

## 1. APPLICATION

- 1.1 These Terms and Conditions of Service (**T&Cs**) apply to and govern the supply of Services by Peter Cochrane Management Pty Ltd (**Cochrane's Transport**) and/or any Affiliate of Peter Cochrane Management Pty Ltd to the Customer.
- 1.2 The Parties acknowledge and agree that all activities performed under these Terms and Conditions must comply with the National Heavy Vehicle Law, including obligations relating to chain of responsibility, vehicle standards, fatigue management, mass and dimension limits, and safety duties.
- 1.3 Any order, request or other instructions (whether oral, in writing or facilitated via the "create consignment" function on the website) issued by or on behalf of the Customer for Cochrane's Transport to supply Services, or the Customer's acceptance of Services supplied by Cochrane's Transport, constitutes acceptance of these T&Cs by the Customer.
- 1.4 For the purposes of clause 1.2, a legally binding contract between the Customer and Cochrane's Transport is created for Cochrane's Transport to supply, and for the Customer to receive, the Services for the Fees at the Rates and Accessorial Charges on and subject to these T&Cs, and any Services Document provided by Cochrane's Transport to the Customer or accompanying these T&Cs in respect of the Services (if applicable) (**Agreement**).
- 1.5 The applicable rates and charges are set out in the Rates and Accessorial Charges Schedule, which forms part of these Terms and Conditions. The Rates and Accessorial Charges Schedule may be amended from time to time in accordance with these Terms and Conditions.
- 1.6 The Rates and Accessorial Charges Schedule is taken to be incorporated into these T&Cs whether or not it is physically attached, provided it is made available to the Customer prior to or at the time of entry into the agreement.
- 1.7 To the extent of any inconsistency between these T&Cs and the Rates and Accessorial Charges Schedule, these T&Cs prevail unless expressly stated otherwise.
- 1.8 The Agreement will commence on the Commencement Date.
- 1.9 Where there is more than one Customer, those Customers are jointly and severally liable for all money payable by either or all Customers under the Agreement.

## 2. SERVICES

- 2.1 The Customer engages Cochrane's Transport to provide, and Cochrane's Transport agrees to provide, the Services specified in the Agreement in consideration for the payment of the Fees on the terms of the Agreement.
- 2.2 In performing the Services Cochrane's Transport must use reasonable endeavours to:
- perform the Services in a competent and professional manner and in accordance with all applicable Law;
  - act in accordance with the Customer's reasonable instructions and directions, subject to clause 13.2; and
  - adequately safeguard and secure the Goods whilst they are in Cochrane's Transport's possession or control in a manner reasonably sufficient to minimise the risk of Loss or Damage to the Goods.
- 2.3 Cochrane's Transport may in its discretion engage a Subcontractor to perform all or any part of the Services. Cochrane's Transport is deemed to have entered into the Agreement as agent for any Subcontractor engaged by Cochrane's Transport. Every exemption, limitation, condition and liberty contained in the Agreement and every right, exemption from liability, defence and immunity of whatsoever nature applicable to Cochrane's Transport or to which Cochrane's Transport is entitled under the Agreement will also be available and will extend to protect all Subcontractors.
- 2.4 Cochrane's Transport may provide and perform Additional Services in accordance with the Customer's Instructions where Cochrane's Transport has agreed to perform such Additional Services in writing.

## 3. RECEIVAL OF GOODS

- 3.1 Receival of Goods occurs in accordance with the Customer's

Instructions and this clause 3.

- 3.2 Receival of the Goods occurs when Cochrane's Transport or its Personnel, Agents or Onforwarder take possession or control of the Goods, including upon loading, collection or acceptance at a pickup location, and may be evidenced by a delivery docket, waybill, consignment note, electronic record, scan, signature or other acknowledgement, whether physical or electronic.
- 3.3 Cochrane's Transport may in its absolute discretion refuse to receive or transport any Goods for any reason or no reason and is not bound to give any reason for its refusal to provide Services.
- 3.4 If Cochrane's Transport is required to attend any Customer's Premises to receive or collect any Goods, the Customer must:
- procure that Cochrane's Transport has access to the Customer's Premises to the extent necessary for Cochrane's Transport to perform the Services;
  - ensure that Cochrane's Transport's Personnel receive appropriate safety training and site induction, and are provided with copies of all relevant policies and procedures applicable to Customer's Premises;
  - comply with all workplace safety Law applicable to the Customer's Premises; and
  - ensure that Cochrane's Transport's Personnel are provided with a safe working environment including the provision of appropriate amenities in accordance with the National Heavy Vehicle Law.
- 3.5 Provisions of clause 3.4 apply to any supplier to the Customer that the Customer directs Cochrane's Transport to attend to in order to facilitate receiving or collecting Goods on behalf of the Customer.
- 3.6 **Non-Standard / Unsuitable Pallets or Packaging:** Where freight is tendered on non-standard, non-returnable, damaged, incompatible or otherwise unsuitable pallets or packaging that, in Cochrane's Transport's reasonable opinion, cannot be safely or efficiently handled, sorted or transported in compliance with NHVL Obligations, Cochrane's Transport may:
- remove the freight from such pallets/packaging;
  - re-handle or repackage the freight into Cochrane's Transport's own pallets, cages or handling units; and
  - dispose of, recycle or scrap the original pallets/packaging.
- 3.7 **Charges:** The Customer agrees to pay an additional Re-handling and Waste Disposal Charge for the activities in clause 3.6, which may include labour, equipment/consumables, repackaging, sorting, licensed waste-handling fees, third-party contractor fees, government-imposed levies, and an administration fee. Charges may be applied per pallet, per consignment, or at prevailing rates (including any minimum charge) as set out in Cochrane's Transport's Rates and Accessorial Charges Schedule (as updated from time to time).
- 3.8 **No Obligation to Return Pallets:** Cochrane's Transport has no obligation to return, store or make available for collection any pallets or packaging removed or disposed of under clause 3.6.
- 3.9 **Customer/Receiver Liability:** To reflect the shared responsibilities of CoR parties, any consignor, packer, loading manager, consignee/receiver, loader or unloader involved with the consignment (each a CoR Party) is deemed a Customer for the purposes of this clause and is jointly and severally liable for charges under clause 3, whether or not that party ordered or paid for the Services.

## 4. DELIVERY OF GOODS

- 4.1 If Transportation Services are specified in the Agreement, Cochrane's Transport will transport and carry Goods in accordance with the Customer's Instructions and this clause 4.
- 4.2 The Customer authorises Cochrane's Transport to transport and deliver the Goods at the address nominated by the Customer to Cochrane's Transport for that purpose (**Delivery Address**). The Delivery Address is to be clear and legible.
- 4.3 Delivery of Goods occurs when the Customer's or Consignee's Personnel at the Delivery Address signs a delivery docket, waybill or receipt in respect of the Goods delivered, including by way of electronic signature or acknowledgement.
- 4.4 If the Delivery Address is unattended or if Cochrane's Transport is otherwise unable to effect Delivery in accordance with clause 4.3:

# Terms and Conditions of Service



- (a) unless otherwise directed in writing by the Customer, Cochrane's Transport may at its election in its absolute discretion:
- (i) deposit the Goods at the Delivery Address, in which event Delivery shall be deemed to have occurred (**Authority to Leave**) with conclusive evidence of it having been done so; and/or
  - (ii) store the Goods at any premises; and/or
  - (iii) return the Goods to the Customer
- (b) In the event of (a)(ii) and (a)(iii) Cochrane's transport will notify the customer and requires a response / direction from the Customer within 48 hours of being advised as to their directed course of action for delivery. Storage and or redelivery fees will apply.
- (c) If the customer fails to meet the terms of (b), the Customer must pay and indemnify Cochrane's Transport for all costs and expenses incurred by Cochrane's Transport in any storage (48 hours of free storage) or return of undelivered Goods.
- 4.5 If Cochrane's Transport accepts Goods from the Customer for forwarding to an address in a place which is not within the Cochrane's Transport delivery network, Delivery of Goods shall be deemed to have occurred if the Goods are delivered to a Cochrane's Transport Depot or Cochrane's Transport Designated Agent / Onforwarder.
- 4.6 Where Cochrane's Transport cannot determine the consignor or consignee, Cochrane's Transport may dispose of such abandoned Goods in any manner it deems fit.
- 4.7 The Customer acknowledges and agrees that the route of transport or manner of carriage of Goods may be different to or deviate from any usual route or manner of carriage of goods, as may be determined by Cochrane's Transport in its absolute discretion.
- 4.8 Dates and times specified or requested for completion of carriage or any other Service are estimates only and Cochrane's Transport shall not be liable for failure to complete carriage or any other Service on such date(s) or time(s).
- 4.9 Waste Removal - Delivery
- (a) Cochrane's Transport does not accept responsibility for, nor will it remove, dispose of, or transport away any packaging waste, materials, debris or by-products associated with a Delivery, excluding standard plain pallets, CHEP pallets, and Loscam pallets. Any additional packaging waste remaining at the Delivery location is the sole responsibility of the Customer/Receiver to manage, remove and dispose of at its own cost.
  - (b) Cochrane's Transport reserves the right to charge the Customer for any costs incurred by it where packaging waste is left in a manner that causes delay, obstruction, safety risks, or additional handling requirements at the Delivery location.
  - (c) Should the payer of the consignment wish Cochrane's Transport to remove the waste on Delivery, a surcharge will apply.
- 5. WAREHOUSING OF GOODS**
- 5.1 If Warehousing Services are specified in the Agreement, Cochrane's Transport will provide Warehousing Services to store the Goods as specified in the Services Document and this clause 5 and clause 6.
- 5.2 Goods will be stored in Cochrane's Transport's Premises under Cochrane's Transport's custody and control.
- 5.3 Loss or Damage to the Goods caused by Cochrane's Transport will be handled in accordance with clause 16 and clause 17.
- 5.4 Cochrane's Transport will provide the Customer with reasonable access to the Goods stored in Cochrane's Transport's Premises on receipt of 48 hours' notice prior and subject to the Customer's Personnel:
- (a) providing to Cochrane's Transport proof of their identity; and
  - (b) complying with all of Cochrane's Transport's directions and requirements whilst on Cochrane's Transport's Premises.
- 5.5 Cochrane's Transport will not allow any person other than its Personnel or Customer's Personnel to handle the Goods.
- 5.6 No Goods will be:
- (a) opened, unpackaged or otherwise handled; or
  - (b) removed from Cochrane's Transport's Premises, except:
    - (i) in the ordinary course of the provision of Warehousing Services;
    - (ii) in accordance with Customer's Instructions; or
    - (iii) as otherwise expressly provided for in the Agreement.
- 6. STOCK MANAGEMENT & RECONCILIATION**
- 6.1 In respect of Goods held in storage in Cochrane's Transport's Premises, Cochrane's Transport will:
- (a) maintain accurate stock counts of the Goods in the manner specified in the Services Document; and
  - (b) provide the Customer with reports of the storage and location of the Goods at the times and in the manner specified in the Services Document.
- An inspection and count of the Goods (**Stock Count**) may be undertaken by Cochrane's Transport using Cochrane's Transport's Personnel and the Customer using the Customer's Personnel, or solely by Cochrane's Transport using Cochrane's Transport's Personnel, whilst the Goods are held in storage at such time as may be agreed by the Customer and Cochrane's Transport acting reasonably beforehand.
- 6.2 The provisions of clause 5.4 shall apply to the Customer Personnel engaged in any Stock Count.
- 6.3 Cochrane's Transport will provide Customer with a report of any Stock Count undertaken by Cochrane's Transport.
- 6.4 The Customer must reimburse Cochrane's Transport for any costs and expenses incurred by Cochrane's Transport in the Stock Count, including for the cost of Cochrane's Transport's Personnel engaged in the Stock Count.
- 6.5 If any Stock Count discloses any material Loss or Damage, Cochrane's Transport will use reasonable endeavours to:
- (a) investigate any material Loss or Damage or discrepancy in the quantity of Goods stored; and
  - (b) implement such corrective or remedial action as may be reasonably necessary (as determined by Cochrane's Transport) to prevent any further Loss or Damage.
- 7. PALLETS**
- 7.1 Cochrane's Transport operates on a pallet exchange policy. This means that customers must exchange pallets on a like for like basis, at the time of delivery or collection with any shortfall, damage, or non-exchange subject to additional charges.
- 7.2 For further information on pallet management refer to the Cochrane's Transport Pallet Management Policy.
- 8. TEMPERATURE CONTROLLED SERVICES (IF OFFERED)**
- 8.1 If provision of the Services requires the transportation or warehousing of Goods in temperature-controlled vehicles, containers or storage facilities:
- (a) Cochrane's Transport will use reasonable endeavours to ensure the Goods are contained and stored in temperature-controlled vehicles, containers or facilities with the temperature maintained within a range of temperatures suitable for the Goods, subject to any specified tolerance levels specified in a Services Document; and
  - (b) the Customer acknowledges and agrees that fluctuations of temperature and humidity within vehicles, containers and facilities may occur, and Cochrane's Transport will not be responsible for any loss or damage to the Goods that results from fluctuations in temperature range or in humidity levels.
- 8.2 Any record of temperature maintained by Cochrane's Transport of any temperature-controlled vehicle, container or facility shall be conclusive evidence of the actual temperature.
- 9. TITLE AND RISK**
- 9.1 Title and risk in the Goods shall remain with the Consignor at all times.
- 9.2 Cochrane's Transport shall not be liable for any Loss or Damage

# Terms and Conditions of Service



to the Goods whatsoever, except in the circumstances specified in clauses 16 and 17.

## 10. RATES, CHARGES AND PAYMENT

### 10.1 Rates and Charges

- (a) The Customer must pay Cochrane's Transport the Rates and Charges and all applicable GST in consideration for the Services.
- (b) The Rates and Charges shall be calculated and charged by Cochrane's Transport in accordance with the Rates and Accessorial Charges Schedule
- (c) The Rates and Accessorial Charges may be increased in accordance with this clause 10.1.
- (d) Unless otherwise agreed, the Rates and Accessorial Charges will increase on a frequency and basis determined by Cochrane's Transport from time to time after the Commencement Date.
- (e) In addition to any increase in accordance with clause 10.1 (d), the Rates may be increased by agreement between the parties or in accordance with the procedure in clause 10.1(f) to (i).
- (f) Cochrane's Transport may propose a change or increase in the Rates and Accessorial Charges to take effect at any time by giving the Customer 14 Calendar Days' prior notice to that effect (**Rates Change Notice**).
- (g) Within 14 days after receipt of a Rates Change Notice the Customer may give Cochrane's Transport notice that it does not agree or accept any proposed change to the Rates (**Rates Response Notice**).
- (h) If the Customer does not give Cochrane's Transport a Rates Response Notice in accordance with clause 10.1 (g), then the Rates shall be deemed accepted by the Customer in accordance with the Rates Change Notice.
- (i) If the Customer notifies Cochrane's Transport in a Rates Response Notice that it does not accept a proposed change in Rates specified in a Rates Change Notice, then to the extent of any change is not accepted by the Customer or otherwise agreed between the parties then the Rates shall remain unchanged unless and until the parties agree any change in the Rates.
- (j) The agreed Rates will take effect on the 15<sup>th</sup> Calendar Day after receipt of a Rates Change Notice.
- (k) If the Customer gives Cochrane's Transport written Instruction requesting Additional Services, Cochrane's Transport may charge for those Additional Services in accordance with Cochrane's Transport's standard rates as notified by Cochrane's Transport or as usually charged by Cochrane's Transport at the time.
- (l) In the event Cochrane's Transport anticipates any costs or expenses which Cochrane's Transport considers should be charged to the Customer in addition to the applicable Fees or Rates for any Additional Services, Cochrane's Transport shall seek the Customer's approval before incurring such costs or expenses, which approval shall not be unreasonably withheld. If the Customer does not approve any costs and expenses, then Cochrane's Transport may refuse to perform the Additional Services.

### 10.2 Invoicing and payment

- (a) Cochrane's Transport may issue an invoice for Services any time after the commencement of the subject Services.
- (b) Except as otherwise agreed in a Services Document, Cochrane's Transport shall invoice the Customer for Services at a frequency determined by Cochrane's Transport.
- (c) Except as otherwise agreed in a Services Document, the Customer must pay the Fees and all other amounts specified by Cochrane's Transport in a tax invoice provided by Cochrane's Transport to the Customer within seven (7) days from the date of tax invoice.
- (d) The Customer must make payment of invoiced amounts by electronic funds transfer or, at Cochrane's Transport's discretion, by, credit card, direct debit by electronic funds transfer (EFT), credit/debit card processed online using cochrane.com.au payment gateway or other methods made available from time to

time. We reserve the right to change or withdraw accepted payment methods at our discretion.

- (e) The Customer must not deduct any money claimed to be due to the Customer by Cochrane's Transport under the Agreement or otherwise from any money due, or which becomes due, for payment by the Customer to Cochrane's Transport, or any money of Cochrane's Transport held by the Customer.
- (f) If the Customer disputes any amount shown on a tax invoice given by Cochrane's Transport, it must notify Cochrane's Transport within 7 calendar days of receiving that tax invoice and must pay any amounts not in dispute in accordance with this clause 10.2. Failure to contest our invoice in writing within 7 calendar days waives all your rights to challenge our invoices.
- (g) Cochrane's Transport is, without limitation, entitled to payment by the Customer of interest on the overdue amount of a tax invoice at the Interest Rate, calculated daily on the basis of a 365-day year, for actual days elapsed, and compounded monthly. Interest accrues from the due date for payment until the date payment is received.
- (h) Cochrane's Transport may recover from the Customer all costs and expenses incurred by Cochrane's Transport in recovering or attempting to recover any outstanding Fees or other monies owed to Cochrane's Transport by the Customer, including debt collection agency fees and legal costs and expenses incurred by Cochrane's Transport on a "solicitor and own client" basis.

## 11. CARD SURCHARGE

- 11.1 Payments made by credit card are subject to a credit card processing surcharge, which reflects the reasonable cost of acceptance and will be applied at the time of payment. No surcharge applies to payments made by EFT or direct deposit.

## 12. CUSTOMER WARRANTIES AND OBLIGATIONS

- 12.1 Customer warrants and undertakes to Cochrane's Transport that:

### (a) Ownership and Authority:

- (i) it is the owner of the Goods or otherwise has the authority of the owner of the Goods to instruct Cochrane's Transport to perform the Services; and
- (ii) it and its Personnel have all power, right and authority to instruct Cochrane's Transport to perform the Services.

### (b) Service Information:

- (i) it will provide any Service Information, within a reasonable time, as required or requested by Cochrane's Transport from time to time;
- (ii) all Service Information is true and correct and is not misleading. If, after providing the Service Information, the Customer becomes aware that it contains false, incorrect (including freight dimensional data), or misleading statement(s) then the Customer must immediately notify Cochrane's Transport of such statement(s) and rectify the Service Information accordingly;

### (c) Inaccurate Description of Freight:

- The Goods will always be fully and accurately described, including their nature, weight and measurements; including in writing on the label, and in the Service Information. If the Customer fails to accurately address, describe, declare, classify, measure, weigh, package or otherwise represent the Goods or their characteristics (including electronically), Cochrane's Transport reserves the right to:
- (i) reclassify the Goods,
  - (ii) charge the applicable freight rate, including any additional charges arising from the true nature, dimensions or weight of the Goods,
  - (iii) charge a fee to correct anomalies in the addressal and associated information or dimensional/weight data. and
  - (iv) If a customer queries the reclassification in (ii)

# Terms and Conditions of Service



a charge to cover verification, administrative, handling, compliance, safety or operational impacts resulting from the inaccurate description will be applied. The Customer acknowledges that all additional charges are immediately payable and form part of the freight and charges due under these T&Cs;

(d) **Government Fees, Charges, Taxes, Customs, Duty and Excise:**

- (i) the Customer must pay all fees, charges, taxes, duties, excise and expenses incurred in respect of the receipt, delivery, transportation or storage of Goods that are charged or levied or required to be paid to any Governmental Authority or any other authority or company operating any railway, tramway, ship, harbour, dock, quarantine facility or customs facility, and the Customer must reimburse Cochrane's Transport for any such fee, charge, tax, duty, excise or expense incurred by Cochrane's Transport with respect to the Goods in the performance of the Services;

(e) **Compliance with Laws and Heavy Vehicle National Law:**

- (i) none of the Goods constitute goods the transportation or storage of which is prohibited by Law;
- (ii) where the Customer acts as a "Consignor", "Consignee", "Loader" or "Packer" of Goods (as those terms are defined in the Heavy Vehicle National Law) it must, so far as is reasonably practicable to do so, ensure the safety of any Personnel performing the Services and comply with the Heavy Vehicle National Law;
- (iii) packaging: the Goods are packed in a manner which complies with all applicable Laws for the packaging, transportation and storage of Goods;
- (iv) the Goods are packaged in a manner which adequately protects the Goods from the risk of Loss or Damage that may be caused by the transportation or storage of the Goods in the ordinary course of the performance of the Services;
- (v) the Customer has informed Cochrane's Transport in writing of any Goods which require particular handling or care to an extent reasonably required to prevent the risk of Loss or Damage or the risk of injury or harm to any person, property, vehicle or premises;
- (vi) Goods provided to Cochrane's Transport will not include Goods which may be liable to damage other goods or property, other than as are specifically and fully described and disclosed as such by the Customer in writing to Cochrane's Transport;

(f) **Dangerous and hazardous goods:**

- (i) except as expressly notified by the Customer to Cochrane's Transport prior to the performance of the Services, the Goods do not comprise any product or material which is explosive, inflammable, radioactive, corrosive, poisonous, infectious or noxious in nature or otherwise inherently capable of causing harm, injury or damage to any person, property, vehicle or premises;
- (ii) at the time the Goods are collected by or delivered to Cochrane's Transport the Goods comply with the requirements of any applicable Law (including, if applicable, the Dangerous Goods Laws, the WHS Laws, any GHS Code and the *Australian Code for the Transport of Dangerous Products by Road and Rail* and the *Civil Aviation Safety Regulations 1998 (Cth)*) relating to the consignment, handling,

- (iii) transportation and packaging of the Goods; If, in the opinion of Cochrane's Transport, the Goods, either by themselves or in conjunction with any other goods, are liable to become dangerous, flammable, explosive, volatile, offensive or of a damaging nature, the Goods may be retained, destroyed, disposed of, abandoned or otherwise rendered harmless. Should this occur, the Customer agrees that no compensation will be payable to the Customer and the action does not prejudice Cochrane's Transport's rights to any Fees or additional charges, including the cost of such action;

(g) **Modern Slavery Act:**

- (i) The Customer complies with the Modern Slavery Act;
- (ii) neither the Customer nor to the best of the Customer's knowledge, the Customer's Personnel, has anywhere in the world committed or been charged with an offence relating to Modern Slavery; and
- (iii) it will comply with Cochrane's Transport's reasonable request for any information to determine the Customer's compliance with the Modern Slavery Act or to enable Cochrane's Transport to comply with the Modern Slavery Act.

## 13. INSURANCE

- 13.1 The Customer acknowledges that the Goods are carried and stored at the Customer's or Consignor's risk and it is the Customer's or the Consignor's responsibility to insure and keep insured the Goods for the full insurable value of the Goods whilst they are in the custody or control of Cochrane's Transport whilst performing the Services. The Customer's or Consignor's insurance policy must not provide for any rights of subrogation against Cochrane's Transport. No claim may be made against Cochrane's Transport for any failure to arrange or maintain insurance of the Goods. The Customer is responsible for the payment of any excess, deductible or self-insured retention applicable to the Customer's insurance.
- 13.2 The Customer must provide Cochrane's Transport with confirmation of coverage that complies fully with the requirements of clause 13.1, in the form of a certificate of currency.
- 13.3 Should any such insurer dispute liability or refuse to settle a claim for any reason whatsoever, the Customer agrees it will have no recourse against Cochrane's Transport.
- 13.4 The Customer acknowledges that Cochrane's Transport is under no obligation whatsoever to insure the Goods.
- 13.5 Cochrane's Transport shall maintain public liability insurance of an amount not less than \$20,000,000 to cover any liabilities arising directly from the provision of Services by Cochrane's Transport under the Agreement.
- 13.6 Cochrane's Transport shall maintain comprehensive motor vehicle insurance with third party property cover.
- ### 13.7 Warranty Cover
- (a) At its absolute discretion, Cochrane's Transport will apply default warranty cover to consignments. Each consignment is warranted by us using "FreightSafe." T&Cs of "FreightSafe" are available on the Cochrane's Transport website. This warranty applies only to the extent stated in this clause and does not replace or extend any broader insurance obligations of the Customer.
- (b) The Customer may opt out of this default warranty by submitting a written request prior to the Services being performed. Where the Customer opts out, the Customer accepts full responsibility for arranging their own insurance cover and acknowledges that our liability will be limited strictly in accordance with these T&Cs.
- (c) No additional or higher insurance cover will apply unless expressly confirmed by Cochrane's Transport in writing before Services are performed.

# Terms and Conditions of Service



## 14. COCHRANE'S TRANSPORT'S COMPLIANCE WITH LAWS AND DIRECTIONS

- 14.1 Cochranes Transport must comply with all applicable Laws in performance of the Services.
- 14.2 Cochranes Transport warrants that it holds all necessary licences required by Law for the provision of the Services.
- 14.3 Cochranes Transport is responsible for the health, safety and welfare of its Personnel engaged in the performance of the Services
- 14.4 In the event a direction or instruction (including any Customer's Instructions) provided by or on behalf of the Customer would result in Cochranes Transport breaching a Law, would prevent Cochranes Transport taking action reasonably required to prevent a breach of a Law, or would risk harm or injury to its Personnel, then Cochranes Transport need not comply with that direction or instruction and may immediately suspend the performance of the Services.

## 15. TERM

The Agreement will commence on the Commencement Date and continues until terminated in accordance with the Agreement.

## 16. LOSS OR DAMAGE TO GOODS

- 16.1 Cochranes Transport's responsibility and Liability for any Loss or Damage to Goods shall be subject to the provisions of this clause 16 and clause 17.
- 16.2 Cochranes Transport shall not be liable for any Loss or Damage caused by or contributed to by the Customer or any of the Customer's Personnel.
- 16.3 If any Loss or Damage occurs to Goods stored in Cochranes Transport's Premises, Cochranes Transport shall promptly inform the Customer of that Loss or Damage as soon as practicable after becoming aware of the Loss or Damage and provide such information to the Customer as the Customer may reasonably request and require to be informed about the circumstances of the Loss or Damage.
- 16.4 If any provision of a Services Document specifies a limit or allowance for Loss or Damage that may occur whilst Goods are in Cochranes Transport's custody or control, Cochranes Transport will not be liable for any Loss or Damage within that limit or allowance howsoever caused.
- 16.5 The Parties will comply with any procedures specified in a Services Document for handling Goods which are lost or damaged. Any Claim by the Customer for Loss or Damage must be notified to Cochranes Transport within 7 days of delivery of the Services/Goods or the date by which the Services/Goods should have been provided (or, where Goods are stored in Cochranes Transport's Premises, within 7 days from the date of the Customer becoming aware of the Loss and Damage), Cochranes Transport will be discharged from all Liability for Loss or Damage unless written notice of a Claim is given to Cochranes Transport within this timeframe.

## 17. LIABILITY AND INDEMNITY

- 17.1 Notwithstanding any other provision of the Agreement, Cochranes Transport shall only be liable for loss or damage suffered or incurred by the Customer with respect to the Goods, the Services or Cochranes Transport's performance of the Agreement generally to the extent of this clause 17.
- 17.2 Cochranes Transport is not a common carrier and does not accept any liability as such, other than where specified in the Agreement. Cochranes Transport may refuse the carriage or transport of any goods or products for any person, corporation or company and the carriage or transport of any class of goods or products at its discretion.
- 17.3 The Customer acknowledges and agrees that Cochranes Transport, or any Subcontractor, shall not in any circumstances (except where any Law otherwise requires) be under any liability whatsoever (whether in contract, tort or otherwise) for any:
- (a) personal injury or property damage caused or contributed

- by;
- (b) Loss or Damage to; or
- (c) mis-delivery, delayed delivery or non-delivery of the Goods while performing the Services except only to the extent where the foregoing is caused by the proven gross negligence or wilful default of Cochranes Transport or its Subcontractor. For the avoidance of doubt, neither Cochranes Transport nor its Subcontractor will be liable in circumstances where the foregoing is caused by a Force Majeure Event.

17.4 Except where any Law otherwise requires, the Customer indemnifies Cochranes Transport against any:

- (a) Claim, Liability, loss, damage, cost or expense, which is incurred by Cochranes Transport whilst performing the Services, to the extent it is caused or contributed to by:
- (i) the inherent nature or improper packaging of the Goods;
- (ii) spillage, escape, leakage or discharge from the Goods or any contamination of any goods or premises caused by the Goods;
- (iii) the negligent act or omission or wilful default by the Customer, any Consignee or any other person or entity acting on behalf of the Customer; or
- (iv) the Customer's breach of the T&Cs, the Agreement or a warranty provided under the Agreement, or which is otherwise necessarily incurred by Cochranes Transport in the proper performance of the Agreement;
- (b) Claim by:
- (i) a Consignee which relates to, or arises out of, lost, damaged, mis-delivered, delivered late or non-delivered Goods; or any third party whether in tort, contract, bailment or otherwise, notwithstanding that the act, omission or negligence of Cochranes Transport may have caused or contributed to such Claim.

17.5 Without limiting clauses 17.3 and 17.4, the Customer indemnifies Cochranes Transport against all reasonable costs (including reasonable solicitor-client legal costs) incurred by Cochranes Transport which may arise from any and all action taken in relation to any debt recovery arising from the Agreement.

17.6 Subject to the Law and notwithstanding any other provision of the Agreement to the contrary, the Customer agrees that it may only commence legal proceedings in relation to Loss or Damage if the Loss or Damage is notified to Cochranes Transport in accordance with the Agreement and the legal proceedings are commenced within 3 months of the date that:

- (a) the Goods are delivered to the Consignee;
- (b) the Goods were intended to be delivered to the Customer (in relation to Claims for lost Goods); or
- (c) the Customer first becomes aware of the Loss or Damage, whichever occurs first.

17.7 To the extent permitted by Law and notwithstanding any other provision of the Agreement to the contrary, the maximum aggregated Liability of Cochranes Transport and /or an Affiliate of Cochranes Transport, as the case may be, to the Customer in relation to the Agreement or otherwise (including for negligence) is limited to the higher of:

- (a) the aggregate Fees of all Services provided by Cochranes Transport and / or an Affiliate of Cochranes Transport, as the case may be, to the Customer during the period 3 months prior to the date of any Claim; and
- (b) the proceeds of insurance received or payable under an insurance policy held by Cochranes Transport and /or an Affiliate of Cochranes Transport, as the case may be, in respect of such Liability.

For the avoidance of doubt, nothing within this clause 17.7 creates joint or several liability between Cochranes Transport and its Affiliates. The maximum aggregated Liability of Cochranes Transport or any Affiliate of Cochranes Transport, as the case may be, under this clause 17.7 is limited to the Services provided by each of them only. Where a Service is provided by Cochranes Transport liability shall not attach to any of its Affiliates and vice

# Terms and Conditions of Service



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- 17.8 If Cochrane's Transport is liable for a breach of a mandatory term, condition, guarantee or warranty implied in the Agreement by Law and for which Liability cannot be excluded or limited by the Agreement, including under clause 17.7, to the maximum extent permitted by Law, Cochrane's Transport's maximum Liability is limited to any one or more of the following, at Cochrane's Transport's discretion:
- (a) if the breach relates to the Services, then re-performing the Services, supplying equivalent services, or paying the cost of re-performing or procuring equivalent services; or
  - (b) if the breach relates to loss or damage to the Goods, then replacement of the Goods, supplying equivalent Goods, or paying the costs of replacing, repairing, procuring or hiring equivalent Goods.
- 17.9 To the extent permitted by Law and notwithstanding any other provision of the Agreement to the contrary, neither party is liable to the other for any Economic Loss in connection with the Agreement.
- 17.10 Cochrane's Transport's Liability under the Agreement is reduced proportionately to the extent that any act or omission of the Customer, the Customer's Personnel or any third party whom Cochrane's Transport does not control, caused or contributed to the Liability.
- 17.11 The remedy of the Customer in relation to any cause of action that the Customer may have against Cochrane's Transport is, to the extent permitted by Law, limited to damages.
- 17.12 Subject to the Law and notwithstanding any other provision of the Agreement to the contrary, but subject to clause 17.6 in relation to Loss or Damage, any legal proceedings by the Customer against Cochrane's Transport must be commenced within 3 months after the cause of action has accrued.
- 17.13 Nothing in the Agreement is intended to have the effect of contracting out of any liability under the Competition and Consumer Protection Laws, except to the extent permitted by those Laws where applicable.
- 18. CONFIDENTIALITY**
- 18.1 Each party (**Recipient**) must at all times during the Term of the Agreement and for the period of 5 years thereafter:
- (a) hold in strict confidence all Confidential Information of the other party (**Disclosing Party**);
  - (b) not disclose or permit or cause the Confidential Information of the Disclosing Party to be disclosed to any person, other than on a confidential basis to those of its Personnel who require that Confidential Information for the purposes of performing the Recipient's obligations under, or receiving the benefit of, the Agreement; and
  - (c) not make use of the Confidential Information of the Disclosing Party (including duplicating, reproducing, distributing, disseminating or directly or indirectly deriving information from that Confidential Information) except and solely to the extent necessary for the performance of, or to obtain the benefit of, the Agreement.
- 18.2 The Recipient will not breach clause 18.1 to the extent that:
- (a) at the time of disclosure, the relevant Confidential Information is in the public domain other than by breach of clause 18.1;
  - (b) the Disclosing Party has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 18.1;
  - (c) disclosure of the relevant Confidential Information is required by Law, court order or the rules of a recognised securities exchange to be communicated to a person who is authorised by Law to receive it;
  - (d) the relevant Confidential Information is required to be disclosed to any bank or other financial institution in relation to the organisation of the Recipient's financial affairs; or
  - (e) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor or other professional adviser in relation to the Recipient's affairs provided that the professional advisor is bound by an obligation of confidentiality in relation to the information disclosed.
- 18.3 The parties agree that damages may not be an adequate remedy for breach of this clause 18.1 and a party will be entitled to equitable relief, including injunctive relief and/or account of profits.
- 18.4 The provisions of this clause 18 survive the termination of the Agreement.
- 19. PRIVACY**
- 19.1 Cochrane's Transport will collect, store, use, handle, transfer and delete personal information (as that term is defined in the *Privacy Act 1988* (Cth)) collected while performing the Agreement in accordance with its Privacy Policy.
- 19.2 Personal information may be collected, stored, used, handled, transferred, and deleted by Cochrane's Transport in any manner permitted by applicable Law, including those permitted under the Australian Privacy Principles.
- 20. PPS ACT**
- 20.1 The parties agree that the Agreement constitutes a security agreement for the purposes of the PPS Act,
- 20.2 The Customer consents to Cochrane's Transport registering a financing statement on the Personal Property Securities Register in relation to any Security Interest in Cochrane's Transport's favour arising under or in connection with the Agreement.
- 20.3 The Customer:
- (a) must provide Cochrane's Transport with reasonable assistance to register and perfect any Security Interest arising under or in connection with the Agreement;
  - (b) undertakes not to:
    - (i) amend or seek to amend (including by way of removal); or
    - (ii) interfere, including exercise any right to object to, the registration or validity of any such Security Interest;
  - (c) must notify Cochrane's Transport in writing of any change to the Customer's name and contact details within 5 days from the date of such change;
  - (d) must not create any Security Interest over Goods prior to payment of the full Fees associated with those Goods, or otherwise allow a Security Interest to come into existence which is inconsistent with the rights and interests of Cochrane's Transport under this clause 18;
  - (e) must keep all information of the kind mentioned in section 275(1) of the PPS Act confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPS Act;
  - (f) waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
  - (g) agrees that the following provisions of the PPS Act will not apply and the Customer will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143; and
  - (h) agrees that Cochrane's Transport is required to give a notice under the PPS Act only if the notice is obligatory and the giving of the notice cannot be excluded under the PPS Act.
- 21. ANTI BRIBERY**
- 21.1 Neither party shall, directly or indirectly, make a bribe or other illegal gift or payment or offer, promise, attempt to give or authorise a bribe or other illegal gift or payment to any public or private person or entity, in connection with the Agreement. The parties each represent and warrant that they have not taken, or permitted any of their Affiliates, agents, Sub-contractors, suppliers or employees to take, any action which would constitute a breach of this provision, and covenant to comply with

(and require their respective Affiliates, agents and employees to comply with) this provision. This provision shall survive the termination of the Agreement.

## 22. LIEN

22.1 Without limiting clause 20 or Cochrane's Transport's other legal rights, including under any Warehouseman's Lien Law, the PPS Act and any other applicable Law, Cochrane's Transport shall have a general lien on any and all Goods in Cochrane's Transport's actual or constructive possession, custody or control, for all amounts owed by the Customer to Cochrane's Transport in connection with any Services or otherwise owed by the Customer to Cochrane's Transport. This lien shall extend to cover any sums due from the Customer to Cochrane's Transport or Cochrane's Transport's Affiliates, whether related to the current Services or arising from any past or present dealings between the parties. The lien shall survive the delivery of the Goods and extend to cover the cost of enforcing its lien and recovering any sums due. If any claim for payment remains unsatisfied for ten (10) Business Days after demand for its payment is made, Cochrane's Transport may dispose or sell at public auction or private sale at the Customer's expense, upon ten (10) days written notice to Customer, the Goods (and documents relating thereto), or so much thereof as may be necessary to satisfy such lien, and apply the net proceeds of such sale to the payment of any amounts then due to Cochrane's Transport. The surplus, if any, from any such sale shall be transmitted to the Customer by Cochrane's Transport, and the Customer shall remain liable for any deficiency from any such sale. Upon completion of the sale and application of proceeds, Cochrane's Transport shall be discharged of any liability whatsoever in respect to the Goods.

22.2 The Customer shall defend, indemnify and hold harmless Cochrane's Transport against any claim, liability, loss, damage, costs or expenses, including legal fees, arising from or in connection with the exercise of Cochrane's Transport lien rights, including but not limited to any claims by owners or third parties with an interest in the Goods, costs of storage, sale or disposal of Goods, and any claim relating to the breach of any Law or regulation in the exercise of such rights. This indemnity shall apply regardless of whether such claims, liabilities, losses, damages, costs or expenses arise from negligence, breach of contract or other fault of Cochrane's Transport, its agents or Subcontractors.

## 23. FORCE MAJEURE

23.1 Cochrane's Transport will not be liable for any loss, damage, delay or failure to perform any of its obligations under the Agreement to the extent that such loss, damage, delay or failure is caused by a Force Majeure Event.

## 24. DISPUTE RESOLUTION

24.1 The parties must comply with this clause 22 in resolving any dispute which arises between the parties in relation to the Agreement (**Dispute**).

24.2 If a Dispute arises, the party requiring it be resolved must promptly give to the other party notice identifying and giving details of the Dispute (**Dispute Notice**).

24.3 If a Dispute Notice is given then managers of the parties must meet within 5 Business Days of the Dispute Notice being received, with a view to negotiating a resolution of the Dispute.

24.4 If the Dispute is not resolved within 5 Business Days of the meeting of managers under clause 22.3, then the parties must engage senior representatives of the parties to meet with a view to resolving the Dispute. The senior manager must have the authority to settle the Dispute on behalf of the party that they represent and contractually bind such party to any settlement agreement.

24.5 If the Dispute is not resolved within 10 Business Days of the senior representatives of the parties meeting or within 20 Business Days of a Dispute Notice being received, whichever occurs first, then either party may refer the Dispute to resolution by mediation by giving the other party notice (**Mediation Notice**). The parties must then participate in mediation in accordance with clause 22.6.

24.6 If a Mediation Notice is given the following shall apply:

- (a) the parties must endeavour to settle the Dispute by mediation;
- (b) the mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any Mediation Notice, by a person appointed by the Chair of the Resolution Institute (**Chair**) or the Chair's designated representative; and the *Resolution Institute Mediation Rules* shall apply to the mediation.
- (c)

24.7 A party claiming a Dispute has arisen must not commence any court or arbitration proceedings unless it has complied with the procedures in clauses 24.5 and 24.6.

24.8 If a party refuses to participate in a mediation of the Dispute under clause 24.6, then the other party may commence proceedings in a court of competent jurisdiction. The party that refuses to participate in a mediation of the Dispute must:

- (a) not take any steps to recover its costs in any court proceedings arising from or in connection with the Dispute; and
- (b) consent to orders by the court in which the proceedings are commenced that the proceedings be referred to mediation to be conducted by:
  - (i) a mediator agreed between the parties; or
  - (ii) if the parties cannot agree with 7 days of the order being made, a Registrar of the court; and/or
  - (iii) consent to an order of a court of competent jurisdiction that it will specifically perform and carry out its obligations under clause 24.7.

24.9 Nothing in this clause 24 prevents a party from seeking urgent injunctive or interlocutory relief from a court of competent jurisdiction.

24.10 Pending resolution of the Dispute in accordance with this clause 24, the parties must continue to perform their obligations under the Agreement, except to the extent of the subject matter in Dispute.

## 25. DEFAULT AND TERMINATION

### 25.1 Termination for default or insolvency

Either party (**Non-Defaulting Party**) may terminate the Agreement immediately by giving the other party (**Defaulting Party**) written notice to that effect if any of the following events occurs:

- (a) the Defaulting Party breaches a material term of the Agreement and fails to remedy that breach within 30 days of written notice to do so from the Non-Defaulting Party, if such breach is capable of remedy;
- (b) the Defaulting Party breaches a material term of the Agreement and such breach is not capable of remedy;
- (c) the Customer fails to pay an overdue amount to Cochrane's Transport within 10 Business Days of receiving a written demand from Cochrane's Transport to pay such amount; or
- (d) the Defaulting Party suffers an Insolvency Event.

### 25.2 Termination on notice

- (a) In relation to Transportation Services provided under the Agreement, either party may terminate the Agreement by giving the other party at least 7 days' (or such lesser period as the other party may agree to or accept) prior written notice to that effect.
- (b) In relation to Warehousing Services provided under the Agreement or in circumstances where Cochrane's Transport has acquired any vehicle or equipment for the provision of the Services, either party may terminate the Agreement by giving the other party at least 90 days' prior written notice to that effect.
- (c) During the period prior to termination under clause 25.2(a), Cochrane's Transport shall continue to provide the Services and the parties must comply with the Agreement.

### 25.3 Effect of termination

- (a) Termination of the Agreement is without prejudice to any

# Terms and Conditions of Service



rights or Claims that accrue to a party prior to the date of such termination.

- (b) On Termination of the Agreement the Customer must pay all Fees incurred up to (and including) the date of termination within 7 days and promptly remove in an orderly manner all Goods from the Storage Facility, subject to Cochrane's Transport's rights under clause 22.

## 26. GST

- 26.1 A reference in this clause 26 to a term defined or used in the GST Law has the meaning given to that term in the GST Law.
- 26.2 Any amount referred to in the Agreement which is relevant in determining a payment to be made by the Customer to Cochrane's Transport is exclusive of any GST unless stated otherwise.
- 26.3 The Customer must pay to Cochrane's Transport the amount equal to the GST liability on any taxable supply by Cochrane's Transport to Customer under the Agreement, at the same time as the Customer is required to pay the consideration for that taxable supply to Cochrane's Transport under the Agreement.
- 26.4 The GST liability for any taxable supply is the amount equal to the consideration attributable to the taxable supply made by Cochrane's Transport to the Customer multiplied by the rate at which GST is imposed in relation to that taxable supply.

## 27. MISCELLANEOUS PROVISIONS

- 27.1 **Governing Law:** The Agreement is governed by the Laws of the State of South Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State. Any dispute or legal proceedings in relation to the Agreement must be held in Adelaide, South Australia.
- 27.2 **Variation and modification:** The parties may vary the Agreement by an instrument in writing signed by each of the parties. Cochrane's Transport may unilaterally modify the T&Cs of the Agreement to reflect or accommodate any change in the Law or interpretation of the Law by giving the Customer notice of the modification to the Agreement or, in the case of a modification to these T&Cs, by publishing the modified T&Cs on Cochrane's Transport's website.
- 27.3 **Assignment:** A party must obtain the prior written consent of the other party before it transfers, assigns, novates or otherwise disposes of a right or obligation under the Agreement, provided that Cochrane's Transport may novate the Agreement (including assignment of all rights under it) to any of its Affiliates by giving the Customer written notice to that effect.
- 27.4 **Cumulative rights:** Cochrane's Transport's rights under the Agreement are in addition to its rights at Law.
- 27.5 **Severability:** If any provision of the Agreement is invalid, illegal or unenforceable, that provision must be severed from and ignored in the interpretation of the Agreement to the minimum extent necessary and to the intent that the remaining provisions of the Agreement remain in full force and effect.
- 27.6 **Entire agreement:** The Agreement constitutes the entire agreement between the parties and supersedes all previous and contemporaneous discussions, undertakings and agreements in relation to the subject matter of the Agreement.
- 27.7 **Implied terms:** All terms, conditions, guarantees and warranties (including as to the condition, suitability, quality, fitness for any purpose, safety of, or title to, goods or services (as applicable)) which would, but for this clause, be implied into the Agreement are excluded to the extent permitted by Law.
- 27.8 **Survival:** The warranties expressly stated in the Agreement survive the termination of the Agreement. Each indemnity expressly stated in the Agreement survives the performance of obligations relating to the Agreement and the termination of the Agreement. To the extent that a party has not satisfied an obligation under the Agreement or that obligation is a continuing obligation, that obligation survives the termination of the Agreement.
- 27.9 **Further assurances:** Each party at its own expense must do everything necessary to give full effect to the Agreement.
- 27.10 **Relationship:** The parties acknowledge and agree that the relationship between them is that of principal and contractor.

Nothing in the Agreement constitutes, or will be deemed to constitute, a relationship of agency or partnership between Cochrane's Transport and the Customer.

- 27.11 **Communications:** Each communication (including each notice, consent, approval, request and demand) given by a party to another party in relation to the Agreement:

- (a) must be in writing and in the English language;
- (b) must be signed by the party making it or by that party's lawyer, attorney, director, secretary or authorised agent;
- (c) must be delivered by hand, sent by prepaid post or sent by email to the recipient party using the contact details of the recipient party specified in the Agreement or as otherwise notified by the recipient party to each other party from time to time; and
- (d) is taken to be received by the recipient party:
- (i) in the case of delivery by hand, upon delivery;
- (ii) in the case of prepaid post sent to a recipient party in the same country as the sending party, on the date of actual receipt or otherwise the 5<sup>th</sup> Business Day after the date of posting;
- (iii) in the case of prepaid post sent to a recipient party in another country to the sending party, on the date of actual receipt or otherwise the 10<sup>th</sup> Business Day after the date of posting; and
- (iv) in the case of email, at the time it is delivered to the recipient party's host server.

- 27.12 **Receipt:** Notwithstanding clause 27.11(d), if a communication given under clause 27.11 is taken to be received on a day that is not a Business Day or after 5.00pm in the place where the communication is received, it will be taken to be received at 9.00am on the next Business Day.

- 27.13 **Counterparts and execution:** The Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of the Agreement, and all of which, when taken together, will be deemed to constitute one and the same document. The Agreement is binding on the parties on the exchange of counterparts the email or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and electronic copies hereof shall be deemed to constitute duplicate originals.

## 28. INTERPRETATION

- 28.1 This clause 28 applies to the interpretation of the Agreement.
- 28.2 If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- 28.3 The singular includes the plural and vice versa.
- 28.4 A reference to:
- (a) a clause, schedule or annexure is a reference to a clause, schedule or annexure to the Agreement;
- (b) a document includes a variation or replacement of that document;
- (c) a statute includes its subordinate legislation and a modification, replacement or re-enactment of either;
- (d) the Agreement includes a schedule or annexure to the Agreement;
- (e) person includes a reference to:
- (i) an individual, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity, whether or not it is a separate legal entity; and
- (ii) the person's personal representatives, successors and assigns;
- (f) a thing, including a right, is a reference to either the whole thing or a part of the thing;
- (g) Australia is to the Commonwealth of Australia, including any State or Territory of the same;
- (h) currency is to Australian currency unless specified otherwise;
- (i) time is to Australian Central Daylight Time, being the time in Adelaide, South Australia, unless specified otherwise;
- (j) a day is a reference to the period which starts at midnight and ends 24 hours later;
- (k) a right includes a benefit, remedy, discretion or power,

# Terms and Conditions of Service



- and vice versa; and  
(l) an obligation includes a duty, and vice versa.
- 28.5 The words “include”, “includes”, “including” and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in the Agreement.
- 28.6 Part performance of an obligation does not constitute performance of an obligation.
- 28.7 A term, condition or warranty in the Agreement in favour of, or on the part of, two or more people benefits or binds them jointly and severally.
- 28.8 If the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- 28.9 If a period of time runs from a given date, act or event, then the time is calculated exclusive of the date, act or event.
- 28.10 A clause is not to be construed against a party on the ground that the party is responsible for the preparation of the Agreement or that clause.
- 28.11 The phrase “in relation to” has the widest possible import and encompasses the phrases “in relation to”, “in connection with”, “in respect of”, “arising out of”, “caused by” and “resulting from”.
- 28.12 In the event of an inconsistency between the main body of the Agreement and any of the schedules, the main body of the Agreement prevails to the extent of that inconsistency.
- 28.13 A heading in the Agreement is for convenience only and does not affect the interpretation of the Agreement.
- 28.14 A Special Condition prevails to the extent of any conflict or inconsistency with another provision of the Agreement.

## 29. DEFINITIONS

“**Accessorial Charges**” means additional charges applied where Services require extra time, labour, equipment, risk controls, compliance steps, or non-standard conditions beyond Standard Service Conditions.

- (a) Accessorial charges may be quoted in advance where known. Where not reasonably foreseeable at booking, Accessorial Charges may be assessed after the event based on actual conditions encountered.
- (b) The customer must disclose at booking any requirement for tail lift, hand unload, time slot/appointment delivery, residential delivery, dangerous goods, limited access, special site induction, or any other non-standard requirement as defined in the Rates and Accessorial Charges Schedule. Failure to disclose may result in Accessorial Charges and/or refusal/deferral of service where safety or legality requires.
- (c) Such charges are outlined in the quoted rate card and in accordance with the Rates and Accessorial Charges Schedule.

“**Additional Services**” means any work or services that may be performed or provided by Cochrane’s Transport in addition to the Services already specified in the Agreement.

“**Affiliate**” in relation to a party, means a corporation or other legal entity that directly or indirectly Controls, is Controlled by, or is under common Control with, that party.

“**Agent**” Transport companies that provide delivery services on behalf of Cochrane’s Transport.

“**Agreement**” has the meaning given to that term in clause 1.3.

“**Authority to Leave**” Where Authority to Leave is provided, delivery is deemed complete once the goods are left at the nominated location, and all risk passes to the customer at that time. Authority to Leave is deemed to apply where the Delivery Address is unattended, or where Cochrane’s Transport is otherwise unable to effect Delivery in accordance with clauses 4.3 and 4.4. Cochrane’s Transport will not be liable for any loss, theft, damage, or deterioration of the goods occurring after Delivery under an Authority to Leave. Notwithstanding the above, the driver may decline to leave the goods if the location is considered unsafe, insecure, or unsuitable.

“**Base/Kg Freight Charges**” The standard method of charging a customer, where each shipment receives a Basic Charge regardless of the size and is then charged per Kg for the

greater of cubic or dead weight in Kgs. This is not the only charge type. This equals the agreed rate for transport from the nominated pickup point to the nominated delivery point under this Agreement.

“**Business Day**” means a day which is not a Saturday, Sunday, public holiday or bank holiday in Adelaide, South Australia.

“**Business Hours**” means Monday to Friday 07:00–17:00 local time, excluding weekend and public holidays, unless otherwise agreed in writing.

“**Calendar Day**” means a day according to the Gregorian calendar, commencing at 12:00 am (midnight) and ending at 11:59 pm, and includes weekends and public holidays.

“**Claim**” means an action, suit, cause of action, proceeding or demand of any kind and any actual or alleged entitlement or right of any kind arising out of or in relation to the Agreement or a breach of it, whether arising at common law, in equity or under statute and whether ascertained or unascertained, or immediate, future or contingent.

“**Chain of Responsibility**” or “**CoR**” means the system of shared legal responsibility established under the Heavy Vehicle National Law (HVNL) pursuant to which all persons and entities who conduct, control or influence transport activities involving a heavy vehicle—including but not limited to consignors, packers, loading managers, loaders, schedulers, operators, employers, prime contractors, consignees and receivers—are each required to ensure, so far as is reasonably practicable, the safety of those transport activities, and must not do anything, or omit to do anything, that would cause or encourage a breach of the HVNL, including in relation to mass, dimension, loading, load restraint, speed, fatigue or vehicle standards.

“**Charge weight**” the greater of the cubic or dead weight kgs

“**Commencement Date**” means the date Cochrane’s Transport first provides the Services or such other date as specified in the Services Document.

“**Competition and Consumer Protection Laws**” means the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act* of the Commonwealth and each State or Territory of Australia where Services are performed, and any Law made under those statutes.

“**Confidential Information**” means information in whatever form:

- (a) relating to the Agreement, including negotiation of the same;
- (b) relating a party (including its Affiliates) or its business affairs;
- (c) that is disclosed by a party and is marked ‘confidential’ or is of a confidential, secret or proprietary nature, but does not include information to the extent that such information:
- (i) is, on the date it is disclosed, already in the public domain, or is generally available to participants in the industry in which a party operates on the date of the Agreement;
- (ii) becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its covenants and obligations under the Agreement);
- (iii) is acquired from a third party entitled to disclose it on a non-confidential basis; or
- (iv) is independently developed without use of material which otherwise constitutes ‘Confidential Information’ under this definition, as demonstrated by contemporaneous written evidence.

“**Consignee**” means the person specified by the Customer in any Services Document to whom Goods are to be delivered.

“**Consignment Note**” the paperwork providing the details of a particular shipment including the receiver’s name and address as well as the number of items, weight, dimensions and description of the goods. The connote is usually divided into:

- (a) Charge Copy (used for data entry)
- (b) Shippers Copy (shippers record of sending the consignment)
- (c) Receivers Copy (receivers record of the consignment)

# Terms and Conditions of Service



(d) POD Copy (copy that receives a name, date, time and signature to be returned to Cochrane's Transport)

**"Consignor"** means the person specified in any Services Document as the person who owns the Goods or, if no such person is specified, the Customer.

**"Control"**, in relation to a body corporate entity, means either:

- (a) holding 50% or more of common voting shares or equivalent rights of the body corporate; or
- (b) the ability to (directly or indirectly) control the determination of the financial and operating policies of the body corporate.

**"Corporations Act"** means the *Corporations Act 2001* (Cth).

**"Cochrane's Transport"** means Peter Cochrane Management Pty Ltd (ABN 22 007 883 669) and/or any Affiliate of Cochrane's Transport as the case may be, which performs all or any of the Services.

**"Cochrane's Transport Depot"** means a depot that is owned or controlled by Cochrane's Transport and used for the purposes of accepting the Goods.

**"Cochrane's Transport Designated Agent"** means a person, company or other entity that is authorised by Cochrane's Transport to act on Cochrane's Transport's behalf in the completion of the Services including the Delivery and acceptance of the Goods.

**"Cochrane's Transport's Premises"** means any premises or Storage Facility under Cochrane's Transport's management and/or control.

**"Consignment Enquiry"** a webform that allows customers to lodge enquiries directly relating to a specific consignment via the Cochrane's Transport website.

**"Create Consignment"** web-based facility for customers to request services from Cochrane's Transport in accordance with clause 1.2.

**"Cross Dock / Cross-Docking"** means a logistics process in which Goods are received at a Cochrane's Transport facility and are transferred directly, or after minimal handling, sorting or consolidation, from an inbound vehicle to an outbound vehicle for onward delivery, with little or no long-term storage at the facility.

**"Cubic Weights"** Kgs as expressed by multiplying the size of the freight in cubic metres by a cubic conversion rate, typically 250.

**"Customer"** means any person or entity who orders, requests, authorizes, pays for, receives, accepts delivery of, or otherwise benefits from the Services provided by Cochrane's Transport, including any consignee, receiver, or end user, whether or not that person or entity entered into the contract or paid for the Services, and includes any Personnel acting on behalf of a Customer.

**"Customer's Instructions"** means the instructions of Customer with respect to Goods expressly stated in a Services Document.

**"Customer's Premises"** means any premises, facility or worksite of the Customer or third-party, other than Cochrane's Transport's Premises.

**"Dangerous Goods"** means any Goods as shall be, or become, in fact or at Law (including the Dangerous Goods Law) noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods, persons, plants or animals or to anything including that in which the Goods are carried, handled or stored.

**"Dangerous Goods Law"** means the *Dangerous Goods Act 2004* (WA), the *Dangerous Goods Safety Regulations 2007* (WA) and any other analogous or applicable Law in any State or Territory of Australia where Services are performed with respect to the transportation, handling or storage of hazardous or dangerous goods.

**"Dead Weight"** actual kgs of item/consignment.

**"Delivery"** means the delivery and unloading of Goods in accordance with clause 4.3 or clause 4.4(a)(i).

**"Delivery Address"** means the address nominated by the Customer to Cochrane's Transport for the delivery of the Goods,

as specified on the consignment note, in Cochrane's Transport's FMS, or otherwise provided in writing by the Customer, and which must be clear, accurate and accessible for the delivery vehicle. The Customer is responsible for ensuring that the Delivery Address permits lawful and safe access and unloading.

**"DIFOT – Delivered-In-Full-On-Time"** the time taken to deliver all items in a consignment measured against the delivery objective.

**"DWS – Dimension Weigh Scan"** the system that operates on our sortation line and captures the dimensions of an item, the weight of an item, scans the barcode and takes a photo of each item as it passes through.

**"DWS Matching"** process that matches the barcodes captured by the DWS system against the data entered into the Freight Management System (FMS) to then identify whether changes to the weight or dimensions will alter the price.

**"Economic Loss"** means any loss of profit, loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity), and damage to reputation from or related in any way to the Agreement or its subject matter, whether actual, direct, indirect, anticipated or otherwise and whether or not foreseeable at the time of entering into the Agreement or at the time of the provision of the Services.

**"EDI - Electronic Data interchange"** the process whereby customers send data files containing the details of the shipments they have given to Cochrane's Transport to import into FMS system. Also, the process whereby Cochrane's Transport sends shipment tracking data and POD's back to the customer for import into their own system.

**"Fees"** means the fee payable by the Customer to Cochrane's Transport for the supply of Services, exclusive of GST.

**"Force Majeure Event"** means an event beyond a party's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by that party, including any:

- (a) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, flood, mud slide, wash-out, explosion, radioactive contamination or natural disaster;
- (b) epidemic or pandemic as characterised by the Australian Government Department of Health or any other public health and safety emergency as characterised by any Governmental Authority;
- (c) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war (whether declared or undeclared) or a military operation, blockade or riot;
- (d) any failure, delay or suspension by any third-party supplier of the supply in whole or in part of fuel, electricity, equipment, machinery or materials to the affected party provided that the affected party has acted in a timely manner in endeavouring to secure the same (which does not require the affected party, to secure the same if the alternative supply is only available to the affected party at a increased or additional cost to it);
- (e) adverse application of any Law or enforcement actions of any court or Governmental Authority;
- (f) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (g) any production shutdown or interruption which is validly required or directed by any Governmental Authority.

**"FMS Freight Management System"** the software system that records all shipments and captures scanning as shipments progress through the supply chain process

**"Free Time"** means the included time allowance for loading or unloading at a site, as set out in the Rate and Accessorial Charges Schedule.

**"GHS Code"** means a code for the Globally Harmonized System of Classification and Labelling of Chemicals.

**"Goods"** means the goods tendered for by the Customer which are the subject of the Services provided by Cochrane's

Transport, including containers and packaging.

**“Governmental Authority”** means any federal, state, territory or local government, or any ministry, department, court, commission, statutory body, board, agency, instrumentality, political subdivision or similar entity.

**“GST”** means goods and services tax levied under the GST Law.

**“GST Law”** has the meaning given to that term in the *A New Tax System (Goods and Services) Tax Act 1999* (Cth).

**“Heavy Vehicle National Law”** means the *Heavy Vehicle National Law Act 2012* (Qld), all Law made under that statute and the Law of each State and Territory adopting that statute.

**“Interest Rate”** is the rate 1.5 percentage points above the then current base lending rate of Commonwealth Bank of Australia.

**“Insolvency Event”**, in relation to a person (**Relevant Person**), means any of the following events occurring:

- (a) a receiver, receiver and manager, controller (as that term is defined in the Corporations Act), administrator, trustee in bankruptcy, liquidator, provisional liquidator, or similar officer is appointed to the Relevant Person's or any of the Relevant Person's assets, or an application to court for such appointment is made and not permanently stayed, withdrawn or dismissed within 30 days;
- (b) the Relevant Person enters into, or resolves to enter into, a deed of company arrangement, scheme of arrangement, compromise or composition with any class of creditors, other than for a solvent corporate restructure;
- (c) a resolution is passed or an application to a court is taken or an order is made for the winding up, dissolution, official management or administration of the Relevant Person;
- (d) the Relevant Person ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention not to pay its creditors;
- (e) the Relevant Person is (or states that it is) insolvent (or is deemed to be insolvent), commits an act of bankruptcy or is declared bankrupt under applicable bankruptcy or insolvency Law; or
- (f) anything having a substantially similar effect to any of the events specified in this definition above happens under the Law of any applicable jurisdiction.

**“Item Number Barcode”** a barcode that references the Connote Number including a count of items in the consignment as a suffix to the connote number.

- (a) Can be a letter e.g. D
- (b) Can be a number e.g. 001
- (c) May also contain other information in the suffix e.g. 0010015221 (1 of 1 postcode 5221)

**“KPI - Key Performance Indicators”** agreed standards / targets of performance that are measured.

**“Law”** means common law, principles of equity, civil law, and statutory law (including regulations, by-laws, ordinances, codes and any other instruments under them).

**“Liability”** means a liability, loss, damage (of any nature, including aggravated and punitive damage), compensation, cost (including all legal costs on a full indemnity basis), charge or expense, whether present or future, actual, contingent or prospective and whether known or unknown, howsoever arising.

**“Loss or Damage”** the loss of or physical damage to Goods rendering the Goods lost or unfit for use or their intended purpose, including loss due to theft, misappropriation or mixing with other goods which are not the Goods.

**“Modern Slavery”** has the meaning given to that term in section 4 of the Modern Slavery Act.

**“Modern Slavery Act”** means the *Modern Slavery Act 2018* (Cth).

**“National Heavy Vehicle Law (NHVL)”** means the *National Heavy Vehicle Law*, being the uniform national legislation regulating the operation of heavy vehicles with a gross vehicle

mass exceeding 4.5 tonnes, as enacted in each participating Australian State and Territory, including all associated regulations, subordinate legislation, standards, guidelines, and codes of practice administered by the National Heavy Vehicle Regulator (NHVR), as amended, re-enacted, or replaced from time to time.

**“Non-Standard Pallet”** means any pallet or packaging platform that:

- (a) is outside common Australian dimensions or design standards;
- (b) is damaged, unsafe or structurally unsound;
- (c) is incompatible with mechanical handling or automated sorting;
- (d) cannot be reused or reasonably returned; or
- (e) would likely prevent compliance with NHVL Obligations or interfere with safe, efficient handling in Cochrane's Transport's reasonable opinion.

**“Non-Trading Account”** sender or receiver that ships a consignment to a trading account.

**“Pallet” – Standard** means a reusable, two-way entry pallet constructed of timber or approved composite material, measuring 1,165 mm × 1,165 mm (±10 mm), in sound, serviceable condition, capable of being handled by standard forklift or pallet-jack equipment, and suitable for the safe transport and storage of goods. A Standard Pallet:

- (a) must be free from structural damage, excessive contamination, or protrusions;
- (b) must not be broken, warped, or unsafe for handling;
- (c) excludes one-way, disposable, slip-sheet, or non-conforming pallets unless expressly agreed in writing; and
- (d) includes equivalent pallets supplied by recognised pallet pooling providers or pallets otherwise approved by the Company in writing.

**“Onforwarders”** other transport companies that provide deliveries to areas that Cochranes does not service directly or through an agent network.

**“party”** means a party to the Agreement, being Cochrane's Transport or the Customer, as the context requires.

**PDA - Personal Digital Assistant”** a handheld electronic device used by transport companies to capture supply chain visibility scan events and related/applicable information. Can also be referred to as a Scanner.

**“Personnel”**, in relation to a party, means any of that party's employees, officers, directors, contractors, agents and its representatives involved directly or indirectly in the matters related to the Agreement, the Services, or in the supply or manufacture of the Goods, and in the case of Cochrane's Transport includes Subcontractors.

**“POD - Proof of Delivery”** either a signed document or a signature on a hand-held scanner, PDA or mobile telephone that provides the receiver's name, the date and the time of delivery. Necessary to prove that the delivery was completed and when.

**“PPS Act”** means the *Personal Property Securities Act 2009* (Cth).

**“Price on Application” (POA)** means that the price for the relevant goods or services is not fixed or published and will be quoted by the Supplier upon request, having regard to the specific requirements of the Customer at the time of the request.

**“Privacy Policy”** means Cochrane's Transport's policy in relation to the collection, use, storage, security, destruction, de-identification and/or disclosure of personal information (as that term is defined in the *Privacy Act 1988* (Cth)) from time to time.

**“Rates and Accessorial Charges Schedule”** means the rates and accessorial charges of the schedule to be read in conjunction with this Agreement that sets out the fees, rates, charges, surcharges, and pricing applicable to the Services, including any assumptions, conditions, inclusions, and exclusions, as amended from time to time in accordance with this Agreement.

**“Residential Delivery”** is a delivery made to a private dwelling

# Terms and Conditions of Service



or domestic address, including houses, apartments, units, townhouses, or any location not operating as a commercial or industrial premises, and where no commercial loading facilities are available. It includes locations where a business is operated from the home or private residence, and/or a shipment in which the customer has designated the delivery address as residential.

**“Route Code”** 6-character sequence that codes the originating area and destination of a shipment.

e.g. S00S04 = SA Adelaide to SA Zone 4

The first 3 characters are the sending zone and the last 3 are the receiving zone

**“Seen Not Known”** Where Cochrane’s Transport has a POD for a delivery, however the shipment is not in FMS meaning the customer has not been charged for the consignment.

**“Security Interest”** means:

- (a) a security interest within the meaning given to that term under the PPS Act; or
- (b) any other security for payment of money, performance of an obligation or protection against default (including a bill of sale, mortgage, charge, lien, pledge, trust, power, title retention arrangement, right of set-off, assignment of income, garnishee order, monetary claim or flawed deposit arrangement).

**“Service Information”** means all information concerning the Goods specified in a Services Document, supplied by a Customer to Cochrane’s Transport or requested by Cochrane’s Transport for the performance of the Services.

**“Services”** means Transportation Services and/or Warehousing Services as specified in a Services Document and any Additional Services provided in accordance with the Customer’s Instructions.

**“Services Document”** means any quotation, proposal, scope of works, credit application, rates card, instruction, electronic message or other document issued by Cochrane’s Transport, or accepted in writing by Cochrane’s Transport from the Customer, in connection with the Services.

**“Skid”** means a load platform smaller than a standard pallet, used to support freight as a single handling unit. Skids are subject to specific weight and cubic thresholds for rating. The Cubic dimensions for a Skid are 600 mm in length X 600 mm in width X 750 mm in height with a cubic volume of 0.27 m<sup>3</sup> and weighing less than 175kg. If the item exceeds any one of these dimensions or weight it is automatically charged at the next charging unit/mechanism.

**“SOG – Sign On Glass”** signature on a hand-held scanner, PDA or mobile telephone.

**“Special Condition”** means a term or condition of the Agreement stated in a Services Document.

**“Standard Service Conditions”** means:

- (a) pickup and delivery during Business Hours;
- (b) safe and lawful site access for the booked vehicle;
- (c) the Customer provides accurate consignment data (weights, dimensions, quantity, address and special requirements);
- (d) loading/unloading is completed within Free Time; and
- (e) no special equipment or additional labour is required.

**“Storage Facility”** means any facility where Goods are stored.

**“Subcontractor”** means any independent contractor or agent engaged by Cochrane’s Transport in the performance of the Services and any direct or indirect subcontractors, servants and agents thereof, whether in direct contractual privity or not any other party which is appointed to be in possession or control of the Goods under the Agreement, including any forwarder, warehouseperson and operator of any aircraft, train, railway, tramway, vessel or vehicle.

**“Sub Docket”** manual docket written for a POD when no paperwork travelled with freight. Printed POD barcode often does not match the charge consignment.

**“Term”** means the term of the Agreement commencing on the Commencement Date and ending on the date of effective termination of this Agreement.

**“Transportation Services”** means the carriage of Goods from one place to another on the instructions of the Customer, the loading and unloading of the Goods, the dispatch of transportation vehicles and the processing of a Customer order as it relates to Delivery. “Transportation Services” does not include Warehousing Services.

**“Warehouseman’s Lien Law”** means the *Warehouseman’s Liens Act 1990 (SA)* and any other analogous or applicable Law in any State or Territory of Australia where Services are performed or applicable to the Goods for the provision of a lien.

**“Warehousing Services”** means the storage and handling of the Goods in a secure weather-proof Storage Facility or in secure hard-surfaced external storage areas if so required, including the receipt, unloading, container de-stuffing, unpacking, palletising and put-away of inwards Goods, and the picking and preparation of outwards Goods for dispatch. “Warehousing Services” does not include Transport Services.

**“WHS Laws”** means the *Work Health and Safety Act 2012 (SA)*, the *Work Health and Safety Regulations 2012 (SA)* and any other analogous or applicable Law in any State or Territory of Australia where Services are performed or applicable to the Goods.