

Barwon Grove Transport

Terms and Conditions of Carriage

1 Carriage Agreement

1.1 These terms and conditions of Carriage ("Terms") plus any implied terms which cannot be excluded are the whole agreement together with:

- 1.1.1 any Credit Account you completed and submitted to us;
- 1.1.2 any Carriage Schedule provided to you by us, whether signed or not;
- 1.1.3 any special terms specific to the type of good/s you require to be carried by us; and
- 1.1.4 any implied terms which cannot be excluded, are the whole agreement between you and us.

1.2 No other contractual terms that you provide us (such as on a purchase order or otherwise) apply and, if provided, they don't constitute a counteroffer.

1.3 Subject to clause 1.3, we may vary these terms at any time by providing written notice to you and the variation will take effect at the time we provide notice. .

1.4 Any variation pursuant to clause **Error! Reference source not found.**, shall not apply to any Carriage being undertaken at the time of the variation, but will apply for any future Carriage after the date of the variation.

2 Definitions

"**Carriage**" refers to any work undertaken by us for you, and includes, but is not limited to: the transportation of Goods from one place to another, the handling or moving of Goods using our vehicles, and any other work involving our vehicles.

"**Credit Account**" means the commercial credit account application form.

"**Dangerous Goods**" means all such goods as are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable, volatile or capable by their nature of causing damage or injury to other goods, persons, animals or any other thing in which such dangerous goods are carried or stored. It also includes any goods which we deem likely to cause damage or injury to persons, other goods or property.

"**Goods**" means any things carried or otherwise handled by us for you or any other party.

"**We/Us/Our**" means J.P & J.C. Holdings Pty. Ltd. ACN 005 857 661 trading as Barwon Grove Transport (ABN 80 005 857 661) and its associates (whether capitalised or not)

"**You/Your**" refers to the person, firm, organisation, partnership, corporation, trust or other entity for which we carry Goods on behalf of, as named in the Credit Account or the Carriage Schedule (if you do not hold a Credit Account). The reference to you also includes any employees, agents and contractors, corporation or other related entity (whether capitalised or not).

3 Charges

3.1 You will pay us for any Carriage in accordance with clause 4

3.2 All prices quoted are estimates and are not to be taken as binding.

3.3 We may also charge you for any of the following:

- 3.3.1 Any fines, penalties or other charges that arise or are incurred in relation to the Carriage.
- 3.3.2 Stamp duty or other statutory charges that may arise and which relate to the Carriage.
- 3.3.3 Any additional fees incurred by us relating to delivery, installation, collection, bagging and/or service calls carried out at your request.
- 3.3.4 Overtime charges, if the Goods are to be carried at your request outside ordinary business hours.

4 Payment

4.1 If you are a credit account holder, payment is due on or prior to thirty (30) days from the date of invoice unless we tell you in writing otherwise.

4.2 If you are not a credit account holder, payment is due on or prior to seven (7) days from the date of invoice unless we tell you in writing otherwise.

4.3 If we don't receive payment on the due date, we may charge interest (as liquidated damages) at the rate of two percent (2%) above the rate of interest fixed from time to time under Section 2 of the Penalty Interest Rates Act 1983.

4.4 We may revoke our express or implied approval for giving you credit at any time. We can set-off against any money owing to you amounts owed to us by you on any account whatsoever.

4.5 Any payments received from you on overdue accounts will be applied first to satisfy interest which may have accrued, second to reasonable expenses and legal costs, and then to principal.

4.6 You are liable for all reasonable expenses (including contingent expenses such as debt collection commission) and legal costs (on a full indemnity basis) incurred by us for enforcement of obligations and recovery of monies due from you to us.

4.7 All sums outstanding become immediately due and payable by you to us if you make default in paying any sums due to us, you become bankrupt, or commit any act of bankruptcy, compound with your creditors, have judgment entered against you in any court or, being a company, have a provisional liquidator, liquidator, receiver, receiver manager or administrator appointed, notwithstanding the provisions of any other clause in these Terms.

5 Indemnities and exclusions of liability

5.1 No warranties except those implied and that by law cannot be excluded are given by us in respect of any Carriage. Where it is lawful to do so, our liability for a breach of a condition or warranty is limited to

- 5.1.1 In the case of goods, the repair or replacement of the goods or the supply of substitute goods (or the cost of doing so); or
- 5.1.2 In the case of services, the supplying of the services again, or the payment of the cost of having the services supplied again.

5.2 You acknowledge and warrant that you have relied on your own skill and judgment or, alternatively, on the skill and judgment of professional advisers retained by you to provide advice and assistance on the suitability of the method by which the Goods are to be carried and, in this respect, you shall indemnify us from and against any suit, claim, demand or compensation which, but for these Terms, you may have had against us.

5.3 To the extent permissible by law, we are not liable for any consequential, indirect or special loss or damage, loss of actual or anticipated profits or revenue, loss of business or any loss suffered by third parties arising or relating to Terms, whether arising in contract, tort, in equity, under statute, under an indemnity, whether or not such loss was foreseeable, and even if we are advised of the possibility of such loss or damage.

5.4 Subject to clause 5.5, you indemnify us against all liability, claims, damage, loss, costs and expenses (including but not limited to, legal fees, costs and disbursements on a full indemnity basis) ("Loss") arising from or relating to these Terms, or the Carriage by us, in respect of:

- 5.4.1 Personal injury.
- 5.4.2 Damage to tangible property.
- 5.4.3 A claim by a third party.

5.5 You are not required to indemnify us in respect of Loss directly caused by the negligence, recklessness or unlawful act committed by us.

5.6 Each indemnity is a separate, independent and continuing obligation which survives termination of these Terms.

5.7 We shall not be liable for any delay at pickup or delivery points or arising under any other circumstances. Times quoted for delivery are an estimate only and should not be relied on. We shall also not be liable for any Loss relating to a delay under any circumstances.

6 Acceptance of Carriage

6.1 You warrant that you are the owner of the Goods, or otherwise have the authority of the owner to consign the Goods subject to these Terms.

6.2 You warrant that:

- 6.1.1 you have complied with all laws and regulations relating to the nature, packaging, labelling or Carriage and that the Goods are capable of withstanding the ordinary risks of carriage having regard to their nature; and
- 6.1.2 you have properly described the nature, size and weight of the Goods and correctly noted the number of items and accurately labelled the Goods;
- 6.1.3 none of the Goods are Dangerous Goods ("Warranties").

6.2 You indemnify us against any Loss howsoever arising in relation to any failure to comply with the Warranties or a breach of these Terms by you.

6.3 We reserve the right to stop the Carriage if you fail to comply with these Terms.

6.4 We may refuse any Carriage in our absolute discretion and may make acceptance of Carriage conditional upon receiving a satisfactory credit assessment on you.

7 Right to Subcontract

7.1 We, and any of our subcontractors, shall be entitled to subcontract the whole or any part of the Carriage on any terms.

7.2 You undertake that no claim or allegation shall be made, whether by you or any other person who is or may hereafter be interested in the Goods, against any person 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 us and the person against whom such claim or allegation is made against the consequences thereof. We shall also 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 shall to this extent be deemed to be parties to this contract.

8 Extension of Exemption to Subcontractors

8.1 Every exemption, exclusion of liability, condition, right and defence contained within these terms shall also be available and shall extend to protect;

- 8.1.1 all subcontractors;
- 8.1.2 all of our agents;
- 8.1.3 all of our subcontractors' agents; and
- 8.1.4 every other person other than us by whom the Carriage or any part thereof is performed or undertaken.

9 Transport and Handling of Goods

9.1 We may have the Goods carried, stored or otherwise handled by any of our agents, sub-contractors or any other persons, or any agent or sub-contractor of any other persons.

9.2 You hereby authorise any deviation from the usual route or manner of cartage or method or place of storage of Goods which may in our absolute discretion be deemed desirable or necessary in the circumstances.

9.3 Delivery of the Goods shall be to the address given by you for delivery.

9.4 If delivery cannot be made to the address given by you during normal trading hours, an additional charge may be payable for any consequential storage under clause 10, further delivery attempts, or any other fees.

10 Storage of Goods

10.1 We may charge storage fees for undelivered Goods according to the standard container storage rates at the time of storage.

10.2 If you do not collect the Goods or if the Goods are not delivered to you (other than due to any act or omission on our part) within 60 days, you authorize us to dispose of the Goods ("Uncollected Goods") by sale and to use the proceeds of such sale

to satisfy any outstanding payment obligations owed by you to us (including any third party costs relating to the sale, legal costs and debt collection commission or fees). Any proceeds remaining after the sale of the Uncollected Goods will be remitted to you.

- 10.3 We are not liable for any claims, losses, damages, costs or expenses (including legal fees, costs and disbursements) relating to the disposal of the Uncollected Goods pursuant to clause 10.2.

11 Access

- 11.1 You warrant that we will have the necessary authorisation to enter any place to facilitate the carriage of any Goods.
- 11.2 You authorise use to use your name and to act on your behalf, if necessary, to gain access to any area where the Goods are kept without liability for trespass or any resulting damage.

12 Common Carrier

We are not a common carrier and reserve the right to refuse any Carriage at our absolute discretion.

13 Insurance

It is your responsibility to maintain adequate insurance in respect of any Goods carried by Us for You. We do not provide insurance for any Goods.

14 Privacy Act 1988 ('Privacy Act')

- 14.1 To enable us to assess your application for credit, you authorise us: (1) to obtain from a credit reporting agency/body a consumer or commercial credit report containing personal information about you and any guarantors; and (2) to obtain a report from a credit reporting agency/body and other information in relation to your commercial credit activities, and (3) to give to a credit reporting agency/body information including identity particulars and application details.
- 14.2 You authorise us to give to and obtain from any credit provider named in the accompanying Credit Account and credit providers that may be named in a credit report issued by a credit reporting agency/body information about your credit arrangements. You understand that this information can include any information about your credit worthiness.
- 14.3 You understand that information can be used for the purposes of assessing your application for credit, assisting you to avoid defaulting on your credit obligations, assessing your credit worthiness and notifying other credit providers and credit reporting agencies of a default by you under these Terms.

15 Notification

You must notify us in writing within seven (7) days of: (1) Any alteration of your name or ownership; (2) the issue of any legal proceedings against you; (3) the appointment of any provisional liquidator, liquidator, receiver, receiver manager or administrator to you; and (4) Any change in the ownership of your business name. You agree that you shall be liable to us for any Carriage undertaken for the new owner by us until notice of any such change is received.

16 Force Majeure

We shall be released from our obligations in the event of national emergency, war, prohibitive governmental regulation or if any other cause beyond the control of the parties renders the Carriage impossible, where all money due to us shall be paid immediately and, unless prohibited by law, we may elect to terminate the Agreement.

17 Failure to Act

Our failure to enforce or insist upon the timely performance of any term, condition, covenant or provision in these Terms, or our failure to exercise any right or remedy available under these Terms or at law, or our failure to insist upon timely payment of monies when due or to demand payment of any charges or fees which accrue or any extension of creditor forbearance under these Terms shall not constitute a waiver of any subsequent default or a waiver of our right to demand timely payment of future obligations or strict compliance with the Terms.

18 Legal Construction

- 18.1 These Terms shall be governed by and interpreted according to the laws of Victoria and the parties consent and submit to the jurisdiction of the courts of Victoria.
- 18.2 Notwithstanding that any provision of the Terms may prove to be illegal or unenforceable pursuant to any statute or rule of law or for any other reason that provision is deemed omitted without affecting the legality of the remaining provisions and the remaining provisions of the Terms shall continue in full force and effect.