
5.2 Equity may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to Equity beyond the reasonable control of Equity (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).	21.2 Equity is authorised to remove the goods from one warehouse to another without cost to the Client. Equity will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).	The Client consents to Equity being given a consumer credit report to collect overdue payment on commercial credit (Section 18k(1)(h) Privacy Act 1988).
5.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weight, or re-value or re-measure or require the Goods to be re-weighted, or re-valued or re-measured and charge proportional additional freight accordingly.	21.3 The Client is entitled upon giving Equity reasonable notice to inspect the Goods in store but a reasonable charge may be made by Equity for this service.	The Client agrees that personal credit information provided may be used and retained by Equity for the following purposes (and for other purposes as shall be agreed between the Client and Equity or required by law from time to time):
5.4 At Equity's sole discretion a deposit may be required.	21.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving Equity not less than five (5) working days notice. If the Client gives Equity less than the required notice Equity will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.	(a) the provision of Services; and/or
5.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Equity, which may be:	21.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from Equity to do so. In default, Equity may after fourteen (14) days notice to the Client SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to Equity.	(b) the marketing of Services by Equity, its agents or distributors; and/or
(a) on delivery of the Goods/Services;	22. Default and Consequences of Default	(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
(b) the date specified on any invoice, consignment note, airway bills, manifests or any other forms as being the date for payment; or	22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Equity's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.	(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by Equity.	22.2 If the Client owes Equity any money the Client shall indemnify Equity from and against all costs and disbursements incurred by Equity in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Equity's collection agency costs, and bank dishonour fees).	(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
5.6 Payment will be made by cash, or by cheque, or by bank cheque, or by any other method as agreed to between the Client and Equity.	22.3 Without prejudice to any other remedies Equity may have, if at any time the Client is in breach of any obligation (including those relating to payment) Equity may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. Equity will not be liable to the Client for any loss or damage the Client suffers because Equity exercised its rights under this clause.	Equity may give information about the Client to a credit reporting agency for the following purposes:
5.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.	22.4 Notwithstanding to the prejudice to the Client's other remedies at law Equity shall be entitled to cancel all or any part of any order of the Client which has not been performed in addition to and without prejudice to any other remedies and all amounts owing to Equity shall, whether or not due for payment, become immediately payable in the event that:	(a) to obtain a consumer credit report about the Client;
6. Equity Not Common Carrier	(a) any money payable to Equity becomes overdue, or in Equity's opinion the Client will be unable to meet its payments as they fall due; or	(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
6.1 Equity 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 Equity subject only to these conditions and Equity reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.	(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or	The information given to the credit reporting agency may include:
7. Client-Packed Containers	(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.	(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
7.1 If a container has not been stowed by or on behalf of Equity shall not be liable for loss of or damage to the Goods caused by:	23. Unpaid Seller's Rights to Dispose of Goods	(b) details concerning the Client's application for credit or commercial credit and the amount requested;
(a) the manner in which the container has been stowed; or	23.1 Equity shall have a lien on any Goods owned by the Client and in the possession or control of Equity (and any documents relating to those Goods) for all sums payable by the Client to Equity, and Equity shall have the right to sell such Goods, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. Equity shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.	(c) advice that Equity is a current credit provider to the Client;
(b) the unsuitability of the Goods for carriage or storage in containers; or	24. Personal Property Securities Act 2009 ("PPSA")	(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
(c) the unsuitability or defective condition of the container.	24.1 In this clause:	(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
8. Nomination of Sub-Contractor	(a) financing statement has the meaning given to it by the PPSA;	(f) information that, in the opinion of Equity, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
8.1 The Client hereby authorises Equity (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Equity. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Equity shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.	(b) financing charge statement has the meaning given to it by the PPSA;	(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
9. Equity's Servants or Agents	25. Unpaid Seller's Rights to Dispose of Goods	(h) that credit provided to the Client by Equity has been paid or otherwise discharged.
9.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of Equity which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify Equity and any such servant or agent against all consequences thereof.	25.1 Equity shall have a lien on any Goods owned by the Client and in the possession or control of Equity (and any documents relating to those Goods) for all sums payable by the Client to Equity, and Equity shall have the right to sell such Goods, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. Equity shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.	27. Cancellation
10. Method of Transport	26. General	27.1 Equity may cancel any contract to which these terms and conditions apply or cancel the Services at any time before the Services are completed by giving written notice to the Client. On giving such notice Equity shall repay to the Client any sums paid in respect of the Price. Equity shall not be liable for any loss or damage whatever arising from such cancellation.
10.1 If the Client instructs Equity to use a particular method of carriage whether by road, rail, sea or air Equity will give priority to the method designated but if that method cannot conveniently be adopted by Equity the Client shall be deemed to authorise Equity to carry or have the Goods carried by another method or methods.	26.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.	In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by Equity as a direct result of the cancellation (including, but not limited to, any loss of profits).
11. Route Deviation	26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.	Equity reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change shall take effect from the date on which Equity notifies the Client of such change. Except where Equity supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
11.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Equity be deemed reasonable or necessary in the circumstances.	26.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Equity.	Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
	26.4 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.	
	26.5 The failure by Equity to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Equity's right to subsequently enforce that provision.	