



Mighty Midgets Transport Pty Ltd (ABN 72 142 251 830)

Transport Terms & Conditions – August 2021

1. Definitions:

"Agreement" means this contract for the carriage of Goods as agreed to by Sender;

"Carrier" means Mighty Midgets Transport Pty Ltd (ABN 72 142 251 830) carrying on business in its own name or under any other business name and unless the context otherwise requires includes its officers, employees, servants, agents and sub-contractors and their officers, employees, servants, agents and sub-contractors (as applicable);

"Consequential Loss" means any incidental or consequential loss which shall include, but not be limited to, loss of revenue, loss of profits, loss of business, interruption to business, loss of opportunity, loss of production, interruption to production or loss of contract regardless of whether Carrier was actually, or should have been, aware of the potential for such loss to occur;

"Dangerous Goods" means all Goods which are in the reasonable opinion of Carrier, or at law, deemed noxious, dangerous, hazardous, explosive, radioactive, inflammable, volatile or by their nature are capable of causing damage or injury to other goods, persons, animals or any other thing in which such Goods are carried or stored including any vessel, vehicle, wagon, van, aircraft or other conveyance;

"Goods" means the cargo or articles or goods perishable or otherwise (including animals of any description) which Sender or any other person has provided together with any other container or any other packaging, pallets or other storage device supplied to Carrier;

"Heavy Vehicle National Law" means the Heavy Vehicle National Law Act 2012 (Qld) and all regulations made under that Act, as well as the associated State and Territory road transport acts and regulations adopting the Heavy Vehicle National Law Act 2012 (Qld) and includes any subsequent replacement, modification or amendment to any of these acts and regulations;

"Receiver" means a person or entity to whom Goods are consigned by Sender;

"Sender" means a person or entity for whom any business is done by Carrier or with whom any contract for the rendering of Services by Carrier is made;

"Service Information" means any statement, document or other form of communication, whether verbally or in writing, which contains information that may affect Carrier's ability to lawfully or safely perform the Services;

"Services" means the domestic road transportation of the Goods and any necessary ancillary services which are associated with such transportation (including, but not limited to, collection, consolidation, deconsolidation and storage of the Goods); and

"Transit" means the period commencing when the Goods are loaded onto Carrier's vehicle until they are unloaded and accepted by Receiver. For the avoidance of doubt, this also includes any period where the Goods are stored at a facility, or any other location, between periods of transportation.

2. Services:

- 2.1** Sender shall enter into this Agreement upon executing this Agreement or accepting the commencement of the Services, whichever occurs earlier.
- 2.2** Carrier is not a “common carrier” and will accept no liability as such. Carrier reserves the right to refuse the carriage or transport of goods for any person or entity and the carriage or transport of any class of goods in its absolute discretion.
- 2.3** Any person at the delivery location shall be deemed to have the authority to sign the consignment note to accept receipt of the Goods.
- 2.4** Carrier relies upon the information stated on the consignment note, or any other document provided to Carrier in relation to the Goods, to enable the performance of the Services. Carrier does not warrant the accuracy or completeness of any such information and any receipt or signature provided is only an acknowledgement of the Goods being collected or delivered. Carrier’s signature or acceptance shall not be construed as confirmation of the quality, quantity or condition of the Goods.
- 2.5** Carrier may have the Goods carried, stored or otherwise handled by any servant or agent or sub-contractor of Carrier or any servant or agent of any sub-contractor or by any other person without Sender’s consent and Sender hereby authorises any deviation from the usual route, manner of cartage, method or place of storage of Goods which may in the absolute discretion of Carrier be deemed desirable or necessary in the circumstances.
- 2.6** Carrier will deliver Goods at intermediate points by special arrangement only provided that suitable facilities are available at all hours.
- 2.7** If Sender expressly or impliedly instructs Carrier to use or it is expressly or impliedly agreed that Carrier will use a particular method of handling or storing the Goods or a particular method of carriage, whether by road, rail, sea or air, Carrier will give priority to that method but, if it cannot conveniently be adopted by Carrier, Sender hereby authorises Carrier to handle, store or to carry or to have the Goods carried by another method or methods. Carrier shall be entitled to open any document, wrapping, package or other container in which the Goods are placed or carried, to inspect the Goods to determine their nature, condition or for the purposes of determining their ownership or destination where any consignment note or other identifying document or mark is lost, damaged, destroyed or defaced.
- 2.8** If Carrier is unable to perform their obligations under this Agreement due to events or circumstances which are outside of Carrier’s reasonable control (FM Event), then Carrier shall advise Sender as soon as reasonably practicable. Sender may, at their cost and discretion, contract with a third party on such terms and conditions as it may agree to enable the Services to continue to be provided. Carrier shall provide Sender with access to the Goods (if it is reasonable and safe to do so) and no payment shall be payable in respect of the Services that Carrier is unable to provide. Carrier shall use all reasonable endeavours to overcome or remove the FM Event as quickly as possible.

3. Sender Obligation:

3.1 Sender warrants that:

- (a) they are the owner of the Goods or otherwise have the authority of the owner to consign the Goods upon and subject to this Agreement;
- (b) the Goods comply with the requirement of any applicable law (including, but not limited to, the Australian Code for the Transport of Dangerous Goods by Road and Rail and Part 92 of the Civil Aviation Safety Regulations 1998 (Cth)) relating to the consigning and packaging of the Goods and the expenses and any charges incurred by Carrier in complying with the provisions of such law or with any order or requirement there under or with the requirement of any harbor, dock, railway, shipping, customs, warehouse or other authority or company shall be paid for by Sender;
- (c) if any of the Goods are subject to the legal control of the Australian Border Force then all customs duty, excise and costs which Carrier may become, or actually becomes, liable for in respect of such Goods pursuant to any law relating to customs duty or excise shall be immediately paid for by Sender. This shall also include any fine or penalty imposed on Carrier related to such customs duty or excise;
- (d) they have complied with all applicable laws relating to Dangerous Goods by fully describing in writing whether on the consignment note or separately (and in the latter case has brought the description to the actual attention of Carrier) the name and nature and the value of all Dangerous Goods and any additional charges shall be paid for by Sender in relation to such Goods if deemed necessary by Carrier;
- (e) they will comply with all applicable laws and regulations applicable to the nature, condition or packaging of the Goods and that the Goods are packed in a manner, having regard to their nature, which is adequate to withstand the ordinary risk of carriage and that Sender has correctly declared the weight and dimensions of the Goods;
- (f) they will, so far as is reasonably practicable, ensure the safety of any Services performed for or on behalf of Sender and that they will meet their obligations under the Heavy Vehicle National Law where Sender acts as a Consignor, Consignee, Loader or Packer of Goods (as those terms are defined in the Heavy Vehicle National Law);
- (g) any containers, packaging or pallets (which contain or comprise the Goods) shall comply with any requirements of the Receiver and that any expense incurred by Carrier, arising from any failure so to conform, shall be borne or reimbursed by Sender;
- (h) any Service Information which is provided to Carrier will be materially accurate and contain no false, incorrect or misleading statements;
- (i) they will promptly comply with all reasonable requests from Carrier for information, in relation to Sender's compliance with the MS Act, or to assist Carrier to comply with Carrier's obligations under the Act.

4. Liability:

- 4.1** The Sender acknowledges and agrees that risk in the Goods shall remain with Sender at all times whilst in the possession, custody or control of Carrier and that Carrier shall, under no circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for any:
- (a) personal injury or property damage caused or contributed to by;
 - (b) loss or damage to; or
 - (c) mis-delivery, delayed delivery or non-delivery of, the Goods while performing, or in relation to, the Services whether the foregoing is caused, or alleged to have been caused by, the negligence, wrongful act, breach or default of Carrier or by any cause whatever.
- 4.2** Carrier shall not be liable for any claim in relation to Consequential Loss which is suffered by Sender, Receiver or any third party whether arising directly or indirectly from any breach of Carrier's obligations under this Agreement or from any negligence, misrepresentation or other act or omission or from any other cause whatsoever.
- 4.3** Except where any statute otherwise requires, Sender shall indemnify Carrier against any claim, liability, loss, damage, cost or expense, which is incurred or suffered by Carrier in relation to the performance of the Services, to the extent that it is caused or contributed to by:
- (a) the inherent nature or improper packaging of the Goods;
 - (b) the negligent act, omission or wilful default by Sender, any Receiver or any other person or entity acting on behalf of Sender; or
 - (c) Sender's breach of clause 3.1 or which is otherwise necessarily incurred by Carrier in the proper performance of its obligations under this Agreement.
- 4.4** Notwithstanding clause 4.3, Sender shall indemnify Carrier against any cost, loss, damage or expense arising from any claim by:
- (a) a Receiver which relates to, or arises out of, lost, damaged, mis-delivered, delivered late or non-delivered Goods; or
 - (b) any third party whether in tort, contract, bailment or otherwise (except personal injury or property claims which are unrelated to the use or condition of the Goods), notwithstanding that the act, omission or negligence of Carrier may have caused or contributed to the claim.
- 4.5** Without limiting clause 4.3, Sender and Receiver shall be liable for, and indemnify against, any and all liability for goods and services tax levied under the A New Tax System (Goods and Services Tax) Act 1999 (Cth) (as amended) and any other goods and services tax, value added tax, consumption tax or tax of similar effect levied from time to time which Carrier may incur in relation to the Services.
- 4.6** Without limiting clause 4.3, Sender indemnifies Carrier against all reasonable costs (including mercantile agent fees and solicitor client legal costs) incurred by Carrier from any and all action taken in relation to any debt recovery arising from this Agreement.

- 4.7** Any instruction to Carrier to exchange or transfer consigned pallets to Carrier's pallet hire account is accepted only on the basis that Sender will indemnify Carrier against any loss or non-recovery of the consigned pallets howsoever arising. Evidence of the instruction to the Carrier and any non-recovery shall be as shown on the face of the consignment note which shall be deemed conclusive proof of the instruction and/or non-recovery. A charge may be made by the Carrier for the cost of hiring, recovery and replacement (if applicable) for all pallets hired by Carrier unless exchange pallets are available at the time of delivery.
- 4.8** In regards to Goods which Carrier has been requested by Sender to pack, or which are described as such on the consignment note, Carrier shall not be liable for any damage or loss whatsoever whether in the course of packing or in Transit or otherwise and howsoever occasioned to the Goods. When Carrier is required to load or unload any liquids, partly liquid substances or any commodities or products into bulk tanks or vessels, drums or containers, Carrier shall not be liable for any loss, damage or contamination of the Goods during any such loading, unloading operation or packing, whilst such Goods are being transported by any means of transportation or whilst Goods are held in store or bulk storage tanks for any reason whatsoever.
- 4.9** If the Goods pose, or are likely to pose, a substantial risk to cause personal injury or property damage then Carrier may take any action that is reasonably necessary to reduce or eliminate such risk. This shall include, but not be limited to, destroying, disposing of or abandoning the Goods. Carrier shall not be liable for any loss or damage as a result of any action undertaken to reduce or eliminate such risk.
- 4.10** Notwithstanding the provisions hereof, this Agreement shall be read subject to any guarantees, implied terms, conditions or warranties imposed by Schedule 2 of the Competition and Consumer Act 2010 (Cth) (as amended) or any other Commonwealth or State legislation (Overriding Legislation) insofar as such may be applicable and prevents either expressly or impliedly the exclusion or modification of any such guarantee, term, condition or warranty.
- 4.11** Carrier's liability as a result of a breach of any Overriding Legislation shall be limited to supplying the Services again or the payment of the cost of supplying the Services again.

5. Heavy Vehicle National Law:

- 5.1** Carrier is committed to taking all steps, so far as is reasonably practicable, to ensure that any Services are performed safely and in accordance with the Heavy Vehicle National Law.
- 5.2** Carrier shall not comply with any direction or instruction provided by Sender or Receiver that might:
- (a) have the effect of contributing to a breach of;
 - (b) prevent Carrier from taking all steps that are reasonably necessary to prevent a breach of; or
 - (c) prevent Carrier from complying with its obligations under, the Heavy Vehicle National Law.

5.3 Without limiting any other clause of this Agreement, Carrier shall not be liable for any loss or damage whatsoever which may be suffered by Sender or Receiver as a result of any action or inaction undertaken by Carrier to ensure compliance with the Heavy Vehicle National Law.

6. Fees and Charges:

6.1 Carrier's charges will be as provided or notified to Sender from time to time. Carrier shall be entitled to amend the charges, or include any new charge, at any time which will become effective upon notice to Sender (whether verbally or in writing).

6.2 The Services shall commence upon collection of the Goods and Carrier's charges shall be deemed fully earned at that time and non-refundable in any event. All charges must be paid within 7 days from the date of invoice unless otherwise agreed to in writing by Carrier.

6.3 Carrier may charge freight by weight, measurement or value and may at any time re-weigh or re-measure or re-value or require the Goods to be re-weighed or re-measured or re-valued and charge proportional additional fees accordingly.

6.4 Where it is agreed that the charges for carriage will be paid for by the Receiver or any other third party, Sender will indemnify Carrier against any loss resulting from the non-payment of the charges by the Receiver or other third party. Without limiting the generality hereof, Sender agrees that if or insofar as any charges are not paid by the Receiver or such third party on demand, Sender will on demand pay the same to Carrier.

6.5 Sender will remain responsible to Carrier for all of Carrier's proper charges incurred for any reason. A charge may be made by Carrier in respect of any delay in excess of 30 minutes in loading or unloading occurring other than from the default of Carrier. Such permissible delay period shall commence upon Carrier reporting for loading or unloading. Labour to load or unload Goods shall be the responsibility and expense of Sender or Receiver. Should Receiver not be in attendance during normal trading hours or at the time specified, Carrier reserves the right to make a further charge for every call made until final delivery occurs.

6.6 If the Goods cannot be delivered, after Carrier has made reasonable attempts to do so, then Carrier shall be entitled (at their discretion) to either maintain possession of the Goods (until Sender advises Carrier of an alternative delivery location) or return the Goods to Sender. Carrier shall be entitled to charge applicable storage fees until the Goods are finally delivered/returned. All charges incurred by Carrier in relation to the attempted deliveries shall continue to be due and payable upon storage of the Goods or delivery/return of the Goods.

6.7 Sender acknowledges and agrees that any claims for incorrect charges, or overcharges, which are not notified to Carrier within 90 days from the date of invoice shall not be claimable.

6.8 Sender is not entitled to offset any amounts which are owed by Sender to Carrier under this Agreement against any amounts which may be due by Carrier to Sender.

7. Dispute Resolution Process:

- 7.1** If any dispute arises in connection with this Agreement, the following must be completed prior to the party requiring it to be resolved (Disputing Party) commencing proceedings in a court of competent jurisdiction (unless requiring urgent or injunctive relief):
- (a) the Disputing Party must promptly give the other party written notice which provides sufficient details of the dispute (Dispute Notice);
 - (b) within 10 business days of receiving a Dispute Notice the relevant managers of the parties must attempt to resolve the dispute via negotiation;
 - (c) if the managers cannot resolve the dispute via negotiation (or a party refuses to participate in the process outlined above) then either party (or the compliant party, if a party refuses to participate in the process outlined above) shall be entitled to commence proceedings in a court of competent jurisdiction.

8. Miscellaneous:

- 8.1** The Services, whether the Goods are delivered or not, shall be subject to this Agreement and shall be governed by the laws of Victoria.
- 8.2** Any proceedings against Carrier must be commenced in a court of competent jurisdiction within Victoria, and not elsewhere, within nine (9) months from the date of delivery, or intended delivery, of the Goods. Sender shall not be entitled to bring any proceedings against Carrier which are not commenced within such time.
- 8.3** The Carrier shall not be bound by any agreement purporting to vary this Agreement unless such agreement is in writing and signed by an authorised representative of Carrier.
- 8.4** This Agreement, and in particular and without limiting the generality hereof the limitations and exclusions of Carrier's liability herein contained, shall continue to apply and to be of full force and effect in all circumstances notwithstanding any breach or alleged breach by Carrier of this Agreement and in particular (but without limitation of the generality hereof), notwithstanding any departure by Carrier from this Agreement whether by way of deviation or otherwise howsoever.
- 8.5** If one or more provisions of this Agreement shall be invalid or unenforceable the remaining provisions of this Agreement shall not be affected thereby and shall continue in full force and effect. If any provision of this Agreement is found to be invalid or unenforceable, that provision will be severed from this Agreement to the extent that it is invalid or unenforceable.
- 8.6** This Agreement may be subject to change from time to time. Any changes to this Agreement will be notified to Sender and shall be effective from such notice.

Sender acknowledges and agrees that they have read and understand the above terms and conditions and that this Agreement shall be applicable for any Services which are performed by Carrier.