



BT Transport & Logistics Pty Ltd

ABN 33 835 689 096

PO Box 211 DRY CREEK SA 5094 | www.bttransportlogistics.com.au

1800 562 328 (1800 LOAD BT) | Fax (08) 8169 1399

BT TRANSPORT & LOGISTICS PTY LTD – TERMS AND CONDITIONS

To the fullest extent legally possible, all contracts and dealings between BT Transport & Logistics Pty Ltd, ACN 114 695 108 (and each subsidiary, affiliate, associated company, related entities, successors or assigns) (**BT Transport & Logistics**) and any owner of goods or any party requesting BT Transport & Logistics to provide the Services “including its servants and agents” (the **Owner**) relating to the Services are subject to the Terms and Conditions set out herein (the **Terms**) unless otherwise expressly agreed in writing by Beattie

1. **Definitions:** In these Terms, unless the context otherwise requires:

Collateral means all present and after acquired property of the Owner.

Contract means a contract between BT Transport & Logistics and the Owner for the supply by BT Transport & Logistics, and purchase by the Owner, of the Services pursuant to these Terms.

Goods means the goods of the Owner the subject of the Services.

GST means any tax or imposition on the supply of goods and services covered by the GST Act.

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.

Owner means the owner of the Goods the subject of the Services, and includes (without limitation):

- (a) the sender or receiver of the Goods;
- (b) a person having an interest in the Goods;
- (c) any party requesting BT Transport & Logistics to provide the Services;
- (d) any agent, representative, employee or sub-contractor of the Owner; and
- (e) any other person entitled to make a claim in respect of the Goods.

Security Interest has the same meaning as in the PPSA;

Services means:

- (a) the carriage by BT Transport & Logistics of the Goods; and/or
 - (b) the storage by BT Transport & Logistics of the Goods
- as may be set out in the Quotation.

Sub-contractor includes (without limitation):

- (a) each Company which is at any time, or from time to time, a subsidiary of BT Transport & Logistics within the meaning of the *Corporations Act 2001* (Cth);
- (b) a railway operated by the Commonwealth of Australia or a State or Territory within the Commonwealth of Australia;
- (c) any person or body corporate with whom BT Transport & Logistics may arrange for the carriage of any or all of the Goods; and
- (d) any person who is at any time, or from time to time, a servant, agent, employee or Sub-Contractor of any of the persons referred to in paragraphs (a) to (c) above;

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

2. **Not a common Carrier:** BT Transport & Logistics is not a common carrier and accepts no liability as such.

3. **Quotation**

BT Transport & Logistics may, in its absolute discretion, provide to the Owner a quotation (**Quotation**) specifying:

- (a) the Services to be carried out BT Transport & Logistics; and
- (b) the fee for carrying out the Services (**Fee**).

4. **Basis of Quotation**

- (a) Quotations make no allowance for waiting time and all extra costs arising from waiting time shall be an additional charge to the Owner.
- (b) Quotations are based upon prompt availability of the Goods for loading and the ability to make prompt delivery, and a charge shall be made by BT Transport & Logistics in respect of any delay in excess of one hour (commencing at the time BT Transport & Logistics reports for loading or unloading) in loading or unloading occurring otherwise than by default of BT Transport & Logistics, and that charge will constitute the extra costs to BT Transport & Logistics incurred as a result of the excess delay.
- (c) Quotations are subject to the vehicle, haulage equipment and equipment required for loading and unloading having clear access for manoeuvring into loading and unloading site positions and the ground surface being firm and consolidated to withstand wheel loadings of the vehicle, haulage equipment and the equipment for loading or unloading and BT Transport & Logistics costs involved in any site preparation shall be borne by the Owner.
- (d) Quotations do not include the cost of obtaining or operating cranes to load or unload and those costs shall be borne by the Owner.
- (e) The Quotation and the Contract are subject to all necessary permits being issued by all relevant authorities.

5. **Payment deemed to be earned:** The Fee shall be deemed earned by BT Transport & Logistics as soon as the Goods are loaded and dispatched from the Owner's premises.

6. **Trading terms:** Trading terms are strictly seven (7) days from the date of the invoice. Owners awaiting account approval by BT Transport & Logistics Pty Ltd “will be required to make payment in full for any services provided by BT Transport & Logistics, prior to the Owner's account being approved”.

7. **Hazardous, dangerous etc Goods**

- (a) The Quotation is made on the basis that goods of a hazardous, dangerous, noxious, offensive, volatile, inflammable or explosive nature will not be tendered to BT Transport & Logistics and if the Owner requires goods of that nature to be carried, the Owner must make full disclosure of the nature of the goods and the same will be carried by BT Transport & Logistics only if express written agreement is made between the Owner and BT Transport & Logistics in relation to the carriage thereof.
- (b) The Owner warrants that except as specified in the Contract the Goods which are tendered to BT Transport & Logistics for carriage are not to be of a hazardous, dangerous, noxious, offensive, volatile, inflammable or explosive nature and will be goods the carriage of which is not illegal or prohibited by any law of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia by reason of their nature, packaging, labelling or otherwise.



(c) The Owner hereby indemnifies BT Transport & Logistics in respect of any liability for death, bodily injury, loss and/or damage incurred by BT Transport & Logistics Pty Ltd arising directly or indirectly as a result of the Owner's failure to comply with this warranty.

8. Weight and dimensions of Goods

(a) Where the Owner has declared the weight of the Goods and BT Transport & Logistics relies or has relied on that declaration then the Owner shall be responsible for all extra costs and risks incurred BT Transport & Logistics and shall be liable to BT Transport & Logistics for any loss or damage occasioned either directly or indirectly to BT Transport & Logistics by reason of BT Transport & Logistics relying or having relied upon a declared weight.

(b) If weights and dimensions of the Goods exceed those declared by the Owner and stipulated in the Contract, the Quotation and/or the Contract shall be null and void at the option of BT Transport & Logistics and or at the option of BT Transport & Logistics may be amended to represent the actual weights and dimensions of the Goods.

9. Invoice and payments

(a) Non-approved account Owners must make payment to BT Transport & Logistics in cleared funds and in full prior to the completion of the loading and dispatch of the Goods.

(b) BT Transport & Logistics will issue an invoice to the Owner for the Fee.

(c) Owners awaiting account approval by BT Transport & Logistics Ltd will be required to make payment in full for any services provided by BT Transport & Logistics, to the Owner prior to the Owners account being approved.

(d) Payment must be made to BT Transport & Logistics by the Owner in cleared funds and in full without any deductions whatsoever strictly within seven (7) days of the date of the invoice.

(e) Where it is agreed that the charges for the Services will be paid by a third party on behalf of the Owner, the Owner will indemnify BT Transport & Logistics against any loss resulting from the non-payment of the charges by the third party and without limiting the generality the Owner agrees that if or insofar as any charges are not paid on demand BT Transport & Logistics will demand payment by the Owner. All collection and solicitor fees incurred by BT Transport & Logistics in relation to this demand will be charged to the Owner.

10. BT Transport & Logistics acceptance of liability: If, by express and written agreement between BT Transport & Logistics and the Owner, BT Transport & Logistics accepts responsibility for damage to, loss of, or deterioration of Goods, no claim for that damage, loss or deterioration will be binding BT Transport & Logistics unless lodged in writing at the office of BT Transport & Logistics in the State in which delivery is made (or where there is no such office, then at the office of BT Transport & Logistics in the State from which the Goods were dispatched) within 72 hours after delivery of the Goods was completed.

11. Carriage

(a) BT Transport & Logistics may, in its absolute discretion, arrange with any Sub-Contractor to undertake the carriage of the Goods, and the Sub-Contractor shall be entitled to the benefit of these Terms to the same extent as BT Transport & Logistics, and insofar as it may be necessary to ensure that the Sub-Contractor shall be so entitled, BT Transport & Logistics shall be deemed to enter into the Contract for its own behalf and as agent for the Sub-Contractor, and the Owner shall be deemed to have ratified the sub-contracting arrangement upon delivery of the Goods by BT Transport & Logistics to the Sub-Contractor.

(b) Where the Owner expressly or by implication instructs BT Transport & Logistics to use, or if it is agreed by BT Transport & Logistics and the Owner that BT Transport & Logistics will use a specific method of carriage (whether by road, sea, rail or air) BT Transport & Logistics shall endeavour to give priority to that specified method. However, if, in BT Transport & Logistics reasonable opinion, carriage by the specified method cannot be conveniently undertaken, the Owner authorises BT Transport & Logistics Ltd to carry or arrange for the carriage of the Goods by any other method(s) to be determined by BT Transport & Logistics in its absolute discretion.

(c) Any deviation from the usual route or manner of carriage of Goods which may, in the absolute discretion of BT Transport & Logistics, be deemed necessary, reasonable or desirable in the circumstances shall be deemed to have been authorised by the Owner.

12. Risk

(a) All Goods are carried entirely at the Owner's risk.

(b) BT Transport & Logistics shall not be responsible:

(i) in tort, contract or otherwise;

(ii) for any loss of, damage to or deterioration of the Goods, the misdelivery or failure to deliver the Goods, or any delay in the delivery of the Goods for any reason whatsoever (including, but without limitation, the negligence or wilful act or default of BT Transport & Logistics, a Sub-Contractor or any other person), in any circumstances, including but not limited to the following:

(A) in the course of performance by BT Transport & Logistics of the Contract;

(B) in events which are in the contemplation of BT Transport & Logistics or the Owner;

(C) in events which are foreseeable by them or either of them; or

(D) in events which would constitute a fundamental breach of the Contract or a breach of a fundamental term thereof.

13. Delivery: BT Transport & Logistics is authorised to deliver Goods to the address for delivery specified by the Owner in the Contract, or if no address is specified, then to the address subsequently notified to BT Transport & Logistics by the Owner, and BT Transport & Logistics shall be deemed to have delivered the Goods in accordance with the Contract if BT Transport & Logistics obtains from any person at that subsequently specified address a receipt or signed docket for the Goods.

14. Storage: If the Services include the storage of the Goods by BT Transport & Logistics, then:

(a) All Goods are stored at the Owner's sole risk and unless otherwise expressly agreed in writing no responsibility in tort or contract or otherwise will be accepted by BT Transport & Logistics for any loss or damage to or concealed damage deterioration contamination evaporation or misdelivery of or failure to deliver or delay on the delivery of goods either in store or in transit to or from the store for any reason whatsoever.

(b) The Owner is solely responsible for all insurance in relation to the Goods that are stored;

(c) The Owner warrants to BT Transport & Logistics that:



- (i) it has full right and power and authority to authorise the storage of the Goods by BT Transport & Logistics;
- (ii) unless previously notified in writing to BT Transport & Logistics, the Goods are free of any deleterious or objectionable matter or odour which may affect other goods and are not explosive, inflammable or liable to spontaneous combustion or otherwise dangerous.

(d) The Owner must notify BT Transport & Logistics in writing of its intention to cease trading with BT Transport & Logistics. The Owner must pay all monies owed to BT Transport & Logistics prior to removal of Goods from storage with BT Transport & Logistics. The Owner acknowledges BT Transport & Logistics's right to not release the Goods until all monies due are received.

(e) Where the Goods are loaded and dispatched from the Owner's premises on or including pallets or any other packaging device or material, the Owner warrants that all charges pertaining to the pallets, packaging device or material have been paid by the Owner. In the event of BT Transport & Logistics signing for receipt of any pallets, packaging device or material, they do so only on behalf of the Owner who appoints BT Transport & Logistics as its agent for this purpose. The Owner accepts full responsibility for all pallets, packaging device or material and for freight charges thereon. The Company accepts no responsibility for return of pallets, packaging device or material.

15. Rental: Where BT Transport & Logistics leases a portion of its storage facilities to the Owner and the Owner assumes control of and responsibility for the Goods in that portion of the facilities, then:

- (a) The rental in respect of that portion of the facilities will be deemed a charge within the meaning of these Terms;
- (b) BT Transport & Logistics's Security Interest will extend to and include all Goods stored in such portion of the facilities; and
- (c) If, in the opinion of BT Transport & Logistics, all or any of the Goods which are stored in the facility are or become deteriorated, objectionable, unwholesome or a source of danger or contamination, then BT Transport & Logistics may at any time with or without notice and at the Owner's expense remove such goods and if thought fit destroy, surrender or sell them. Where the Goods are sold, BT Transport & Logistics will apply the proceeds as follows:
 - (i) firstly, the proceeds will be applied to any costs incurred in the removal and sale of the Goods;
 - (ii) secondly, the proceeds will be applied to any amounts outstanding by the Owner to BT Transport & Logistics under any arrangement;
 - (iii) thirdly, any remaining amount will stand to the credit of the Owner's account with BT Transport & Logistics for future Services under these Terms; and
 - (iv) fourthly, if the Owner terminates Services with BT Transport & Logistics whilst still in credit, then the balance of the credit will be refunded to the Owner.

16. Delay

- (a) If a vehicle is delayed by any cause beyond the control of BT Transport & Logistics or is delayed as a result of BT Transport & Logistics following instructions of the Owner, the Owner shall be liable for any extra costs incurred by BT Transport & Logistics as a consequence of the delay.
- (b) If a vehicle is bogged whilst BT Transport & Logistics is following instructions of the Owner, the Owner shall be liable for the costs incurred by BT Transport & Logistics in recovering the vehicle from the bog and shall be liable for any damage to the vehicle, equipment or plant so caused or the recovery thereof.
- (c) If the Goods have not been loaded within 60 days of the date of the Quotation or the Contract (as the case may be), and the delay in loading is due to any cause beyond the control of BT Transport & Logistics, the Owner shall be liable to pay to BT Transport & Logistics in addition to the Quotation an amount equal to the increase in BT Transport & Logistics costs of carrying out the Services.
- (d) For the avoidance of doubt, the Owner is not relieved of any obligation to accept or pay for the Services due to any delay in delivery.

17. Insurance:

- (a) The Owner shall be responsible for obtaining its own insurance for the Goods whilst they are in transit and any expense for any such insurance shall be borne by the Owner.
- (b) Insurance of the Goods will not be effected by BT Transport & Logistics for the benefit of the Owner except upon the written instructions of the Owner and then only at the Owner's expense and upon receipt of a declaration of value a reasonable time prior to the loading of the Goods.

18. Obligations of the Owner

- (a) The Owner shall be solely responsible for the conformity of all containers, packaging and pallets with any requirements of the Goods in relation thereto and for any expenses incurred by BT Transport & Logistics arising from any failure to so conform.
- (b) The Owner shall be responsible for all applicable laws, customs and other governmental regulations of the Commonwealth or of any state or territory of the Commonwealth including those relating to the packaging, carriage and delivery of the Goods and shall furnish information and attach such documents to the consignment note as may be necessary to comply with those laws and regulations and BT Transport & Logistics shall not be liable to the Owner or any other person for loss or expense due to the Owner's failure to comply with this clause.

19. Owner's authorised agents: If the person who delivers the Goods or any of them to BT Transport & Logistics for carriage is not the Owner, that person shall be deemed to be duly authorised by the Owner to execute all documents (including, without limitation, the acceptance of these Terms) for and on behalf of the Owner. Such documents that are executed by that person shall be binding on the Owner.

20. Security Interest

- (a) The Owner grants a Security Interest to BT Transport & Logistics in respect of the Collateral to secure payment for all charges, costs and other expenses and amounts owed by the Owner to BT Transport & Logistics under these Terms or any other agreement.
- (b) The Owner agrees and acknowledges that possession of the Goods (which the Owner agrees and acknowledges forms part of the Collateral) will be conferred upon BT Transport & Logistics for the purpose of the PPSA as soon as the Goods are loaded and dispatched from the Owner's premises.
- (c) If:
 - (i) the Owner fails to pay any charges, costs or other expenses or amounts owed by the Owner to BT Transport & Logistics when such amount falls due; and
 - (ii) this failure continues after 7 days of BT Transport & Logistics requesting in writing that the Owner make payment



then BT Transport & Logistics may retain possession of those Goods and/or enforce its Security Interest over the Collateral in accordance with the PPSA.

(d) For the avoidance of doubt, BT Transport & Logistics will not be entitled to retain possession or enforce its Security Interest unless the Owner has failed to make payment within 7 days of being requested to do so by BT Transport & Logistics after the relevant amount has fallen due.

(e) The Owner must do anything (such as obtaining consents and signing documents) which BT Transport & Logistics requires for the purposes of:

- (i) Ensuring that the Security Interest is enforceable, perfected and otherwise effective under the PPSA;
- (ii) Enabling BT Transport & Logistics to gain first priority for the Security Interest;
- (iii) Enabling BT Transport & Logistics to exercise rights in connection with the Security Interest.

(f) To the extent permitted by law, the parties agree that:

(i) The secured party need not comply with the following provisions of the PPSA do not apply: sections 95, 118, 121(4), 125, 130 (to the extent that it requires BT Transport & Logistics to give any notice to the Owner), section 132(3)(d), 132(4), 135.

(ii) the following provisions of the PPSA are excluded: section 142 and section 143.

(iii) for the purposes of section 115(7) of the PPSA, BT Transport & Logistics need not comply with sections 132 and 137(3).

(g) Subject to section 275(7) of the PPSA, the parties each agree not to disclose any information of the kind described in section 275(1) of the PPSA, including:

(i) information about these Terms, including a copy of it;

(ii) information about the amount or the obligation secured by the Security Interest and the terms of such payment or performance at any time; and

(iii) information about any Collateral subject to the Security Interest at any time,

except if the other party is given prior notice of the disclosure, and one of the following criteria is met:

(iv) the other party consents to the disclosure; or

(v) the disclosure is necessary to comply with any applicable law (other than section 275(1) of the PPSA), the rules of any securities or stock exchange or an order of a court or tribunal.

(h) The Owner agrees not to authorise the disclosure of any information as contemplated by section 275(7)(c) of the PPSA except in accordance with clause 20(g) or with the consent of BT Transport & Logistics.

21. Limitation of Liability

(a) Subject to clause 21(a), any condition or warranty (including, but without limitation, any implied warranty of merchantability, satisfactory quality or fitness for a particular purpose) which would otherwise be implied in these Terms or in relation to any Goods and/or Services is hereby excluded.

(b) Where legislation implies in these Terms any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in these Terms. However, the liability of BT Transport & Logistics for any breach of such condition or warranty shall be limited to one or more of the following, at the sole and absolute discretion of BT Transport & Logistics

(i) supplying of the Services again; or

(ii) payment of the cost of having the Services supplied again.

22. Acceptance of these Terms: The Owner expressly represents and warrants to BT Transport & Logistics that it is either the Owner or the authorised agent of the Owner, and by entering into the Contract, accepts these Terms.

23. Indemnity: The Owner hereby indemnifies BT Transport & Logistics from all actions, claims, demands, proceedings, costs, damages and expenses brought or recovered by any of those persons arising out of, or in connection with, these Terms, the Goods, the Contract or the Services.

24. Recovery costs: The Owner must pay to BT Transport & Logistics all and any costs, expenses or losses incurred by BT Transport & Logistics as a result of the Owner's failure to pay to BT Transport & Logistics all sums outstanding (including any debt collection and legal costs) on a full indemnity basis.

25. GST: To the extent that a supply of Services provided by BT Transport & Logistics, or any other supply made under or pursuant to these Terms, is a "taxable supply" as defined in the GST Act, BT Transport & Logistics will increase its price in respect of that supply its makes by the amount of GST payable on the supply.

26. Notice: Any notice required to be given by one party to the other may be given in writing and delivered personally, posted to the address last notified to the other party, sent by facsimile to the facsimile number last notified to the other party or sent by electronic communication to the email address last notified to the other party. A notice so delivered will be deemed to have been received by the other party upon receipt of the written notice delivered personally; at the time when in the ordinary course of postage it should have been delivered; a notice sent by facsimile shall be deemed to have been received at the time indicated in the sender's record of transmittal and a notice sent by electronic communication shall be deemed received at the time when the sender receives confirmation electronic communication enters the receiver's information system.

27. Jurisdiction: The Owner agrees that all Contracts made with BT Transport & Logistics shall be deemed to be made in the State of South Australia and subject to the non-exclusive jurisdiction of the courts of South Australia.

28. Force majeure: BT Transport & Logistics will not be or will not be deemed in default or breach of any Contract as a result of the effects of force majeure. Force majeure will include (but is not limited to) any fire, flood, strike, civil disturbance, theft, crime or other matter beyond the control of BT Transport & Logistics.

29. Attornment: For the purpose of giving effect to the Owner's obligations pursuant to these Terms, the Owner hereby irrevocably appoints the public officer of BT Transport & Logistics as its attorney in all things.

30. Independent Legal Advice: The Owner acknowledges that is has had the opportunity to seek separate and independent legal advice in respect of the implications of these Terms before entering into these Terms. If the Owner has failed to obtain such advice, it shall not be entitled to rely on such failure to exercise any non-compliance with these Terms.



- 31. **Laws:** These Terms have effect subject to the provisions of any Act or Regulation relating to the transport or warehousing of goods in the State where the Goods are located. Nothing in these Terms is to be construed to mean that BT Transport & Logistics has surrendered any of its right or immunities or to have increased its responsibilities and liabilities under the said Acts and Regulations or to have lost the benefit of any statutory exemption, limitation or protection whatsoever.
- 32. **Default in payment**
Notwithstanding any other provision of these Terms, if the Owner (or any other person liable to make payment to BT Transport & Logistics for the Services) fails to make payment to BT Transport & Logistics in accordance with clause 9, BT Transport & Logistics may, in its absolute discretion:
 - (a) Exercise its right under the PPSA in relation to the Security Interest;
 - (b) charge interest on any overdue accounts at a rate of 10%. The Owner will be charged this additional %, at each invoice period until the Owner makes payment in full to BT Transport & Logistics of the outstanding amount; and
 - (c) if the Owner's account fails to be settled after 90 days, BT Transport & Logistics will automatically render the outstanding amount to external Debt Collection, whereby the Owner will negotiate agreed terms direct with the Debt Collection, on behalf of BT Transport & Logistics. The Owner's failure to honour these agreed terms will result in formal proceedings to recover the outstanding money and all or any costs incurred to recover the outstanding amounts will also be born by the Owner.
- 33. **Severability:** Any part hereof being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.
- 34. **Waiver:** The waiver by BT Transport & Logistics of any breach by the Owner of any of these Terms shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.
- 35. **Privacy Act:** The Owner agrees that BT Transport & Logistics can make any inquiries it deems necessary to investigate the Owner's creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers (the *Sources*). The Owner authorises the Sources to disclose any information concerning its creditworthiness in their possession to BT Transport & Logistics. The Owner agrees that BT Transport & Logistics may disclose any information in its possession concerning the Owner's creditworthiness to the Sources.
- 36. **Statement by BT Transport & Logistics:** A statement by any officer of BT Transport & Logistics is conclusive evidence of any fact, matter or thing.

DATE This day the day of **20**__ __

Customer (including all parties who are a sole trader and all directors of any company customer) to complete.

SIGNED:

(Director)

Print Name:

OR

.....

(Sole Trader / Sole Trader Secretary / Individual)

Print Name:

SIGNED:

(Director / Secretary)

Print Name:

Witness:

Print Name:

OFFICE USE ONLY

Sales Representative:

Credit Limit: **Date:**

Commencement of Account:

Comments: