

**DEFINITIONS:**

1. In these terms and conditions:

**Carrier** means Nalgate Pty Ltd ACN 003 552 592 trading as 'Express Boat Transport' or its controlled entities, or otherwise its servants, agents, subcontractors, successors and assigns.

**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 but not limited to, the handling, loading, unloading, storage or other related services.

**Customer** means and includes the person who engages the Carrier to carry the Goods.

**Dangerous Goods** means Goods which are or may become noxious, dangerous, inflammable or damaging, or which are or may become liable to damage any person or property whatsoever.

**Force Majeure Event** means anything outside that party's reasonable control that either directly or indirectly prevents it from complying with some or all of its obligations under these Terms and Conditions including flood, fire, theft, storm, tempest, act of God, war, act of Government such as a change in legislation, regulation or order made under legislative authority, strike, lockout and shortage of labour.

**Goods** means the property from time to time accepted by the Carrier from the Customer or on the Customer's behalf for carriage.

**GST** means the definition given to that term in the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*.

**Order** means an order placed by the customer in a form acceptable to the Carrier for the Carriage of Goods by the Carrier.

**Person** includes a corporate, company, partnership or any other entity.

**Place of Receipt** means the place nominated by the Customer for receiving the Goods.

**Place of Delivery** means the place nominated by the Customer for delivering the Goods.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and any Regulations as amended from time to time. Term used in these Terms and Conditions have the same meaning as contained in the PPSA.

**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 part thereof.

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### INTERPRETATION

2. Headings are inserted for ease of reference only and shall be disregarded in the interpretation of these Terms and Conditions.
3. Words importing the singular include the plural and vice versa and words importing a gender include other genders.
4. Where the Customer comprises two or more persons an agreement or obligation to be performed or observed by the Carrier or Customer binds those persons jointly and severally.
5. In these Terms and Conditions, a reference to any law or legislative provision includes any statutory modification, amendment or re-enactment and any subordinate legislation or regulation issued under the legislation or legislative provision.

### ENTIRE AGREEMENT

6. The Customer acknowledges and agrees that:
  - (a) These Terms and Conditions constitute the entire agreement between the parties and that in entering into these Terms and Conditions the Customer does not rely upon any representation, or otherwise, not contained in this document; and
  - (b) The Carrier shall not be bound by any agreement purporting to alter or amend these Terms and Conditions unless such agreement is in writing and signed on behalf of the Carrier.

### ACCEPTANCE

7. The Customer will be deemed to have accepted these Terms and Conditions by placing an Order with the Carrier for the Carriage of Goods.
8. These Terms and Conditions have effect, whether or not the Customer has signed an acknowledgment of their application.

### ORDERS

9. Any quotation by the Carrier is not to be construed as an offer by, or an obligation on, the Carrier to supply Carriage of the Goods.
10. The Carrier may accept, refuse or cancel any Order for the Carriage of Goods in its absolute discretion and may make its acceptance of an Order conditional, for example, upon a satisfactory credit assessment of the Customer and payment of a deposit.
11. Once placed, an Order cannot be cancelled, altered or deferred by the Customer without the Carrier's prior written agreement and then only on terms that fully indemnify the Carrier against any loss, damage, cost or liability suffered by it as a result of the cancellation, alteration or deferral.

12. The Customer may cancel an Order at any time prior to the date which is 14 days before the date the Goods are to be collected from the Customer's nominated Place of Receipt.

#### **DEPOSIT**

13. Within 48 hours of placing an Order or the date which is 14 days before the date the Goods are to be collected from the Customer's nominated Place of Receipt, whichever is the latter, the Customer must pay to the Carrier a non-refundable deposit of twenty percent (20%) of the quoted price.
14. If the Customer cancels an Order contrary to these Terms and Conditions the Customer will be liable for the whole of the Carrier's charges as quoted and/or invoiced. If, for whatever reason, the Carrier cancel an Order, it will reimburse to the Customer any deposit paid.

#### **INVOICING AND PAYMENT**

15. The Carrier's charges pursuant to these Terms and Conditions will be deemed fully earned on the date which is 14 days before the date the Goods are to be collected from the Customer's nominated place of Receipt.
16. At the Carrier's sole discretion, the Carrier will charge the Customer for the Carriage of Goods the price:
  - (a) As indicated on any tax invoice/s provided by the Carrier to the Customer; or
  - (b) In accordance with the quotation provided. Quotations and charges are provided subject to the right of revision by the Carrier with or without notice if any changes occur in the rates of custom duty, freight or other charges applicable to the Goods or for any variation of the Order requested by the Customer and agreed to by the Carrier.
17. The Customer will pay the Carrier any charges within seven (7) days of the date of any tax invoice issued by the Carrier unless otherwise agreed by the Carrier.
18. The tax invoice issued by the Carrier to the Customer will be supplied in accordance with the requirements of the law relating to GST. The Carrier's charges are exclusive of GST and the Customer must pay the GST on the charges.
19. The Customer must pay the charges relating to the Carriage of Goods by the due date specified in the tax invoice in full without any deductions whether by the way of set-off, counterclaim or any other equitable or legal claim. If another Person is nominated in writing as paying the charges, the Customer promises that that person will pay.

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20. The Customer cannot withhold payment for any reason including the Customer making an insurance claim or warranty claim.
21. If at any time the Customer is outside of the payment trading terms contained in these Terms and Conditions or is in breach of any other term of these Terms and Conditions, then the Carrier may take steps to immediately recover all monies owing for the Carriage or Goods or contracted for pursuant to these Terms and Conditions.
22. The Carrier, at its discretion, may charge interest on overdue accounts at the standard default contract rate published by the Queensland Law Society.
23. The Customer will pay to the Carrier all costs and expenses incurred in the recovery, or attempted recovery, of overdue accounts including but not limited to all costs and expenses payable to mercantile agents, solicitors (on a solicitor and client basis) and third parties in securing any account balance, outstanding or otherwise. These costs shall extend to the costs in defending actions, or advice incidental to the account, while overdue, notwithstanding that same is not categorised as debt recovery.
24. If the Customer fails on reasonable demand being made to pay charges due to the Carrier pursuant to these Terms and Conditions then the Carrier may detain or sell any of the Goods of the Customer which are in its possession at any time. The Carrier can retain out of the monies arising from such a sale, retain any monies due to the Carrier together with all charges and expenses of the detention or sale and will render any surplus (if any) of the monies arising from any sale, and such of the Goods as remain unsold, to the party entitled thereto. Any such sale will not prejudice or affect the right of the Carrier to recover from the Customer the balance of any such charges due or payable pursuant to these Terms and Conditions or the detention or sale.
25. These Terms and Conditions are a bar to any proceedings being commenced against the Carrier and as a bar to defence in proceedings commenced by the Carrier whilst any payment for any account remains outstanding.

#### **INSURANCE**

26. The Carrier will not effect any insurance of the Goods for the benefit of the Customer or otherwise. The Customer acknowledges that the Carriage of the Goods is at the Customer's sole risk and not at the risk of the Carrier.

#### **CUSTOMER WARRANTIES & INDEMNITIES**

27. The Customers warrants and agrees that:
  - (a) The Goods are fit for Carriage;
  - (b) The Customer has the authority of all persons owning or having any interest in the Goods to enter into these Terms and Conditions on their behalf;
  - (c) All information provided by the Customer to the Carrier is correct in every respect;
  - (d) The Goods are free from any encumbrance, charge, lien or any other interest; and
  - (e) These Terms and Conditions contain no clause, condition or warranty express or implied, which would make the Carrier responsible for any loss, damage, incorrect delivery, non-delivery or delay in the delivery of Goods. This clause must not be construed so as to exclude or limit liability of the Carrier to consumers which arises under the *Competition and Consumer Act 202 (Cth)*.
28. The Customer agreed to indemnify the Carrier against any claim, loss, damage, payment, fine, expense, duty, tax impost or other outlay whatsoever or howsoever caused, whether arising directly or indirectly from any service arranged or performed by the Carrier in respect of the Good and/or in respect of any such costs incurred as a result of any breach of these Terms and Conditions or warranties by the Customer.

#### **DANGEROUS GOODS**

29. The Customer shall not tender for the provision of Carriage by the Carrier any Dangerous Goods without presenting to the Carrier a full description disclosing their nature and in any event the Customer shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify the Carrier for such liability.
30. If, in the Carrier's opinion, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless without compensation to the Customer and at the Customer's cost.

#### **RIGHT TO SUBCONTRACT**

31. The Carrier at its discretion may subcontract on any terms whatsoever the whole or any part of the Carriage.
32. The Customer agrees that no claim or allegation shall be made against any employee, servant, agent or subcontractor of the Carrier or any Person who carries the Goods at any time pursuant to these Terms and Conditions which imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods and/or the

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Carriage thereof 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 thereof.

33. Every employee, servant, agent or subcontractor of the Carrier or any Person who carries the Goods at any time pursuant to these Terms and Conditions shall have the benefit of every exemption, limitation, condition and liberty contained herein and every right, exemption, liability, defence and immunity of whatsoever nature benefiting the Carrier or to which the Carrier is entitled as if such provisions were expressly for its benefit, and in entering into these Terms and Conditions the Carrier, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.

#### **LIABILITY OF CARRIER**

34. To the fullest extend permitted by law, the obligations of a Bailor are excluded.
35. At all times and in all circumstances and for all purposes the Goods will be and remain at the sole risk of the Customer and the Carrier will be under no liability whatsoever for any delay, misdelivery, damage to the Goods or consequential loss arising out or in any way connected with the Carriage of the Goods howsoever caused including without limiting the foregoing, any negligence, breach of contract or wilful act of the Carrier, its employees, servants, agents or subcontractors or any Person who carries the Goods at any time pursuant to these Terms and Conditions.
36. The defences and exclusions of liability provided for in these Terms and Conditions will apply in any action against the Carrier for loss arising from the Carriage of the Goods whether the action is founded in tort, contract or otherwise.
37. The Carrier will be entitled to the benefit of the exclusions of liability provided for in these Terms and Conditions even if it is proved that the loss or damage resulted from an act or omission of the Carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.
38. Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of these Terms and Conditions or otherwise, whether lawful or unlawful, will in any circumstances constitute a fundamental breach of these Terms and Conditions, or a repudiation so as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities, limitations of liability and other like

protections of the Carrier contained in these Terms and Conditions and all such rights, defences, exceptions, immunities, limitations of liability and like protections will continue to have full force and effect in any event.

#### COMMON CARRIER

39. The Carrier is not a common Carrier and will accept no liability as such.
40. The Carrier may refuse to handle, transport or store Goods for the Customer for any reason whatsoever without the Carrier having any liability to the Customer by reason of that refusal.

#### CARRIAGE AND DEMISE

41. The Carrier undertakes to procure the Carriage of the Goods from the Place of Receipt to the Place of Delivery. The Carrier will use reasonable endeavours to follow any instructions given by the Customer, however, the Carrier is entitled to depart from those instructions if it thinks it is necessary in the circumstances.
42. The Carrier at its discretion may subcontract on any terms all or any part of its obligations contained in these Terms and Conditions.

#### DELIVERY

43. The Customer will take delivery of the Goods as soon as the Carrier is ready to deliver them. If the Customer fails to take delivery of the Goods, the Carrier will be deemed to have delivered the Goods in accordance with these Terms and Conditions if the Goods are delivered to the Place of Delivery nominated by the Customer. The Carrier may without notice unload the Goods and/or store them in the open and uncovered.
44. If for any reason the Carrier is unable to deliver the Goods, the Carrier may without notice to the Customer return the Goods to the Customer at the Customer's expense or store the Goods at any place and such return or storage of Goods will be deemed to constitute delivery and any responsibility that the Carrier has in respect of the Goods will cease. The Customer will pay and indemnify the Carrier for any additional carriage and/or storage costs and expenses incurred.
45. If the Carrier effects arrangements for storage or preservation of the Goods after delivery it does so as agent of the Customer and solely at the Customer's risk and expense.

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#### ROUTE AND DEVIATION

46. The Customer authorises any deviation from the Carrier's usual route or manner of Carriage of the Goods that may in the Carrier's absolute discretion be deemed reasonable or necessary.
47. The Customer agrees and authorises the Carrier at its discretion and at any time without notice to the Customer to:
  - (a) Use any means of transport or storage whatsoever; and
  - (b) Proceed by any route whether or not it is the nearest or most direct or customer route.

#### CARRIER'S LIEN

48. The Goods are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier by the Customer on any account whatsoever, whether in respect of the Goods comprised herein, or in respect of any other Goods for which the Carrier provides or has provided services of Carriage.
49. If charges are not paid when due, or the Goods are not collected when so 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 Customer's risk and expense; and/or
  - (b) Sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.
50. The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for Carriage.
51. The Carrier's lien over the Goods arising under these Terms and Conditions constitutes a security interest for the purposes of the PPSA and this is a Security Agreement.
52. The Customer must, at its cost and immediately upon the Carriers request:
  - (a) Do all things reasonably required (including execution of documents) to ensure the Carrier has a continuously perfected security interest (as defined in the PPSA) created in the Goods pursuant to these Terms and Conditions. This includes, but is not limited to:
    - (i) Providing details of any item of collateral sufficient to complete registration of the security interest in accordance with the requirement of the PPSA;
    - (ii) Enabling the Carrier to apply for registration of or give any notification in relation to the security interest;

(iii) Enabling the Carrier to exercise rights in relation to the security interest;

(b) Procure from any person considered by the Carrier to be relevant to its security position, such agreements and waivers as the Carrier may at any time require to ensure the Carrier attains the highest ranking security possible in respect of the security interest;

(c) Not claim nor exert any right of possession over the Goods in any manner contrary to the Carrier's lien or right to possession of the Goods.

53. Where permitted by the PPSA the:

(a) Customer waives any right to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 129, 130, 132(3)(d), 132(4), 135 and 157 of the PPSA and;

(b) Carrier and the Customer agree to contract out of and nothing in the provisions of sections 96, 125, 142 and 143 of the PPSA shall apply to this Security Agreement.

54. To the extent permitted by the PPSA:

(a) The provisions of Chapter 4 of the PPSA which are for the benefit of the Customer or which place obligations on the Carrier will apply only to the extent that are mandatory or the Carrier agrees to their application in writing; and

(b) Where the Carrier has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.

55. The Customer hereby consents and appoints the Carrier to be an interested person and the Customer's authorised representative for the purposes of section 275(9) of the PPSA.

56. The Customer agrees not to register a security interest over the Carrier.

#### **SECURITY AND CHARGE**

57. Despite anything to the contrary contained in these Terms and Conditions or any other rights which the Carrier may have:

(a) Where the Customer is the owner of real and/or personal property capable of being charged, the Customer agreed and charges in the Carrier's favour all of its estate and interest in any real and/or personal property that it owns now or in the future with due payment to the Carrier of all monies owing or may become payable in accordance with these Terms and Conditions.

(b) The Customer acknowledges and agrees that the Carrier (or the Carrier's nominee) shall be entitled to lodge, where appropriate, a Caveat, which Caveat shall be released once all payments and other

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monetary obligations payable to the Carrier have been met.

(c) Should the Carrier elect to proceed in any manner in accordance with this clause and/or its subclauses, the Customer shall indemnify the Carrier from and against all of the Carrier's expenses and legal costs (on a solicitor and client basis).

(d) The Customer agrees with irrevocably nominate, constitute and appoint the Carrier and the Carrier's nominee as the Customer's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 57 including, but not limited to, signing any document on the customers behalf.

#### **APPLICABLE LEGISLATION**

58. Notwithstanding anything contained in these Terms and Conditions the Carrier will continue to be subject to any implied terms, guarantees, conditions or warranties imposed by the *Competition and Consumer Act 2010 (Cth)* or any other Commonwealth or State legislation insofar as such may be applicable and prevents the exclusion or modification of any such term, guarantee, condition or warranty.

59. If the Carrier is liable for a breach of guarantee implied by the *Competition and Consumer Act (Cth)* in respect of any carriage of Goods, the Carrier's liability to be Customer will be limited to:

(a) The resupplying of the service of carriage of Goods; or

(b) The costs of having the service of carriage of Goods resupplied.

60. This clause applied only insofar as the service to be provided by the Carrier under these Terms and Conditions is a service not acquired for personal, domestic or household use.

#### **NOTICE OF CLAIM**

61. To the fullest extent permitted by law, notice in writing of any claim intended to be made against the Carrier or its employees, agents, servants or subcontractors under these Terms and Conditions must be given to the Carrier within 14 days after the date of delivery or, in the case of non-delivery within 30 days from the date the Goods should have been delivered and, unless so given and made the claim however so made shall be extinguished and will not be enforceable against the carrier.

62. If the Customer becomes aware of any action, claim, demand or legal proceeding made, contemplated or taken against it in respect of the Goods by any third party, the Customer, before taking any action in respect of such action, claim, demand or legal proceeding, must immediately notify the Carrier.

63. Before settling any third party action, claim, demand or legal proceeding in respect of which the Customer seeks or may seek compensation or a contribution from the Carrier, the Customer must obtain prior written authorisation from the Carrier.

#### **CHANGE IN OWNERSHIP**

64. The Customer must advise the Carrier in writing within one (1) day of any change in ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s or business practice). The Customer shall be liable for any loss incurred by the Carrier as a result of the Customer's failure to comply with this clause.

#### **GOVERNING LAW**

65. These Terms and Conditions are governed by the laws of Queensland. Any dispute arising under these Terms and Conditions shall be determined exclusively by the Courts of Queensland and the parties irrevocably and unconditionally submit to the no-exclusive jurisdiction of the Courts.

#### **NON-WAIVER**

66. Any failure by the Carrier to insist on strict compliance with any of these Terms and Conditions or any delay by the Carrier in exercising its rights under these Terms and Conditions will not constitute a variation or waiver of any of these Terms and Conditions or any of the Carrier's rights hereunder and shall not preclude the Carrier from subsequently enforcing any of those rights or insisting on strict compliance.

#### **SEVERABILITY**

67. If any provision of these Terms and Conditions is unenforceable, that provision is severable and its unenforceability will not affect any other part or provision of these Terms and Conditions.

#### **FORCE MAJEURE**

68. The Carrier or any of its employees, servants, agents or subcontractors will not be liable and shall not be taken to have failed to perform its obligations to deliver the Goods as a result of a Force Majeure Event, being any action which is outside the contract of the Carrier.

#### **CREDIT INFORMATION AND PRIVACY**

69. To the extent and as required by law, the parties will comply with the *Privacy Act 1988 (Cth)*.  
70. The Customer authorises the Carrier to share credit information regarding these Terms and Conditions

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with third parties and to conduct due diligence by contacting third parties to verify information contained in this application, or any other document, and investigate or make enquiries from time to time with those third parties as the Carrier sees fit so as to assess the credit worthiness of the Customer at any point in time.

71. The authority given by the Customer in clause 70 is an irrevocable authority and these Terms and Conditions may be used as evidence of the Customer's consent when contacting third parties.

#### **INSOLVENCY**

72. The Customer will be in breach of these Terms and Conditions if at any time it becomes the subject of bankruptcy proceedings, voluntarily enters into bankruptcy, goes into liquidation either compulsorily or voluntarily, if a receiver is appointed in respect of the whole or any part of its assets, if it makes an assignment for the benefit of or composition with its creditor generally or threatens to do any of these things, or any judgment is made against the Customer or any similar occurrence under any jurisdiction affects the Customer.