

## **GENERAL CONDITIONS OF CARRIAGE**

### **1. DEFINITIONS AND INTERPRETATIONS**

In this agreement

1.1 "the Company" shall mean Mardi Gras Furniture Removals Pty Ltd (ACN 121590556 ) trading as 'Discountbackloading.com.au

1.2. "The Contractor" shall mean any person who has appointed the Company as agent to find work on behalf of that person.

1.3. "Goods" shall mean any thing, object or item, which the Client has requested to be carried or arranged to have carried.

1.4. "Services" shall mean any storage, pre-packing, loading, transit, relocation, unloading, or any other services whatsoever that the Client has requested the Company to provide.

1.5. "Time rate" shall be \$25.00 per fifteen (15) minutes or part thereof spent by two Contractors or employees of the Company engaged in the provision of the Services requested by the Client, exclusive of GST, or as may be otherwise advised by the Company in a quotation from time to time.

1.6. Unless otherwise apparent from the context, singular words include the plural and vice versa, words in any one gender include any other gender and any reference to person includes both natural persons and incorporated bodies.

1.7. The Company and the Contractor are not common carriers and will not accept liability as such.

1.8. Any of these conditions concerning the liability of the Company also extends to and ensures the benefit of the Company's employees, contractors, sub-contractors and agents.

1.9. The parties agree that these conditions are to be interpreted, enforced and governed by the laws applicable in Queensland.

1.10. If for any reason any part of these conditions are determined to be invalid or contrary to or in conflict with any existing or future law or regulation then the invalid part shall be deemed not to be part these conditions and shall not impair the operation or effect of the remaining parts.

### **2. APPLICATION OF CONDITIONS**

2.1 These conditions shall apply to any contract for the carriage of Goods (or the provision of services) that was entered into after being given a reasonable opportunity to view them on the Company's Website, booking on the Company's website or as a result of the acceptance of any quotation accompanied by these conditions.

2.2 The Company reserves the right to subcontract Services from time to time at the Company's discretion and the Client acknowledges that the Company acts as agent for every Contractor referred to in these conditions in procuring the Client's business and that the Company has disclosed that fact to the Client prior to the Client prior to entering into the Contract.

2.3 By entering a contract with the Company the Client accepts these conditions in their entirety.

2.4 All goods are carried subject to these conditions and the Company reserves the right to refuse to carry any Goods.

2.5 Failure or omission by the Company at any time to enforce or require strict or timely compliance with any provision for breach of these conditions should not affect or impair that provision in any way or the rights of the Company to avail itself of the remedies it may have in respect of any breach.

### **3. VARIATIONS OF CONDITIONS**

1. These conditions constitute the entire agreement between the Company and the Client and supersede all prior agreement. There are no representations, inducements, promises or agreement oral or otherwise among the parties not embodied in these conditions, which are of any force or effect.

2. No amendment, change or variance from this Agreement shall be binding on the Company or the Client unless provided in writing and executed by both parties.

### **4. OWNERSHIP AND NATURE OF GOODS**

4.1. The Client expressly warrants to the Company that the Client is either the owner or authorized agent of the owner of any Goods or property that the Client has requested to be carried or arranged to be carried and has authority to enter in to a contract for same.

4.2. The Client expressly warrants to the Company that the Goods comply with the requirements of any applicable law (including but not limited to the *Dangerous Goods Safety Management Act (Qld) 2001*(as amended) and other such legislation) relating to the nature, condition or packaging of the Goods.

4.3. The Company may, at the expense of the Client and without liability to the Client, refuse to carry, or if carriage has commenced, take any reasonable action to dispose of, destroy or otherwise deal with any Goods, which in the opinion of the Company are illegal, dangerous, corrosive, noxious, explosive, flammable, perishable, or capable of attracting vermin or pests.

4.4. The Client agrees to notify the Company in writing, prior to pickup, of any Goods, which may be exceptionally fragile or valuable, and of any special precautions of which the Company cannot reasonably be expected to be aware that should be taken when carrying the Goods, or any part of them.

### **5. CHARGING METHODS**

5.1. The Client agrees that fixed price quotations to the Client are calculated on the basis of information supplied by the Client as to the nature and quantity of items to be moved and as to any difficulties in gaining access at the pickup or delivery locations.

5.2. The Client warrants that all information that is reasonably necessary to assess the work involved and to prepare a quotation for carrying out that work has been accurately provided.

5.3. In the event that the information supplied by the Client is incorrect, inadequate, inaccurate or varied after a quotation is given, the Company may at its discretion perform the work strictly as per its quotation or vary its charges in accordance with the variation in the specified quantity, volume or weight of the goods plus any variation in time taken to perform the Services.

5.4. The Client agrees that where the loading or unloading process is delayed by over 30 minutes of the time contained in the quote provided by the Company, due to any factor outside the Company's Control, an additional charge will apply to be calculated in accordance with the time rate.

5.5. The Client agrees that in the event that a Client cancels a contract for Services with less than 24 hours notice to the Company prior to the agreed time for pick up, the Client will be charged the lesser of the following amounts:

- 1 The amount quoted by the Company for the provision of the Services; or
2. For two (2) hours of the Company's time, calculated in accordance with the time rate.

5.6 The Client agrees that in the event that a Client cancels a contract for Services with more than 24 hours notice to the Company prior to the agreed time for pick up, the company reserves the right to charge an administration fee, to cover time and costs involved in arranging the booking

5.7. The Client agrees to pay or reimburse the company any costs, fees or taxes incurred in complying with Customs, Quarantine, Import or Export requirements in addition to any quotation provided to the Company for Services.

## **6. PAYMENT METHODS AND OBLIGATIONS**

6.1. The Client agrees the Company shall provide an invoice in the terms of the quotation provided at the time of loading and that payment is required in the form of cash, credit card or other non-reversible electronic funds transaction at that time.

6.2. The Client agrees that in the event that the Company incurs additional charges in accordance with these conditions, the Company will provide an additional invoice at the time of unloading.

6.3. The Client agrees that the Company may assign its rights and the right of any person on behalf of whom it is acting, to collect all charges and payments from the client to the Contractor.

6.4. The Contractor agrees to issue an invoice to the Client in accordance with the quotation provided by the Company, and collect payment of the invoice in accordance with these conditions.

## **7. LIEN ON GOODS PENDING PAYMENT**

7.1. The Company reserves the right to exercise a lien over the Goods until such time as full payment is received for the Services provided.

7.2. In the event that the Client fails, neglects or refuses to provide full payment for the Services in accordance with the invoice issued by the company at the time of unloading, the Company may refuse to unload, hold, seize, or retain any Goods as security for payment.

7.3. In the event that the invoice provided by the Company remains unpaid for twenty eight (28) days after the lien has been exercised, the Company may give not less than a further twenty eight (28) days written notice by ordinary post to the last known address of the Client of the Company's intention to sell the Goods.

7.4. In the event that payment is not received at the expiry of twenty eight (28) days written notice of the intention to sell the Goods, the Company may dispose of the goods or sell any or all of the Goods by action or by private treaty at its discretion without being liable in any respect to the Client. The proceeds of sale shall then be applied as follows:

- A. Firstly, to pay all costs, commissions and expenses of the sale of the Goods;
- B. Secondly, to pay any storage fees incurred in retaining, storing or otherwise holding the Goods,
- C. Thirdly, to pay all invoices provided by the Company or the Contractor; and
- D. The balance of the proceeds of sale (if any) be forwarded by way of bank cheque to the Client at the Client's last known address.

## **8. RESPONSIBILITY FOR LOSS AND DAMAGE**

8.1 The Client acknowledges that while all reasonable care and skill is exercised by the Company, there are inherent risks involved in the movement of Goods or the provision of Services, many of which are beyond the control of the Company, Contractor, or Client.

8.2 The Client accepts that there are such risks referred to in clause 8.1 of these conditions and accepts any financial detriment or other losses that may result from the movement of Goods by the Company or Contractor.

8.3 The Company shall not be liable to the Client for any loss or damage whatsoever suffered by the Client, either directly or indirectly, including but not limited to economic loss, loss of profits, liabilities to third parties, caused by:

- A. Any damage, loss or destruction of Goods in the provision of Services;
- B. A mis-delivery, delay in delivery or non-delivery of the Goods;
- C. Theft, overturning, fire, collision, road or rail accident involving the conveying vehicle; or
- D. The carriage of Goods by a route other than the shortest or usual route.

## **9. INSURANCE**

9.1 The client acknowledges that the company has no duty to ensure goods the subject of carriage against loss, damage or destruction of goods the subject of these terms of carriage howsoever caused.

9.2 The client acknowledges that the company does not insure goods the subject of carriage against, loss, damage or destruction of goods the subject of these terms of carriage howsoever caused.

9.3 The client acknowledges that it is the client's sole duty to arrange insurance policy indemnifying the client to any loss, damage or destruction of goods the subject of these terms of carriage and if the client fails to arrange such a satisfactory policy, the company will not be held liable. 9.4 The client acknowledges and agrees that the company is not liable to the client if a claim made on independent insurer fails causes or is limited in any way because the policy is void, voidable, unenforceable, expired, or because of the operation of an exclusion clause, restriction, or other term of the policy of insurance, whether or not such failure or limitation arises directly or indirectly from any action of the company.

## **10 EXCLUSIONS AND LIMITATIONS**

10.1 Subject to 11, the company excludes from these conditions all conditions, warranties and terms implied by statute, general law or custom.

10.2 The company excludes all liability to any person, including the client, for acts or omissions of the company in tort (including negligence), contract, bailment or otherwise for a loss of, damage to or deterioration or contamination of goods, or any delay, non-delivery or other failure to supply the transport or arising out of the goods, the transport or these conditions.

10.3 The company excludes all liability for, and the sender and receiver release and indemnify the company against all loss, damage, cost and expense from any claim or any person in tort (including negligence), contract, bailment or otherwise from loss or damage to any property injury to, or death of any person arising out of any acts or omissions of the company or any or all the goods, the transport, any delay, non-delivery or other failure to supply the transport all these conditions.

10.4 The exclusions, releases and indemnities in 10.2 AND 10.3.3 extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if the company knows that they are possible or otherwise foreseeable.

10.5 These conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental time.

10.6 The company, in addition to acting for itself, also acts as agent and trustee for each of its servants, agents and subcontractors so they are entitled to the full benefit of these conditions, including any exclusions or limitations of liability, to the same extent as the company.

10.7 Even if the company breaches any of these conditions, all the rights, immunities and limitations of liability in these conditions continue to have their full force and effect in all circumstances.

## **11. TRADE PRACTICES ACT**

11.1. Nothing herein shall be construed as having the effect of excluding, restricting or modifying the provisions of the *Trade Practices Act (Cth) 1974* (as amended).

11.2. Unless otherwise stated herein, all warranties and conditions are hereby negated and excluded to the maximum extent allowed by Law.

## **12. BREACH OF CONDITIONS**

The client acknowledges that any breach of any conditions contained herein will result in legal action being commenced by the Company to recover any and all losses suffered by the Company, on an indemnity basis.