

BTG TRANSPORT: TERMS AND CONDITIONS OF TRANSPORT

1. Interpretation

- 1.1 **"Agreement"** means the document titled Transport Agreement to which these terms and conditions are attached as provided by BTG.
- "BTG"** means Bigtee Group Pty Ltd ACN 609 065 349 trading as BTG Transport as set out in the Agreement and includes its officers, agents, servants and sub-contractors.
- "Consignment Note"** means the consignment note supplied by the Customer to BTG in respect of the Services.
- "Contract"** means the Transport Agreement and these Terms and Conditions.
- "Customer"** means the person, corporation or entity requesting transportation of Goods as identified in the Storage Agreement.
- "Customer's Site"** means the address at which the Goods will be collected as set out in the Agreement or Consignment Note.
- "Dangerous Goods"** has the same meaning as set out in the Australian Code for the Transport of Dangerous Goods by Road and Rail, as amended from time to time.
- "Delivery Location"** means the address to which the Goods are delivered as set out in the Agreement or as otherwise indicated by the Customer in writing.
- "Force Majeure"** means any cause outside the control of BTG, including any event defined as an event of Force Majeure in a contract between BTG and any other party, the occurrence of which prevents BTG from performing its obligations under this Contract.
- "Goods"** means any item or thing which the Customer directs BTG to transport from the Customer's Site to the Delivery Location.
- "GST"** means GST imposed by the GST law, applicable from time to time, as that term is defined in A New Tax System (Goods and Services Tax) Act 1999 or a successor Act.
- "Services"** means the carriage and transportation of the Goods as described in the Agreement.
- 1.2 These Terms and Conditions form part of any Agreement in which they are referred to or to which they are attached.

2. Entire Agreement

- 2.1 The Contract supersedes all other discussions, representations and arrangements relating to the supply of the Services and constitutes the entire agreement between BTG and the Customer with respect to the Services.
- 2.2 No variation, modification or alteration of any of the terms of the Contract shall be of any effect unless in writing and signed by each of the parties.
- 2.3 If there is any inconsistency between the Agreement and these Terms and Conditions then the Agreement will prevail.

3. BTG Not a Common Carrier

- 3.1 BTG is not a common carrier and will accept no liability as such.

- 3.2 BTG reserves the right to refuse to provide transport or carriage services to any person or to transport or carry any particular Goods or class of Goods at its sole discretion.

4. Customer's Obligations and Warranties

- 4.1 The Customer will:
- (a) be fully responsible for the Goods and all risks associated with the Services;
 - (b) be vicariously liable to BTG for all acts and/or omissions of its subcontractors, agents and employees;
 - (c) comply with all reasonable directions given by BTG;
- 4.2 The Customer must:
- (a) fully and accurately describe all Goods on the Consignment Note or by providing a written description to BTG and the Goods must match their description;
 - (b) The Customer must fully and accurately disclose any Dangerous Goods or any other dangerous items or substances that are included with or which form part of the Goods;
 - (c) Notify BTG in writing of any special exemption, authority or permit required to perform the services in relation to the Customer's Goods;
- Upon receipt of such notice or disclosure BTG may withdraw its offer to provide all or part of the Services and upon such withdrawal will refund any payment made by the Customer to BTG in respect of those particular Services.
- 4.4 The Customer warrants that:
- (a) it is the owner of the goods or is otherwise authorised to enter into the Contract on behalf of the owner of the Goods;
 - (b) it has complied with all Commonwealth, State and Territory laws, regulations, codes, standards or other relevant requirements relating in any manner to the Goods and that it will provide written assurance of such compliance to BTG upon request;
 - (c) the Goods have been packed and prepared to withstand the risks of damage to the Goods by the provision of the Services having regard to the nature and characteristics of the Goods;
 - (d) The person delivering the goods to BTG or who is holding the goods for collection by BTG is authorised to sign the Consignment Note for and on behalf of the Customer;
 - (e) it has taken out and will maintain all available and adequate insurances to cover the Goods against the risk of loss or damage and acknowledges that BTG shall not provide any insurance against such loss or damage;
- 4.5 The Customer authorises BTG:
- (a) to use any method of handling, transporting or storing the Goods. BTG will use its best endeavours to comply with any instructions provided by the Customer but may, at its sole discretion,

- deviate from those instructions where such instructions cannot be followed;
- (b) deviate from any usual route of transport or place of storage;
- (c) weigh or measure the Goods;
- (d) open any container or packaging to inspect the Goods to determine their nature, condition, ownership or destination;
- (e) to take any action necessary to remedy the Customer's failure to comply with the Contract and the Customer shall indemnify BTG against any and all costs, charges, expenses, loss or damage resulting from the Customer's failure to comply with the Contract;
- (f) the deal with the Goods as it sees fit in circumstances where, in the opinion of BTG, the Goods are or are liable to become dangerous, inflammable, volatile, explosive, offensive or damaging in nature. Such authority includes but is not limited to the destruction, disposal, abandonment or rendering harmless of the Goods and BTG shall not be liable for any loss or damage suffered by the Customer as a result of BTG exercising its discretion under this clause.

5. BTG's Rights and Obligations

- 5.1 BTG will collect the Goods from the Customer's Site and Deliver them to the Delivery Location.
- 5.2 Should circumstances beyond BTG's control prevent or hinder delivery of the Services, BTG will be free from any obligation to deliver Services while such circumstances continue. Such circumstances beyond the control of BTG include, but are not limited to: strikes, lockouts, rebellions; fire; Force Majeure; Government decrees, proclamations or orders; transport difficulties; and failures or malfunctions of computers or other information technology systems.
- 5.3 BTG may, at its absolute discretion, engage a subcontractor to provide all or part of the Services without first obtaining the approval of the Customer.
- 5.4 Any subcontractor engaged by BTG is entitled, jointly and severally, to the benefit of all or any part of BTG's rights under the Contract.
- 5.5 BTG may assign, subrogate or novate any of its rights and/or liabilities under the Contract.

6 Containers and Packaging

- 6.1 The Customer will be responsible for all container, packaging and pallet requirements.
- 6.2 SCT will not pack Goods unless specifically requested to do so in writing by the Customer.

7 Loading and Unloading

- 7.1 Labour to load and unload the Goods shall be at the responsibility of the Customer unless otherwise agreed in writing.
- 7.2 If the Customer is responsible for loading and unloading the Goods it must:
 - (a) ensure any Goods or related equipment is loaded safely, securely and in accordance with any reasonable loading requirements;

- (b) ensure that the mass of the Goods is within the carrying capacity and is evenly and safely distributed; and
- (c) the Goods or any related equipment is unloaded safely

- 7.3 If the Customer fails to comply with clause 7.2 BTG may reload the Goods at the Customer's expense or refuse to carry the Goods.
- 7.4 BTG may charge the Customer an additional fee in respect of any delay in loading or unloading the Goods except where the delay is caused by an act or omission of BTG.
- 7.5 A delay shall be deemed to occur where loading or unloading takes in excess of 60 minutes starting from the time when BTG reports for loading or unloading.

8 Collection and Delivery

- 8.1 BTG will collect the Goods from the Customer's Site and will deliver the Goods to the Delivery Location nominated in the Agreement, the Consignment Note or as otherwise advised by the Customer in writing.
- 8.2 A receipt or signed delivery docket for the Goods by a person at the Delivery Location shall be conclusive evidence of the delivery of the Goods;
- 8.3 If the Delivery Location is unattended or if delivery to a person cannot be effected by BTG, BTG may fulfil its obligations to the deliver the Goods by leaving them at the Delivery Location, or at its discretion may store the goods. If the Goods are stored by BTG the Customer shall be responsible for any costs, fees or expenses incurred as a result of the storage.
- 8.4 BTG will make all reasonable effort to collect and deliver the goods at the quoted time and date but does not guarantee collection or delivery by that date. The Customer must accept the Goods regardless of any delay.
- 8.5 BTG will not be required to provide provide copies of signed delivery dockets upon the expiration of 120 days from the date of delivery.

9 Handling of Goods

- 9.1 If the Customer expressly instructs BTG to use, or it is agreed in writing that BTG will use, a particular method of handling goods when providing the Services, BTG will endeavour to comply with any such instructions but may, at its sole discretion, deviate from those instructions where the method cannot conveniently be adopted by BTG.

10 Fees, Costs and Expenses

- 10.1 The Customer must pay to BTG all fees costs and expenses identified in the Agreement as and when they fall due (regardless of whether they are to be invoiced) without set-off or deduction.
- 10.2 The Customer will pay:
 - (a) the Transport Fee, being the amount indicated in the Agreement, or such other amount as notified to the Customer in accordance with clause 5.3 below on the payment date specified in the Agreement or invoice;
 - (b) the toll charge, which becomes payable each time a toll is incurred for or in relation to the use of a motorway, in the

- amount specified in the Agreement or such other amount as notified to the Customer in accordance with clause 5.3 below.
- (b) a late payment fee, identified in the Agreement, which becomes payable each time a payment is late;
 - (c) the Invoice Preparation and Postage fee if the Customer chooses to receive invoices by post;
 - (e) the Failed Payment fee in the event of a returned cheque or a failed credit card, debit card or direct deposit payment;
 - (g) any costs or expenses incurred by BTG in collecting late or unpaid storage fees, maintaining the Goods, selling the Goods in enforcement of the Contract, or in otherwise enforcing this Contract in any way;
- 10.3 BTG may vary the amount of any fees, costs or expenses by providing the Customer with 14 days' written notice of any such variation.
- 10.4 The Customer will be responsible for payment of any government taxes or charges (including any GST) being levied on the Contract, or any supply pursuant to the Contract.
- 10.5 the Customer's liability for any unpaid fees, costs and expenses survives the termination of the Contract.

11. Payment

- 11.1 The Customer must pay the Transport Fee, along with any other fees, costs or expenses, on the Payment Date specified in the Agreement, or as otherwise agreed with BTG in writing.
- 11.2 Any payment that is made by direct deposit or credit must be clearly identified as a payment under this Contract and the Customer agrees to follow any directions of BTG associated with the identification of payments. The Customer has no claim against BTG and indemnifies BTG against the any claim in respect of the Customer's breach of this clause 11.2.

12. Risk and Responsibility

- 12.1 Risk in the Goods shall not pass from the Customer to BTG.
- 12.2 The Goods are transported at the sole risk and responsibility of the Customer who shall be responsible for any and all theft, damage to, and deterioration of the Goods, and shall bear the risk of any and all damage caused by missed delivery, delayed delivery, concealed damage, deterioration, contamination or evaporation of the Goods, flood, fire, road accident, or any other reason whatsoever including the acts or omissions, negligent or deliberate, of BTG or persons acting for or on behalf of BTG or under its direction or control.
- 12.3 The Customer agrees to indemnify, and keep indemnified, BTG from all claims for any loss or damage to the property of, or of personal injury to, the Customer or any third party resulting from or incidental to the provision of the Services.

13. Termination

- 13.1 This Contract shall come to an end on the date specified in the Agreement.

- 13.2 During the course of the Contract either party may terminate this Agreement by giving the other party 14 days' notice.
- 13.3 BTG may terminate the Contract without notice:
- (a) in the event of default under clause 14.1; or
 - (b) in the event that the Customer engages in activities reasonably considered by BTG to be illegal or environmentally harmful in relation to the provision of the Services.
- 13.4 The Customer must pay all amounts due under this Contract up to the date of termination.
- 13.5 The Customer must take possession of all Goods which may have been collected by BTG but have not yet been delivered before close of business on the day of termination.
- 13.6 Any of the Customer's Goods that remain in uncollected by the Customer after 7 days' from the date of termination will be deemed abandoned and may be sold or disposed of in accordance with clause 16.

14. Default

- 14.1 The Customer shall commit an act of default in the event that:
- (a) any fees, or any other moneys owing under this Contract, remain in arrears and are unpaid for a period of 42 days;
 - (b) the Customer breaches any of the conditions or warranties contained in clauses 4.2 and 4.3 above.
- 14.2 Upon default BTG may terminate this Contract without notice.

15. Lien

- 15.1 BTG shall have a lien on all Goods or documents relating to any and all Goods in their possession for any and all sums due at any time from Customer, and shall be entitled to sell or dispose of such Goods or documents in accordance with clause 16 upon BTG providing 28 days' notice in writing to the owner of the Goods notwithstanding the fact that the Goods or documents thereby sold or disposed of do not relate to the sum or sums due to the Carrier.
- 15.2 Without limiting clause 15.1, the Customer indemnifies BTG against all solicitor-client legal costs incurred by BTG for any reason in respect of the Contract, and the lien shall be available to cover all such costs incurred by BTG.

16. Sale and Disposal of Goods

- 15.1 In the event of default or the abandonment of the Goods, BTG may take possession of, sell, or dispose of any Goods on such terms that BTG may determine upon BTG providing 28 days' notice in writing to the owner of the Goods.
- 15.2 For the purposes of the Personal Property Securities Act 2009, BTG is deemed to be in possession of the Goods from date specified in the notice referred to in clause 15.1.
- 15.3 If, in the opinion of BTG, the Goods are not saleable, are of insufficient value to warrant a sale, may pose a health risk to its staff or the public if handled, or the Goods fail to sell when offered for sale, then BTG may dispose of any or all of the Goods by any means.

- 15.4 The Customer consents to and authorises the sale or disposal of all Goods regardless of their nature or value.
- 15.5 BTG may also require payment of any costs associated with the sale or disposal of the Goods.
- 15.6 If the proceeds of the sale of any Goods sold exceed the amount due to BTG under this Contract then BTG will pay the excess to the Customer within 28 days of the date of sale. If the Customer cannot be located the excess funds shall be deposited with the Public Trustee.

17. Exclusion of Implied Terms

- 17.1 The Customer may have the benefit of consumer guarantees under the Australian Consumer Law. Otherwise, to the maximum extent permitted by law, all terms, conditions or warranties that would be implied into these Terms and Conditions or in connection with the supply of any Services by BTG under law or statute or custom or international convention are excluded.

18 Liability

- 18.1 The Customer shall be liable for, and to the extent permitted by law hereby releases and indemnifies BTG against all claims, loss or expense including claims in contract, tort or otherwise whether arising out of, or in connection with or relating to any breach of this Contract, the performance or provision of the Services or any fact, matter or thing relating to the Services or error in information supplied to the Customer before or after the date of the Customer's use of or Services.
- 18.2 Notwithstanding anything else expressed or implied in these terms, to the extent permitted by law, BTG shall not be liable for any injury to persons or damage to property, loss of production, or for any special indirect or consequential loss or damage whatsoever such as but not limited to loss of profits, loss of use, loss of power, costs of capital or costs of replacement power, arising in any way whether directly or indirectly and whether as a result of negligence on the part of BTG or its employees, agents and contractors or otherwise arising out of or resulting from, whether directly or indirectly, the supply or use of the Services.

19. Force Majeure

- 19.1 The failure by BTG to observe or perform wholly or in part any of its obligations in this Contract is deemed not to be a breach if the failure was caused by Force Majeure.

20 Waiver

- 20.1 The failure of any party to enforce any provision of this Contract or exercise any rights expressed in this Contract, shall not be a waiver of such provisions or rights and shall not affect the enforcement of this Contract.

21. No Assignment

- 21.1 The Customer shall not assign its rights or obligations under this Contract without the prior written consent of BTG.

22. Governing law

- 22.1 This Contract shall be governed by and construed in accordance with the laws of New South Wales, Australia. Each party to this Contract submits to the non-exclusive jurisdiction of the Courts of that State.

23. Notices

- 23.1 A notice in connection with the Contract
- (a) must be in writing;
 - (b) must be marked for the attention of the person described in the Agreement; and
 - (c) must be:
 - (i) left at the address of the addressee; or
 - (ii) sent by email or prepaid ordinary post (airmail if posted to or from a place outside Australia) to the address of the addressee; or
 - (iii) sent by way of SMS or text message to the mobile phone number of the addressee which is specified in the Agreement; or
 - (iv) sent by facsimile to the facsimile number of the addressee which is specified in the Agreement; or
 - (v) if the addressee notifies another address, mobile phone number or facsimile number then to that address, mobile phone number or facsimile number.

24. GST

- 24.1 All amounts payable or the value of other consideration provided in respect of supplies made in relation to this Contract are exclusive of GST (if any). If a GST is levied or imposed on any supply made (or deemed to have been made) under or in accordance with this Contract the amounts payable or the value of the consideration provided for that supply (or deemed supply) must be increased by the amount of GST payable in relation to the Supply.

25 Unenforceability

- 25.1 If any clause, term or provision of this Contract is rendered invalid or unenforceable by operation of any law or otherwise then:
- (a) the offending clause, term or provision should be read down to give it a valid or enforceable operation of a partial nature, if possible, otherwise;
 - (b) the offending clause, term or provision should be severed from this Contract, in which event the remaining clauses, terms and provisions operate as if the offending clause, term or provision had never been included.