

The Marair Trust T/A Marair Freight – Terms & Conditions of Carriage

1. **Definitions**
 - 1.1. "Agent" shall mean The Marair Trust T/A Marair Freight and its successors and assigns or any person acting on behalf of and with the authority of The Marair Trust T/A Marair Freight.
 - 1.2. "Sub-Contractor" shall mean and include:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person, firm or agent with whom the Agent may arrange for the carriage or storage of any Goods the subject of the contract or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
 - 1.3. "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
 - 1.4. "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Agent's Services.
 - 1.5. "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer on a principal debtor basis.
 - 1.6. "Goods" shall mean cargo together with any container, packaging or pallet(s) to be moved from one place to another by way of the Agent's Services, or for storage by the Agent.
 - 1.7. "Services" shall mean all services supplied by the Agent to the Customer and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by the Agent to the Customer and includes any advice or recommendations.
 - 1.8. "Price" shall mean the cost of the Services as agreed between the Agent and the Customer subject to clause 4 of this contract.
2. **Acceptance**
 - 2.1. Any instructions received by the Agent from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
 - 2.2. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be varied in accordance with these terms and conditions or with the written consent of the manager of the Agent.
 - 2.3. These terms and conditions are to be read in conjunction with the Agent's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Agent to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
 - 2.4. The Customer shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by the Agent as a result of the Customer's failure to comply with this clause.
 - 2.5. Services are supplied by the Agent only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
3. **Freight Forwarding**
 - 3.1. Except to the extent that any of the Services shall be actually performed by the Agent, the Agent shall act as a forwarding agent only. The Agent shall be entitled to enter into contracts on behalf of and as agent for the Customer and without notice to the Customer, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Agent may be necessary or desirable to the performance of the Services. The Customer hereby appoints the Agent as agent of the Customer for the purpose of entering into any contract, upon such terms and conditions, as the Agent may in its absolute discretion think fit. The Customer shall be bound by the terms of any consignment note, air waybill or other contractual document which the Agent may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Customer, the Agent, or any other person.
 - 3.2. The Customer and any Consignee shall be jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit, or outlay of whatsoever nature levied by any government, or the authorities at any port or place in connection with the Goods, and for any payments, fines, expenses, loss or damage incurred or sustained by the Agent in connection therewith and shall indemnify the Agent, its servants and agents from all claims by third parties howsoever arising in connection with the Goods.
 - 3.3. When the Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the Consignee or any other person the Customer shall remain responsible for those charges and expenses if they are not paid by the Consignee or other person.
 - 3.4. The Agent may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
 - 3.5. The Agent's Price (including all charges) shall be paid in full and shall be paid in any event including, but not limited to, cargo lost, or a voyage or flights broken up or abandoned. If there is a forced interruption or abandonment of a voyage or flight at the port or airport of shipment or elsewhere, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Customer and Consignee.
 - 3.6. All unpaid charges shall be paid in full and without offset, counterclaim, or deduction, in the currency of the place of receipt of the Goods or at the Agent's sole discretion, in the currency of the place of delivery at the T/T selling rate in effect on the day of payment. If the date falls on a day which banks are closed for business, the rate ruling on the next succeeding business day shall govern.
4. **Price And Payment**
 - 4.1. At the Agent's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Agent to the Customer in respect of Services supplied; or
 - (b) Agent's quoted Price (Subject to clause 4.2) which shall be binding upon the Agent provided that the Customer shall accept in writing the Agent's quotation within thirty (30) days.
 - 4.2. The Agent may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Agent beyond the reasonable control of the Agent (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
 - 4.3. Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.
 - 4.4. At the Agent's sole discretion a deposit may be required.
 - 4.5. Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of two percent (2%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Agent.
 - 4.6. Instructions to collect payment from the Customer on delivery (COD) in cash or otherwise are accepted by the Agent upon the condition that the Agent in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
 - 4.7. GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
5. **Agent Not Common Carrier**
 - 5.1. The Agent is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Agent subject only to these conditions and the Agent reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
6. **Nomination Of Sub-Contractor**
 - 6.1. The Customer hereby authorises the Agent (if it should think it to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Agent. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Agent shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
7. **Agent's Servants or Agents**
 - 7.1. The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Agent which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Agent and any such servant or agent against all consequences thereof.
8. **Method Of Transport**
 - 8.1. If the Customer instructs the Agent to use a particular method of carriage whether by road, rail, sea or air the Agent will give priority to the method designated but if that method cannot conveniently be adopted by the Agent the Customer shall be deemed to authorise the Agent to carry or have the Goods carried by another method or methods.
9. **Route Deviation**
 - 9.1. The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Agent be deemed reasonable or necessary in the circumstances.
10. **Charges Earned**
 - 10.1. The Agent's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Customer's premises.
11. **Demurrage**
 - 11.1. The Customer will be and shall remain responsible to the Agent for all its proper charges incurred for any reason. A charge may be made by the Agent in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Agent. Such permissible delay period shall commence upon the Agent reporting for loading or unloading.
12. **Perishable Goods**
 - 12.1. Where the Goods are perishable and the Customer has, in the opinion of the Agent, failed to collect the Goods within a reasonable period having regard to the nature of the Goods, or is likely so to fail to collect the Goods or, in the opinion of the Agent, the Agent cannot properly or is unlikely to be able properly to deliver the Goods to the address nominated by the Customer for delivery, the Agent may sell the Goods in which event the proceeds of sale shall be used by the Agent to discharge its costs in respect of the Services together with all costs, expenses and charges (the Charges) incurred by the Agent in effecting such sale and the balance of the proceeds (if any) shall be paid by the Agent to the Customer. In the event of a shortfall, the Customer shall pay to the Agent the balance of the Charges then outstanding.
13. **Non-Perishable Goods**
 - 13.1. Where the Goods are non-perishable and the Customer has, in the opinion of the Agent, failed to collect the Goods within a period of twenty-one (21) days from the date that written notice was sent to the address supplied by the Customer to the Agent at the time of quotation, or is likely to fail to collect the Goods or, in the opinion of the Agent, the Agent cannot properly or is unlikely to be able to properly deliver the Goods to the address nominated by the Customer for delivery, the Agent may, at its option, serve a notice on the Customer that it intends to sell the Goods on the date which is twenty-one (21) days from the date on which the Customer receives the notice. In the event the Goods are sold pursuant to Clause 13.1, the proceeds of sale shall be used by the Agent to discharge its costs in respect of the Services together with all costs, expenses and charges (the Charges) incurred by the Agent in effecting such sale and the balance of the proceeds (if any) shall be paid by the Agent to the Customer. In the event of a shortfall, the Customer shall pay to the Agent the balance of the Charges then outstanding.
14. **Prohibited And Dangerous Goods**
 - 14.1. The Agent or its authorised agent will not transport or store any:
 - (a) bullion, cash, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants; or
 - (b) any materials that are prohibited under any Australian State or Federal law (including, without limitation, prohibited weapons and certain types of fertiliser).
 - 14.2. The Customer shall provide the Agent with all necessary information relating to the Goods in addition to any data requested by the Agent (including, but not limited to, technical specifications, data sheets, and safety information). The Customer shall be liable for and hereby indemnifies the Agent against all loss or damage whatsoever caused by the Client supplying incorrect information (relating to the Goods) to the Agent.
 - 14.3. Due to the dangerous nature of the Goods, the Goods may be destroyed or otherwise dealt with as determined by the Agent in its absolute discretion, or by any other person in whose custody they may be at the relevant time, and at the expense of the Customer, and neither the Agent nor any such other person shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the Goods.
15. **Consignment Note**
 - 15.1. It is agreed that the person delivering any Goods to the Agent for carriage or forwarding is authorised to sign the consignment note for the Customer.
16. **Customer's Responsibility**
 - 16.1. The Customer expressly warrants to the Agent that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of carriage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.
17. **Delivery**
 - 17.1. It is the Customer's sole responsibility to address adequately each consignment and to provide the Agent with instructions to enable it to deliver.
 - 17.2. Pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Agent.
 - 17.3. At the Agent's sole discretion delivery of the Goods shall take place when:
 - (a) the Customer takes possession of the Goods at the Agent's address; or
 - (b) the Customer's nominated carrier takes possession of the Goods in which event the carrier shall be deemed to be the Customer's agent; or
 - (c) the Goods are delivered to the Customer's nominated address (as supplied to the Agent by the Customer for that purpose) and it is expressly agreed that the Agent shall be taken to have delivered the Goods in accordance with this contract if at that address the Agent obtains from any person a receipt or a signed delivery docket or consignment note for the Goods.
 - 17.4. The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.
 - 17.5. The Customer shall inspect the Goods on delivery and shall notify (in writing) the Agent of any alleged damage or shortage in quantity. If the alleged damage or shortage in quantity is not apparent at the time of delivery then the Customer shall within five (5) days of delivery (time being of the essence) notify (in writing) the Agent the alleged damage or shortage in quantity. The Customer shall afford the Agent an opportunity to inspect the Goods within a reasonable time following delivery. If the Customer believes the Goods are damaged in any way, if the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any damage or shortage in quantity.
 - 17.6. The Agent may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
 - 17.7. Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
 - 17.8. The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.
18. **Insurance**
 - 18.1. The Customer acknowledges that:
 - (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of the Agent; and
 - (b) the Agent is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - (c) under no circumstances will the Agent be under any liability with respect to the arranging of any such insurance and no claim will be made against the Agent for failure to arrange or ensure that the Goods are insured adequately or at all.
19. **The Commonwealth Trade Practices Act 1974 and Fair Trading Acts**
 - 19.1. Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
20. **Limitation of Liability**
 - 20.1. Subject to any statutory provisions imposing liability, the Agent shall not be under any liability for any loss or damage whatsoever or howsoever arising (unless such loss or damage is due to the willful neglect of the Agent or its agents). This limitation of liability shall include all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Agent or incurred or become payable by the Agent.
 - 20.2. The Customer acknowledges that due to the nature of the Goods, delays can occur due to circumstances beyond the control of the Agent (including, without limitation, time frames related to regulations, or third party carriers refusing to transport the Goods), and as such the Agent shall not be liable for any consequential or indirect loss, or loss of
- 20.3. **Liability of the Agent arising out of any one incident for breach of these terms and conditions, howsoever arising, is limited to any of the following as determined by the Agent:**
 - (a) the supply of the Services again; or
 - (b) the payment of the cost of having the Services supplied again; or
 - (c) where the Customer is a consumer as defined in the Trade Practices Act 1974 then the Customer shall also be entitled to a refund.
21. **Default & Consequences Of Default**
 - 21.1. Interest on overdue invoices shall accrue from the date when payment becomes due daily until the date of payment at a rate of 2.5% per calendar month and such interest shall compound monthly at such a rate after as well as before any judgement.
 - 21.2. If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.
 - 21.3. Without prejudice to any other remedies the Agent may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Agent will not be liable to the Customer for any loss or damage the Customer suffers because the Agent exercised its rights under this clause.
 - 21.4. If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.
 - 21.5. Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
 - (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
22. **Unpaid Agent's Rights to Dispose of Goods**
 - 22.1. The Agent shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Agent for all sums payable by the Customer to the Agent, and the Agent shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. The Agent shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
23. **Secure And Charge**
 - 23.1. Despite anything to the contrary contained herein or any other rights which the Agent may have hereover:
 - (a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met;
 - (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis;
 - (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 23.1.
24. **Privacy Act 1988**
 - 24.1. The Customer and/or the Guarantor's agree for the Agent to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor's in relation to credit provided by the Agent.
 - 24.2. The Customer and/or the Guarantor's agree that the Agent may exchange information about the Customer and the Guarantor's with those credit providers either named as trade creditors by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
 - (a) to assess an application by Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the credit worthiness of Customer and/or Guarantor's.
 - 24.3. The Customer consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(b) Privacy Act 1988).
 - 24.4. The Customer agrees that personal credit information provided may be used and retained by the Agent for the following purposes and for other purposes as shall be agreed between the Customer and Agent or required by law from time to time:
 - (a) provision of Services; and/or
 - (b) marketing of Services by the Agent, its agents or distributors in relation to the Services; and/or
 - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to provision of Services; and/or
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or
 - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 24.5. The Agent may give information about the Customer to a credit reporting agency for the following purposes:
 - (a) to obtain a consumer credit report about the Customer; and/or
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
25. **Cancellation**
 - 25.1. The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Agent shall repay to the Customer any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
 - 25.2. In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
26. **General**
 - 26.1. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
 - 26.2. These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
 - 26.3. The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by the Agent.
 - 26.4. The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Customer of such change.
 - 26.5. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of either party.
 - 26.6. The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
 - 26.7. The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.