

TERMS AND CONDITIONS OF CARRIAGE

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In these terms and conditions, unless specified to the contrary, the following words and phrases have the meanings given to them:

Carrier means Tilt Trays Australia Pty Ltd (ACN 101 325 302) and or Low Loaders Australia (ACN 134 989 718) and or applicable business names including Trailer Rentals Australia or its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)) and/or registered business names as appropriate including (but not limited to): Access Group Australia Pty Ltd (ACN 096 170 071), Access Equipment Group Pty Ltd business names (not limited to the following): Access Equipment VIC; Access Equipment WA; Sub Hire Australia VIC; Sub Hire Australia WA; Access Equipment Hire Australia; Access Hire Darwin, Access Express Australia, Access Rentals South Australia, Access Rentals Queensland; Access Rentals New South Wales; Access Rentals Victoria; other related bodies include; Access Rentals Australia Pty Ltd (ACN 226 811 529); Access Hire South Australia Pty Ltd (ACN 127 535 142); Access Hire Kalgoorlie Pty Ltd (ACN 639 267 799); Access Hire New South Wales Pty Ltd (ACN 121 860 955); Access Hire Port Hedland (ACN 646 333 397); Tilt Trays Australia Pty Ltd (ACN 101 325 302); Access Indigenous Pty Ltd (ACN 643 507 653); Access Express SA Pty Ltd (ACN 639 819 211); Low Loaders Australia Pty Ltd (ACN 134 989 718) and Access Services Group Pty Ltd (ACN 133 958 906), Generators Australia Pty Ltd (ACN: 114 816 465); Forklifts Australia Pty Ltd (ACN: 159 399 756) where relevant providing the carriage services to the Customer.

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action or claim for compensation.

Consignor means the Customer.

Contract means the agreement made between Tilt Trays and the Customer, consisting of these terms and conditions, the relevant purchase order and any invoice for the carriage of the Goods.

Customer means the consignor and anyone acting on behalf of the consignor entering into the contract of carriage with the Carrier.

Force Majeure means any event or circumstance which is beyond the reasonable control of Tilt Trays including, without limitation, any Act of God, strike, lockout or other labour dispute, war, riot or civil commotion, breakdown of machinery or facilities necessary for the transportation or delivery of the Goods to the Place of Delivery.

Goods means the goods provided to Tilt Trays for consignment.

Place of Delivery means the place where the Goods are to be delivered by Tilt Trays, as specified in the relevant purchase order relating to the carriage of the Goods (or as otherwise agreed in writing by both Tilt Trays and the Customer).

Place of Receipt means the place where the Customer delivers the Goods to Tilt Trays.

Sub-Contractor means any person, firm, company, or other entity Tilt Trays uses for the carriage of any part of

the Goods (including operators of railways such as the Commonwealth of Australian and any State or Territory of Australia) and any person who is or becomes a servant, agent, employee or sub-contractor of any such person, firm, company or other entity.

1.2 Interpretation

In the interpretation of these terms and conditions, the following provisions apply unless the context otherwise requires:

- 1.2.1 words importing the singular include the plural and vice versa;
- 1.2.2 words importing any gender includes both genders;
- 1.2.3 a reference to any matter or thing includes the whole and each part of it separately;
- 1.2.4 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;
- 1.2.5 a reference to a natural person includes a company or other corporate body and vice versa;
- 1.2.6 a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;
- 1.2.7 the obligations imposed by these terms and conditions on or in favour of a party who is a natural person extends to his heirs, executors, administrators and assigns;
- 1.2.8 the obligations imposed by these terms and conditions on or in favour of a party which is a company or other corporate body includes its successors and assigns;
- 1.2.9 use of the word "including" is to be read and construed without limitation; and
- 1.2.10 where the Customer comprises of two or more persons they are bound jointly and severally by the Contract.

2 COVERAGE

- 2.1 These conditions of carriage cover the whole of, or any part of, the operations provided from time to time by the Customer, including but not limited to the carriage, storage, loading, un-loading, packing, un-packing, freight forwarding, customs clearance or de-consolidation of any goods on behalf of the Consignor.

3 CARRIER IS NOT A COMMON CARRIER

- 3.1 The Carrier is not a Common Carrier and is not liable as such.
- 3.2 The Carrier reserves the right to refuse the carriage of Goods of any person or corporation and the carriage or transport of any class of goods is at the Carrier's absolute discretion.
- 3.3 All Goods are carried, stored and other services are performed by the Carrier subject only to the terms stated in:
 - 3.3.1 the relevant purchase order agreed by the Carrier for the carriage of the Goods;
 - 3.3.2 these terms and conditions; and
 - 3.3.3 any other conditions given by the Carrier to the Customer.

3.4 If there is any ambiguity, discrepancy, conflict or inconsistency in or between the documents that constitute the Contract, the order of precedence (with the documents higher in the list taking precedence over those lower in the list) in clause 22.3 will apply.

4 CARRIER MAY SUBCONTRACT

- 4.1 The Carrier may, in its absolute discretion, subcontract the carriage (or part of it) of the Goods (or part of them), as well as any other service provided by the Carrier. The Customer ratifies any such arrangement.
- 4.2 All sub-contractors shall be entitled to the full benefit of these terms and conditions to the same extent as the Carrier.

5 CARRIER'S CHARGES

- 5.1 Any quote which is issued by the Carrier is valid for 30 days from the date of issue.
- 5.2 The Customer must pay all fees, charges and costs that become due and payable under this Contract upon delivery, unless expressly stated otherwise in the relevant purchase order for the carriage of the Goods.
- 5.3 In addition to the costs stated in the Contract, the Customer must pay to the Carrier such reasonable additional expenses relating to the carriage of the Goods which are incurred in the performance of this Contract, including (without limitation):
- 5.3.1 additional charges imposed by the Carrier if the Carrier costs increase as a result of legislative changes or requirements (including due to a Road Safety Remuneration Order being made or varied under the *Road Safety Remuneration Act 2012* (Cth)),
 - 5.3.2 fees and charges imposed by any authority in connection with the carriage of the Goods;
 - 5.3.3 all GST, customs duties, government taxes, import/export permits and documentation fees levied or pertaining to carriage of the Goods; and
 - 5.3.4 any other charges not mentioned in this Contract that are levied upon the Carrier by any authority having jurisdiction over the carriage of the Goods.
- 5.4 All prices quoted on the purchase order for the carriage of the Goods are GST-exclusive and net of all taxes (whether in Australia or otherwise), unless otherwise expressly stated. The Carrier will provide a tax invoice to the Customer where applicable.
- 5.5 The Customer indemnifies the Carrier to the extent it becomes liable for payment, or has paid, any charges, costs, taxes and fees and is unable to recover it from the relevant authority.
- 5.6 The Customer acknowledges that the Carrier may impose a charge for accepting payments by credit card in the amount of 2% of the total charges that would otherwise apply.
- 5.7 Carrier charges shall be considered earned as soon as the Goods are loaded and dispatched from the Place of Receipt.
- 5.8 Notwithstanding any special instruction that charges are to be paid by the consignee or third party, the Customer remains liable and shall pay the Carrier if the consignee or third party fail to pay within seven (7) days of the date that payment is due to the Carrier.

6 LATE PAYMENT AND DISPUTES

- 6.1 The Customer may not dispute an invoice or any part of it unless the dispute is brought to the attention of the Carrier in writing within 30 days of the date of the invoice.
- 6.2 If the Carrier is not paid by the payment due date, the Customer agrees that a late payment fee of 2% per month of the unpaid amount, compounding monthly, may be imposed by the Carrier.
- 6.3 The Customer indemnifies the Carrier against all fees, costs and expenses (including legal fees on a full indemnity basis) incurred or expended by the Carrier as a result of any delay in payment or the need to take action to recover moneys due.

7 SET-OFF AND APPLICATION OF FUNDS

- 7.1 The Carrier may set-off against any credit owed to the Customer any amount owing by the Customer to the Carrier. The Customer must not withhold or make any deduction from any payment by way of set-off.
- 7.2 The Customer acknowledges and agrees that any payment made by the Customer pursuant to this Contract may be applied by the Carrier to such outstanding moneys due to the Carrier, as the Carrier determines in its sole discretion and notwithstanding any direction given by the Customer at the time of payment.

8 CREDIT ACCOMMODATION

- 8.1 The Carrier may review any credit accommodation granted by the Carrier to the Customer at any time and withdraw the credit accommodation for any reason, or no reason, in its absolute discretion.
- 8.2 Should credit accommodation be withdrawn, a statement may be issued by the Carrier at that time requiring payment within seven (7) days of any amount due or owing.

9 LOADING AND UNLOADING OF GOODS

- 9.1 Labour and machinery to load and unload the Goods shall be the responsibility of the Customer, unless otherwise expressly agreed.
- 9.2 The Carrier may charge the Customer for time in loading or unloading the Goods, other than for delays due to the fault of the Carrier. The time runs from when the Carrier reports for loading or unloading.
- 9.3 The Customer will ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and best industry practice for goods in the nature of the Goods.
- 9.4 The Customer must observe any safety directions advised by the Carrier relating to the loading and unloading of the Goods.

10 GENERAL LIEN

- 10.1 The Carrier has a lien over all the Customer's goods in the possession of the Carrier.
- 10.2 If the Customer fails to pay any amount due to the Carrier, the Carrier may detain and sell all or any of those goods and out of monies arising from the sale retain all monies and charges payable to the Carrier.
- 10.3 The Customer shall be entitled to any surplus moneys arising from such sale and any goods remaining.
- 10.4 This clause shall not prejudice or affect the charges due or payable in respect of services rendered.

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11 ROUTE AND DEVIATION

- 11.1 Carriage commences when the Goods are delivered to the Carrier at the Place of Receipt and carriage ceases when the Goods are delivered to the Place of Delivery.
- 11.2 Carriage will be suspended when:
- 11.2.1 the Goods are held by the Carrier at some place other than the destination at the request or the convenience of the Customer or because the Customer refuses or is unable to take delivery at the destination;
- 11.2.2 the Goods are detained by any statutory authority; or
- 11.2.3 there is an event of Force Majeure preventing or delaying the performance of any of the Carrier's obligations under this Contract.
- 11.3 Should carriage be suspended, carriage shall resume when the Carrier resumes transport of the Goods.
- 11.4 The Carrier may at its discretion at any time, without notice to the Customer:
- 11.4.1 use any means of transport or storage;
- 11.4.2 proceed by any route from the Place of Receipt whether or not the route is the nearest or most direct or customary route;
- 11.4.3 proceed to, stay at or store the Goods at any place;
- 11.4.4 comply with any order, directions or recommendations as to loading, unloading, departure, routes, places of call, stoppages, destination, arrival, discharge, delivery or discharge given by any government or authority.
- 11.5 Any action taken by the Carrier under clause 30.4 and any delay resulting therefrom shall be deemed to be included within the contractual route and shall not be a deviation.
- 11.6 The Customer shall take delivery of the Goods as soon as the Carrier is ready to deliver them.
- 11.7 If the Customer fails to take delivery of the Goods in accordance with clause 30.6, the Carrier may, without notice, unload the Goods and store them in the open or undercover and with or without refrigeration. Such storage shall constitute delivery and all liability of the Carrier in respect of the Goods shall cease.

12 INSURANCE

- 12.1 Insurance of the Goods will not be effected by the Carrier for the benefit of the Customer, unless agreed in writing, in which case the cost of the insurance shall be entirely at the Customer's expense (including any excess arising from a claim on the insurance policy).

13 DANGEROUS OR ILLEGAL GOODS

- 13.1 The Customer (including through its agents) shall not tender for carriage and the Customer warrants that it has not so tendered, any illegal or stolen Goods.
- 13.2 The Customer is responsible for ensuring these Dangerous Goods are packed in accordance with best industry practice for their carriage and storage in accordance with all applicable laws.
- 13.3 The Customer shall be solely liable for and indemnifies and agrees to keep the Carrier indemnified against all loss, damage and injury arising due to the Goods being Dangerous Goods, or illegal or stolen Goods, whatever the cause of the loss, damage and injury and irrespective of whether the Carrier knew or ought to have known that the Goods were Dangerous Goods, or illegal or stolen Goods.

14 INDEMNITIES AND LIMITATIONS OF LIABILITY

- 14.1 The Goods shall at all times be at the risk of the Customer and the Carrier shall not be liable in tort (including negligence), contract (including a fundamental breach of contract), bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery howsoever caused.
- 14.2 To the maximum extent permitted by law, the Carrier shall not be responsible for, and the Customer releases the Carrier from, and indemnifies the Carrier against, liability for loss, damage and injury to any person or property (including the Goods) in connection with the Contract, however occurring and however caused.
- 14.3 Without limiting the generality of clause 33.1, the Customer agrees that the Carrier shall not be liable for any loss or damage:
- 14.3.1 arising from the deterioration of the Goods, misdelivery, delays or failure to deliver the Goods either in transit or in storage for any reason whatsoever (including the negligence or fault of the Carrier);
- 14.3.2 that are indirect or consequential such as, without limitation, loss of profit or anticipated profit, loss of data, loss of use, damage to goodwill and losses due to delays;
- 14.3.3 that is concealed or caused by inherent vice or nature of the Goods (including chilled, frozen, refrigerated or perishable goods) either in way of transit or in storage howsoever caused (including the negligence or fault of the Carrier); and
- 14.3.4 arising from a failure to perform any obligation under this Contract where such failure is due to any event of Force Majeure.
- 14.4 To the extent that the Carrier's liability is not excluded or limited under clause 33.1 and 33.3, the Carrier's liability under this Contract (however arising, including from a breach of this Contract or from the Carrier's negligence or tort) is limited at the option of the Carrier to:
- 14.4.1 the price paid or payable by the Customer to the Carrier pursuant to this Contract; or
- 14.4.2 performing the services the subject of this Contract again.

15 CUSTOMER TO PROVIDE ACCURATE INFORMATION TO THE CARRIER

- 15.1 The Customer warrants that the information provided to the Carrier to enable it to perform the services under this Contract is accurate. The customer must endeavour to provide this information in writing. This information includes but is not limited to the nature, size and description of the Goods, the location of the Goods, accessibility by the Carrier to any site where the Goods are located and the time for specified by the Customer for collection of the Goods by the Carrier.
- 15.2 Where any information provided to the Carrier by the Customer is incomplete and/or inaccurate and leads to the Carrier being unable to or delayed in providing the services under this Contract, the Customer agrees that it will be liable for any time and/or costs to the Carrier for the Carrier carrying out/attempting to carry out the services under this Contract.

16 CUSTOMER'S WARRANTIES, ACKNOWLEDGEMENTS AND INDEMNITIES

- 16.1 The Customer warrants to the Carrier that:
- 16.1.1 the Goods are fit for carriage;

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16.1.2 the person delivering or consigning any goods to the Carrier is fully authorised to do so and to sign this Contract on behalf of the Customer; and

16.1.3 it has the authority of all persons owning or interested in the Goods to agree to this Contract on their behalf.

16.2 The Customer acknowledges and agrees that:

16.2.1 no representations have been made by any employee or agent of the Carrier to the Customer; and

16.2.2 the Carrier reserves the right to inspect and unpack the Goods and shall not be liable for any loss or damage to the Goods caused by or arising directly or indirectly out of such inspection or unpacking.

16.2.3 The method or methods of undertaking the services under this Contract shall be at the sole discretion of the Carrier and the Customer hereby authorises the Carrier to adopt any method or methods other than any method which may have been instructed or agreed.

16.3 The Customer shall indemnify the Carrier against:

16.3.1 all Claims arising as a direct or indirect result of the Customer incorrectly describing the Goods;

16.3.2 any loss or damage which may be suffered by the Carrier as a result of any breach by the Customer of the warranties and acknowledgements in clauses 35.1 and 35.2;

16.3.3 all loss and damage to any property of any person arising from the Carrier or its sub-contractors loading and unloading the Goods; and

16.3.4 any loss or damage to the Carrier's container or other equipment which occurs due to the nature or condition of the Goods.

16.4 For the purposes of this clause "loss" expressly includes:

16.4.1 consequential loss; and

16.4.2 any fine, levy, charge or other monetary imposition for which the Carrier may become liable as an incident to the carriage and resultant from any breach by the Customer of this Contract.

17 TERMINATION

17.1 The Carrier may terminate this Contract immediately by notice to the Customer:

17.1.1 if the Customer breaches any term of this Contract; or

17.1.2 if the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.

17.2 The rights of termination in clause 36.1 are in addition to any other rights under this Contract and do not exclude any right or remedy under law or equity and the terms of this Contract.

18 SECURITY

18.1 The Carrier may at any time request that the Customer provide a bank guarantee, security bond, corporate guarantee, personal guarantee or such other security as the Carrier deems necessary to secure the Customer's obligations in this Contract, on such terms and conditions and for such amount as the Carrier considers reasonable (in its sole discretion).

18.2 If the Customer complies with all the covenants, terms and conditions in this Contract, the Carrier must return to the Customer any bank guarantee or security bond at the expiry of one (1) month after all payments due pursuant to this Contract have been paid.

18.3 As security for the obligations and liabilities of the Customer in connection with this Contract, the Customer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any way in any real property.

18.4 Without limiting the generality of the charge in this clause, the Customer agrees, on request by the Carrier, to execute any documents and do all things necessary required by the Carrier to register a mortgage security or caveat over any real property in which the Customer has an interest (whether legal, equitable, present or future).

18.5 The Customer will indemnify the Carrier on an indemnity basis against all costs and expenses incurred by the Carrier in connection with the preparation and registration of any mortgage documents or caveats.

19 MISCELLANEOUS

Assignment

19.1 The Customer must not assign or otherwise deal with this Contract, or any rights under this Contract, without the prior written consent of Company.

19.2 The Carrier may, in its absolute discretion, assign this Contract to any third party without Customer's consent and will notify the Customer if it elects to do so.

VARIATIONS

19.3 The Carrier may at any time vary this Contract, including these terms and conditions of carriage, by giving the Customer 14 days' written notice of its intention to do so.

19.4 If the Customer is materially prejudiced by the variation, it may terminate the Contract by giving written notice to the Carrier.

Enquiries

19.5 The Customer irrevocably authorises the Carrier to make such enquiries as it deems necessary to investigate the creditworthiness of the Customer, any officers of the Customer and guarantors from credit reporting agencies.

Governing Law and Jurisdiction

19.6 This Contract is governed by the law of Western Australia. The parties submit to the non-exclusive jurisdiction of the Western Australian courts and courts of appeal.

Entire Agreement

19.7 This Contract comprises the entire agreement between the parties. No terms and conditions of the Customer apply to the carriage of Goods unless expressly agreed to in writing by Tilt Trays.

Severability

19.8 Each provision of this Contract is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Contract in the relevant jurisdiction, but the rest of this Contract will not be affected.

Previous Editions

This edition of the terms and conditions of carriage replaces and supersedes all of the Carrier's previously issued terms and conditions of carriage.

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