



Please read all the following conditions carefully. You will be bound by these conditions if we provide services at your request or on your behalf. Please note that:

- Our services are priced based on the exclusions and limitations set out in these conditions;
- The goods are at your risk. To the extent permitted by law, we will not be liable for any loss of or damage to goods during transit, unless you prove that the loss or damage was caused by our negligence or wilful misconduct;
- The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to goods that occurs while the goods are in our custody. These exclusions and limits are set out in clause 6;
- The general effect of these provisions is that, even if you prove we have been negligent, you may not be able to recover the full value of any lost or damaged goods;
- Because of these considerations, we recommend that any goods are covered by an appropriate insurance policy taken out by you, or by the owner of the goods; and
- If we store goods for you, you **must** take out a policy of insurance over those goods (see clause 12).

CONDITIONS OF CARRIAGE

1. DEFINITIONS AND INTERPRETATION

1.1 In these conditions:

Authority includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

Carriage means the whole of the operations and services undertaken by the Carrier or any person on behalf of the Carrier in respect of the Goods (whether gratuitously or not), including transporting, loading, unloading, packing, handling, unpacking and storage of the Goods, towing a trailer and the provision of any advice.

Carrier means KMB Pty Ltd (A.C.N. 080 827 210) trading under its own name, under the business name Whybirds Transport or under any other business name and its officers, employees, agents and Subcontractors.

Chain of Responsibility Law means the Heavy Vehicle National Law as enacted in any Australian state, the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

Consequential Loss means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of the Carriage and whether or not foreseeable at the time of entering into any agreement incorporating these conditions.

Container includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods.



Consignor means the person engaging the Carrier.

Crane includes any machine used for lifting Goods, including a forklift and a sideloader.

Damage means physical damage and includes deterioration, evaporation and contamination.

Dangerous Goods means Goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property whatsoever.

Force Majeure means any event beyond the control of the Carrier including acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any road closure or congestion of roads, any quarantine or customs restriction, epidemic or pandemic, cyber warfare, cyberattacks, ransomware attacks, cyber sabotage, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, Crane, machinery or equipment.

Goods means the property accepted by the Carrier from, or at the request of, the Consignor for Carriage and includes any Container or packaging supplied by or on behalf of the Consignor.

Law includes applicable statutes, regulations, proclamations, orders, bylaws, requirements and approvals.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Subcontractor includes any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) performs or agrees to perform the Carriage or any part of it.

1.2 In these conditions:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of these conditions;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)'; and
- (f) all indemnities survive the termination or expiration of any agreement incorporating these conditions.

2. NEGATION OF LIABILITY AS A COMMON CARRIER

The Carrier is not a common carrier and will accept no liability as such. All Goods are carried and all Carriage is performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage of goods for any person and the Carriage of any class of goods at its discretion.



3. CARRIER'S OBLIGATIONS

The Carrier will:

- (a) take reasonable care to protect and safeguard the Goods;
- (b) provide the Carriage exercising the degree of skill, care and efficiency that would be expected from a competent provider of services of Carriage;
- (c) at its own expense, hold all licences as may be required by Law in connection with the Carriage;
- (d) use reasonable endeavours to deliver the Goods to the address nominated by the Consignor and to effect delivery at the date and time requested by the Consignor (subject to compliance with all Law, including Chain of Responsibility Law); and
- (e) use reasonable endeavours to comply with the Consignor's reasonable and lawful directions.

3.2 To the extent permitted by law, all conditions, guarantees, terms and warranties which would otherwise be imposed or implied into these conditions are excluded. Without limitation, this exclusion applies to any conditions, guarantees, terms or warranties of merchantability or of satisfactory quality applying to the Carriage.

3.3 The Carrier accepts no responsibility for collection of cash or other payments from any party.

4. WARRANTIES AND INDEMNITIES

4.1 The Consignor warrants that:

- (a) the Goods are fit for Carriage and are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature;
- (b) it is authorised by all persons owning or having any interest in the Goods to accept these conditions on their behalf;
- (c) all details supplied by the Consignor or any other party with respect to the Goods, including the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements, are correct;
- (d) there is a suitable and safe road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (e) safe and adequate loading facilities and equipment will be available at any place from which any Goods are to be collected and to which any Goods are to be delivered;
- (f) Carriage is supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by the Consignor; and
- (g) unless specifically declared in writing prior to Carriage, the Goods are not Dangerous Goods.

4.2 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor but does not admit their accuracy.



4.3 The Consignor will indemnify the Carrier:

- (a) in respect of any liability whatsoever in respect of the Goods to any person (other than the Consignor) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods; and
- (b) against all losses, damages, claims, fines, expenses, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against, the Carrier as a result, directly or indirectly, of:
 - (i) a breach of the Consignor's obligations under these conditions;
 - (ii) any material inaccuracies in Safety Data Sheets; or
 - (iii) the negligence, wilful misconduct or recklessness of the Consignor or the consignee.

5. SUBCONTRACTING

- 5.1 The Carrier, at its discretion, may subcontract on any terms the whole or any part of the Carriage.
- 5.2 The Consignor agrees that no claim or allegation may be made against any employee, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such person any liability whatsoever arising out of or in any way connected with the Goods or the Carriage of them whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences of any such claim or allegation.
- 5.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available to and will extend to protect:
- (a) all Subcontractors;
 - (b) every employee or agent of the Carrier or of a Subcontractor;
 - (c) every other person (other than the Carrier) by whom the Carriage or any part of it is undertaken; and
 - (d) all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within clauses 5.3(a), 5.3(b) and 5.3(c).
- 5.4 For the purposes of clause 5.3 the Carrier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and all such persons will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

6. LIABILITY OF CARRIER

- 6.1 The Goods are at the risk of the Consignor. Neither the Carrier nor any Subcontractor nor any other person who undertakes the Carriage of the Goods will, under any circumstances, (except where any legislation otherwise requires) be under any liability whatsoever, including in contract, tort or bailment, for any:
- (a) loss of the Goods;



- (b) Damage to the Goods; or
- (c) mis-delivery, delay in delivery or non-delivery of the Goods,

whether in the course of Carriage or otherwise, unless the Consignor proves that such loss, Damage, mis-delivery, delay in delivery or non-delivery was caused by the negligence or wilful default of the Carrier.

6.2 Any liability of the Carrier under clause 6.1 will be reduced proportionately to represent the extent to which the Consignor or any other person's negligent or wrongful acts or omissions caused the loss, Damage, mis-delivery, delay in delivery or non-delivery of the Goods.

6.3 Notwithstanding any other provision of these conditions, the Carrier will not be liable for any:

- (a) loss of or Damage to Goods:
 - (i) caused by Force Majeure;
 - (ii) caused by the Carrier following the Consignor's instructions;
 - (iii) caused by the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
 - (iv) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including stone, rain, hail or storm Damage;
 - (v) caused by the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without Damage;
 - (vi) caused by a decline in value, or loss of value as a result of the Goods becoming past their 'use by' or expiry date;
 - (vii) where such loss becomes apparent as the result of a stock count or stocktake;
 - (viii) where such loss or damage comprises mechanical, electrical or electronic breakdown, derangement, or malfunction of the Goods;
 - (ix) caused by the inherent vice or the nature of the Goods; or
 - (x) caused by insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary incidents of Carriage;
- (b) loss or damage suffered in connection with any delay in the delivery or collection of Goods; or
- (c) any loss of or Damage to Goods that occurs during any storage of the Goods.

6.4 Notwithstanding any other provision of these conditions, the Carrier will not be liable, under any circumstances, for Consequential Loss.

6.5 Notwithstanding any other provision of these conditions, the Carrier's liability arising from any loss of Goods, Damage to Goods or mis-delivery, delay in delivery or non-delivery of Goods (including any liability arising from breach of a warranty, guarantee or term imposed or implied by Law) is limited, at the option of the Carrier, to:



- (a) supplying the services of Carriage that were supplied with respect to the lost, Damaged or mis/non-delivered Goods, again; or
- (b) payment of the cost of having the services of Carriage that were supplied with respect to the lost, Damaged or mis/non-delivered Goods, supplied again.

7. CONTAINERS AND PALLETS

Notwithstanding any other provision of these conditions, the Consignor:

- (a) acknowledges that the Carrier has no liability or responsibility in relation to any Container, or any hire charge or demurrage charge associated with any Container;
- (b) must ensure that any pallets are transferred to and from any relevant hire accounts and that any necessary documentation is provided to relevant pallet hire businesses; and
- (c) releases and indemnifies the Carrier from and against any liability for loss of any Container and the failure of any party to transfer, or correctly transfer pallets on or off any hire account, or to return a pallet or Container.

8. ROUTE AND DEVIATION

- 8.1 The Consignor authorises any deviation from the usual route or manner of Carriage of Goods that may, in the opinion of the Carrier, acting reasonably, be considered desirable or necessary in the circumstances.
- 8.2 If the Consignor expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods, or a particular method of Carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier, the Consignor authorises the Carrier to handle, store or carry or to have the Goods handled, stored or carried by another method or methods.

9. INSPECTION

- 9.1 The Carrier:
 - (a) is not obliged to carry out any inspection of the Goods;
 - (b) may inspect the Goods (including opening any Container) to determine the nature or condition of the Goods or for any other purpose which the Carrier considers reasonably necessary.
- 9.2 If, under Law, a Container must be opened to allow the Goods to be inspected, the Carrier will not be liable for any loss, Damage or delay incurred as a result of any opening, unpacking, inspection or repacking and the Consignor agrees to pay the Carrier's charge for the cost of any such opening, unpacking, inspection or repacking.

10. DELIVERY

- 10.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier for that purpose. The Carrier will be deemed to have delivered the Goods if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.



- 10.2 If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Carrier, the Carrier may, at its option, deposit the Goods at that place (which will be conclusively presumed to be due delivery under these conditions), store the Goods or redeliver the Goods to the Consignor at the Consignor's expense.
- 10.3 If the Goods are stored by the Carrier pursuant to clause 10.2:
- (a) the Consignor will pay or indemnify the Carrier for all costs and expenses incurred with respect to such storage; and
 - (b) the Carrier may, at any time, redeliver the Goods to the Consignor at the Consignor's expense.

11. CRANE SERVICES

- 11.1 Where the Carrier provides Crane services, the Consignor warrants that:
- (a) the road surfaces, access and egress to the site and the site itself are stable, adequate to support the Crane, clear of obstacles and of a gradient to allow the Crane to be operated safely;
 - (b) sufficient clearance will be afforded in respect of all overhead wires; and
 - (c) the specifications and size of the Crane are suitable for the site and for the Consignor's purpose.
- 11.2 The Carrier will supply a standard selection of slings, lugs and chains but accepts no responsibility for loss or delay if any slings, lugs or chains are found to be unsuitable for the Consignor's purpose.
- 11.3 The Consignor warrants that the weight of the Goods to be lifted in any one lift and the radius of the proposed lift, measured from the radial point of the Crane, will not exceed the limits of the Crane.

12. STORAGE

- 12.1 Where Goods are stored by the Carrier at the request of the Consignor, the Consignor will provide:
- (a) an address to which notices will be sent;
 - (b) samples of the signatures of persons entitled to collect the Goods; and
 - (c) an inventory of the Goods to be stored.
- 12.2 The Carrier may remove the Goods from a place of storage to another place of storage at its discretion.
- 12.3 Storage charges do not include removing, packing, unpacking, inspecting, stowing, restoring or delivering.
- 12.4 The Consignor must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.
- 12.5 The Carrier will not be obliged to allow an inspection of the Goods or to deliver up any Goods in storage:



- (a) to any person other than the Consignor or a person authorised in writing by the Consignor; or
- (b) in circumstances where any amount is due by the Consignor to the Carrier on any account whatsoever.

12.6 The Consignor will remove its Goods from storage within seven days of receipt of written notice from the Carrier.

12.7 The Consignor must:

- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods while the Carrier is storing the Goods and that includes a waiver by the insurer of all rights of subrogation against the Carrier; and
- (b) provide a certificate of currency in respect of the policy referred to in clause 12.7(a), within seven days of receiving a request from the Carrier.

13. LIEN

13.1 The Goods are accepted subject to a general lien for all charges due or that may become due to the Carrier by the Consignor on any account whatsoever, whether in respect of the Goods or in respect of any other goods for which the Carrier provides or has provided services of Carriage.

13.2 Without prejudice to any other rights the Carrier may have under Law, if charges are not paid when due, or the Goods are not collected when required or designated, the Carrier may, without notice, and immediately:

- (a) remove all or any of the Goods and store them as the Carrier thinks fit at the Consignor's risk and expense; or
- (b) open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss caused.

13.3 The parties agree that the lien arising under these conditions:

- (a) attaches to the Goods when the Goods are accepted by the Carrier for Carriage; and
- (b) is a security interest.

13.4 On request by the Carrier, the Consignor must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including perfection by registration), maintained and is otherwise effective. Anything that is required by the Consignor to be done under this clause will be done at the Consignor's expense. The Consignor agrees to reimburse the Carrier's costs in connection with any action taken by the Carrier under or in connection with this clause.

13.5 The parties agree that, to the extent permitted by the PPSA:

- (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Carrier); and
- (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.



13.6 Terms used have the same meaning as under the PPSA.

14. CARRIER'S CHARGES

- 14.1 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier and are non-refundable in any event. The Consignor agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 14.2 In addition to any other charges contemplated under these conditions, the Consignor is liable to pay:
- (a) all storage charges and any costs associated with loading or unloading Goods;
 - (b) any fuel levy imposed, which may be adjusted by the Carrier at any time on reasonable grounds to reflect fuel price movements;
 - (c) any additional costs arising from heavy or over-dimensional transport including costs associated with permits, escorts, equipment, bridge/road works and detours and fees imposed by any Authority; and
 - (d) all charges under Law including customs charges and excises in relation to the Carriage.
- 14.3 The Carrier may charge the Consignor, in accordance with its schedule of rates, in respect of any delay in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading. Labour to load or unload is the responsibility and expense of the Consignor or consignee.
- 14.4 If the Consignor instructs the Carrier that the Carrier's charges will be paid by the consignee or any other third party and the consignee or third party does not pay the Carrier's charges within seven days of the date of delivery or attempted delivery of the Goods, the Consignor must pay such charges.
- 14.5 Where the Carrier stores Goods for the Consignor, the Consignor must:
- (a) pay the Carrier's expenses and charges to comply with any Law including any customs, excise or warehouse charges;
 - (b) supply or pay for labour or machinery, or both, to load or unload the Goods;
 - (c) compensate the Carrier for any cost, expense or loss to any property caused by the nature of the Goods; and
 - (d) if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.

15. DANGEROUS GOODS

- 15.1 If the Carrier agrees to accept Dangerous Goods for Carriage:
- (a) such Goods must be accompanied by a written declaration disclosing the nature of such Goods; and
 - (b) the Consignor must comply with all Law that deals with the Carriage of Dangerous Goods, including the *Australian Code for the Transport of Dangerous Goods by Road & Rail*.



- 15.2 The Consignor will indemnify the Carrier against all loss, harm or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Consignor was aware of the nature of the Goods.
- 15.3 The indemnity in clause 15.2 extends to Consequential Loss.
- 15.4 If, in the opinion of the Carrier, acting reasonably, the Goods are or are liable to become of a dangerous or flammable or damaging nature and pose a threat of property damage or personal injury, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Consignor and without prejudice to the Carrier's right to charge for the Carriage of the Goods.

16. FORCE MAJEURE

The Carrier will not be liable for any failure or delay in performance of the Carriage if such failure or delay is due, in whole or in part, to Force Majeure.

17. NOTIFICATION OF CLAIM

- 17.1 Notwithstanding any other provision of these conditions (other than clause 18), the Carrier will, in any event, be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier:
- (a) in the case of Goods allegedly lost or Damaged in the course of loading, unloading or transit within fourteen (14) days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; or
 - (b) in the case of Goods allegedly lost or Damaged during storage, within fourteen (14) days of the date of removal or attempted removal of the Goods from storage.
- 17.2 The Carrier will, in any event, be discharged from all liability whatsoever in respect of the Goods unless legal proceedings are commenced:
- (a) in the case of Goods allegedly lost or Damaged in the course of loading, unloading or transit within twelve months of their delivery or of the date on which, in the ordinary course of business, they should have been delivered; or
 - (b) in the case of Goods allegedly lost or Damaged during storage, within twelve months of the date of removal or attempted removal of the Goods from storage.

18. APPLICABLE LEGISLATION

- 18.1 Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any terms, conditions, guarantees or warranties imposed or implied by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 18.2 The Carrier, Consignor and consignee must comply with all Law, including Chain of Responsibility Law.



- 18.3 The Consignor must not impose any requirement on the Carrier that would directly or indirectly encourage or require the Carrier or any person on behalf of the Carrier to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner or in breach of Law.

19. ENTIRE AGREEMENT

- 19.1 The entire agreement between the parties is contained in these conditions and there are no other understandings, representations or agreements between the parties that are not set out in these conditions.
- 19.2 The Carrier will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

20. GENERAL

- 20.1 This agreement will be construed in accordance with the Law in force in Queensland and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.
- 20.2 The failure of a party to take action to enforce its rights under any agreement incorporating these conditions or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these conditions.
- 20.3 Where the Consignor or consignee comprise two or more persons, an agreement or obligation to be performed or observed by the Consignor or consignee binds those persons jointly and severally.
- 20.4 If any provision of these conditions is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

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