

TUTT BRYANT HEAVY LIFT & SHIFT – Terms and Conditions of Cartage

Please read and acknowledge your acceptance of our Terms and Conditions of Cartage
by return fax or email marked to attention of Tutt Bryant Heavy Lift & Shift, signing where indicated

1. **DEFINITIONS** In these terms and conditions:-
"CLIENT" means and includes the person who engages the Carrier to carry the Goods,
"CARRIAGE" means and includes any carrying or other work performed by the Carrier or agreed to be performed by the Carrier in relation to the Goods;
"CARRIER" means Tutt Bryant Group Limited (ABN 89 009 242 675) or its controlled entities, including Kingston Industries (W.A.) Pty Limited (ABN 82 059 941 392), or otherwise its servants, agents, contractors and assigns;
"GST" means the definition given in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999 (Cth);
"GOODS" means goods of any type or description whatsoever whether originally contracted for, substituted for or added to the original contract be they declared or not.

2. **CONSTRUCTION** In this document, unless the context otherwise requires;
(a) Words importing:
i) the singular include the plural and visa versa;
ii) any gender includes the other gender;
(b) An obligation of two (2) or more parties shall bind them jointly and severally;
(c) If a word or phrase is defined, cognate words and phrases have corresponding definitions;
(d) a reference to:
i) a person includes any natural person, firm, corporation, government, statutory body, trust or partnership (whether or not having separate legal personality);
ii) a person includes the legal representatives, successors and assigns of that person;
iii) a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority.

3. **NEGATION OF LIABILITY AS A COMMON CARRIER** The Carrier is not a common carrier and does not undertake the obligations or liability of a common carrier. The Carrier reserves the right to refuse the Carriage or transport for any class of Goods at its discretion.

4. **AGREEMENT OF PARTIES**
4.1 It is agreed that the person dispatching the Goods to the Carrier for the Carriage is authorised by the Client to sign a consignment note for and on behalf of the Client.
4.2 The Client warrants that in agreeing to the terms hereof, it is or has the authority of the person or persons owning or having an interest in the Goods or any part thereof.
4.3 Without prejudice to the generality of the foregoing, the Client undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any person other than the Client who claims to have or has or may hereinafter have any interest in the Goods or any part thereof.

5. **RIGHT TO SUBCONTRACT**
5.1 The Carrier and any of its subcontractor shall be entitled to subcontract on any terms the whole or any part of the Carriage.
5.2 The Client undertakes that no claim or allegation shall be made, whether by the Client or any other person who is or may hereafter be interested in the Goods, against any person (other than the Carrier) by whom (whether as a subcontractor, principal, employer, servant, agent or otherwise) the Carriage of any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the Goods whether or not arising on part of such person, and if such claim or allegation should nevertheless be made, to indemnify the Carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

6. **EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS** Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect;
(a) all subcontractors;
(b) every servant or agent of the Carrier or of a subcontractor;
(c) every other person (other than the Carrier) by whom the Carriage or any part thereof is performed or undertaken;
(d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within (a), (b) or (c) hereof and for the purposes of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to this contract.

7. **ENTIRE CONTRACT** The Goods shall be carried and the Carriage shall be performed subject only to these terms and conditions and any terms, conditions or warranties implied by statute which cannot be excluded.

8. **LIABILITY OF CARRIER**
8.1 To the fullest extent permitted by law, the Carrier shall only be liable for its wilful neglect or default in respect of the Carriage of the Goods for physical loss of or damage to the Goods up to a limit of \$200.00 whether or not there has been a declaration of the value of the Goods or any of them by the Client for the purposes of the Carriage or otherwise.
8.2 Subject only to clause 8.1, the Goods are at the risk of the Client and not the Carrier, and the Carrier shall not be responsible in tort, contract or otherwise for any loss of, damage to or deterioration of the Goods, mis-delivery, failure, or delay in the delivery of the Goods for any reason whatsoever, including without limiting the foregoing, the negligence or breach of contract or wilful act or default of the Carrier or others. This clause shall apply to all such loss of, damage to or deterioration of the Goods as aforesaid whether or not the same occurs in the performance by or on behalf of the Carrier of the contract and/or the Client or in events which could constitute a fundamental breach of the contract or a breach of a fundamental term thereof.

8.3 To the fullest extent permitted by law, the Carrier is not liable to the Client for any indirect or consequent losses, loss of profits or use, any rectification costs or any third party claims in connection with the Carriage.

9. **INDEMNITY BY CLIENT** The Client indemnifies the Carrier and shall keep it indemnified in respect of any liability to any person for any loss of or damage whatsoever to property, any personal injury or death, or any delay or loss of any nature arising out of or incidental to the Carriage or any services thereto caused by any act, error or omission by the Client.

10. **HANDLING OF GOODS** If the Client expressly or implicitly instructs the Carrier to use or it is expressly or implicitly agreed that the 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 the Carrier will give priority to that method but if it cannot conveniently be adopted, the Carrier shall handle or store or carry or have the Goods carried by another method or methods.

11. **AUTHORISATION OF DEVIATION FROM USUAL ROUTE** Where the Carrier considers the mode of Carriage or route quoted (if any) is not, at the time the Goods are to be carried, the most practical or feasible route or mode of Carriage to be used, it reserves the right to vary the same and charge the Client any extra cost thereby incurred.

12. **DELIVERY**
12.1 The Carrier is authorised to deliver the Goods to the address nominated to the Carrier by the Client for that purpose and without prejudice to the foregoing it is expressly agreed that the Carrier shall be conclusively taken to have delivered the Goods in accordance with this contract if at that address it obtains from any person a receipt or signed delivery docket for the Goods.
12.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier, it may at its option deposit the Goods at that place (which shall be conclusively taken to be due delivered) or store the Goods. If the Goods are stored by the Carrier, the Client shall pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. The Carrier shall be at liberty to redeliver the Goods to the Client from the place of storage, which shall be done at the Client's expense.

13. **CARRIERS CHARGES**
13.1 All charges, rates and prices quoted are based upon rates of wages and salaries, prices of fuel and oil, and rates, road taxes and other charges prevailing at the date of the quote. In the event of any increases between that date and the date when the Carriage is commenced, then the Carrier reserves the right to increase those charges, rates or prices payable by the Client that are rightly incurred in the course of the Carriage. All charges, rates and prices payable by the Client to the Carrier under this contract are expressed on a GST exclusive basis.
13.2 Where the Carriage involves the performance of two or more separate items of work then for the purposes of the preceding clause, the date when the Carriage commenced shall be deemed to be the respective dates on which the said separate items of work are commenced.
13.3 The Carrier's charges shall be considered earned as soon as the Goods are loaded and dispatched, and the Client will be and remain responsible to the Carrier for all its proper charges incurred for any reason. Labour and the use of mechanical equipment to load and unload the Goods shall be the responsibility and at the expense of the Client.
13.4 The Carrier shall, in addition to the amounts payable under this contract and any other instruments contemplated by this contract, recover from the Client at the same time that amounts are payable under this contract and any other instruments contemplated by this contract, an additional amount on account of GST, calculated in accordance with the GST law or similar tax, charge, assessments, duty or fees.
13.5 Should the Client's account fail to be finalised within the Carrier's trading terms, the Carrier reserves the right to rescind all discounted rates and prices previously quoted and recalculate outstanding charges, rates and prices at then prevailing levels.
13.6 The Client must make payment to the Carrier within 30 days upon supply of a valid tax invoice by the Carrier to the Client requesting payment.
13.7 The Carrier reserves the right to impose a service fee on all amounts not paid pursuant to these terms and conditions ("Outstanding Charges") at the rate of 1.5% per month of the Outstanding Charge plus GST.

14. **CARRIER'S LIEN AND WITHDRAWAL OF CARRIAGE**
14.1 The Carrier shall have a lien on the Goods and any documents relating thereto, and on any other Goods of the Client in the possession of the Carrier or any documents relating thereto for all sums payable by the Client to the Carrier and any documents relating thereto for all sums payable by the Client to the Carrier, and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to the Client.
14.2 The Carrier reserves the right to suspend the Carriage or decline the Carriage should the Client be in breach of these terms and conditions.

15. **DANGEROUS GOODS**
15.1 The Client shall not tender for Carriage any volatile or explosive materials which are or may become dangerous, inflammable or offensive (including radioactive material) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such Goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the Carrier the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Client and without prejudice to the Carrier's right to any charges hereunder.
15.2 The Client warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or cartage of the Goods and that the Goods are placed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and hereby indemnifies the Carrier and keep the Carrier indemnified for any liability whatsoever as a result of or arising out of the Client's failure to comply with each of these warranties.

16. **VARIATION OF TERMS AND CONDITIONS** It is agreed that no servant or agent of the Client or any other person has any power to waive or vary any of the terms and conditions hereof unless such waiver or variation is agreed in writing by an executive officer of the Carrier.

17. **SUIT TO BE BROUGHT WITHIN SIX MONTHS** To the fullest extent permitted by law, any proceeding or suit commenced by the Client against the Carrier or its

agents, servants or subcontractors must be commenced within six (6) months from the delivery of the Goods under the Carriage.

18. **CONDITIONS TO HAVE FULL FORCE IN ALL CIRCUMSTANCES** All the rights, immunities and limitations of liability in these terms and conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any of the conditions hereof by the Carrier or any other person entitled to the benefit of such provisions.

19. **PROVISIONS SEVERABLE** It is hereby agreed that if any provision or part of any provision of this contract is invalid or unenforceable, such invalidity or unenforceability shall not affect any other part of such provision or any other provision hereof.

20. **DECLARATION OF WEIGHT AND/OR DIMENSION** Where the Client has declared the weight and/or dimensions of the Goods and the Carrier has relied upon such declared weight and/or dimensions in making its arrangements for transportation and the actual weight and/or dimensions of the Goods differs from the declared weight and/or dimensions then in every such case the Client shall be responsible for all extra cost and risk incurred by the Carrier resulting from its reliance as aforesaid upon the declared weight and/or dimensions.

21. **OTHER DOCUMENTS** All Goods are carried subject and liable in every respect to the Bills of Lading issued by and/or conditions imposed by any shipping company, railway, port or harbour authority or other Carriers of the Goods and to the issue of permits or authorisations where required from government authorities and the conditions and limitations stated in any such permits or authorisations.

22. **LAW OF CONTRACT AND JURISDICTION** These terms and conditions shall be governed and construed by the laws of Western Australia, and any proceeding in respect of any matter or thing with respect to the Client shall be instituted or carried on in the state of Western Australia only.

23. **PRIVACY**
23.1 The Client agrees to the Carrier collecting, using and disclosing personal information about the Client for various purposes, including to:
(a) assess creditworthiness of the Client;
(b) supply services to the Client and the management of the Client's account;
(c) communicate to the Client about the services which the Carrier or its subcontractors or affiliates may provide to the Client;
(d) implement these terms and conditions; and
(e) comply with relevant laws.
23.2 The Carrier's Privacy Officer may be contacted:
(a) for more information about the Carrier's Privacy Policy;
(b) to access any personal information relating to the Client held by the Carrier;
(c) to correct or amend any personal information relating to the Client held by the Carrier; or
(d) if the Client does not wish the Carrier to make contact about information on any other products or services.
23.3 The Carrier will handle the Client's personal information in accordance with relevant laws.

DECLARATION, ACKNOWLEDGMENT, ACCEPTANCE OF TERMS AND CONDITIONS
Please read carefully and complete the declaration below.

I/We declare that I/We have read and understood the Terms and Conditions of Cartage, as detailed in this form and hereby acknowledge and accept those Terms and Conditions. I/We agree to conduct all trading in accordance with those Terms and Conditions.

Signature of Director or Authorised Person: _____

Date: _____

Name: _____

Position: _____