



HI-HAUL TRANSPORT PTY LTD – TERMS AND CONDITIONS

To the fullest extent legally possible, all contracts and dealings between Hi-Haul Transport Pty Ltd ACN 005 099 632 (**Hi-Haul**) (and each subsidiary, affiliate, associated company, related entities, successors or assigns) and any owner of goods or any party requesting Hi-Haul to provide the Services (the **Owner**) relating to the Services are subject to the Terms and Conditions set out herein (the **Terms**) unless otherwise expressly agreed in writing by Hi-Haul.

1. **Definitions:** In these Terms, unless the context otherwise requires:
 - Contract** means a contract between Hi-Haul and the Owner for the supply by Hi-Haul, and purchase by the Owner, of the Services pursuant to these Terms.
 - Goods** means the goods of the Owner the subject of the Services.
 - GST** means any tax or imposition on the supply of goods and services covered by the GST Act.
 - GST Act** means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended from time to time.
 - Owner** means the owner of the Goods the subject of the Services, and includes (without limitation):
 - (a) the sender or receiver of the Goods;
 - (b) a person having an interest in the Goods;
 - (c) any party requesting Hi-Haul to provide the Services;
 - (d) any agent, representative, employee or sub-contractor of the Owner; and
 - (e) any other person entitled to make a claim in respect of the Goods.
 - Services** means the carriage by Hi-Haul of the Goods.
 - Sub-contractor** includes (without limitation):
 - (a) each Company which is at any time, or from time to time, a subsidiary of Hi-Haul within the meaning of the *Corporations Act 2001* (Cth);
 - (b) a railway operated by the Commonwealth of Australia or a State or Territory within the Commonwealth of Australia;
 - (c) any person or body corporate with whom Hi-Haul may arrange for the carriage of any or all of the Goods; and
 - (d) any person who is at any time, or from time to time, a servant, agent, employee or Sub-Contractor of any of the persons referred to in paragraphs (a) to (c) above.
2. **Not a common Carrier:** Hi-Haul is not a common carrier and accepts no liability as such.
3. **General lien:** All Goods are accepted subject to a general lien for all charges due to Hi-Haul on any account whether in respect of the Goods comprised herein or in respect of any other goods for which Hi-Haul provides any service.
4. **Quotation**

Hi-Haul may, in its absolute discretion, provide to the Owner a quotation (**Quotation**) specifying:

 - (a) the Services to be carried out by Hi-Haul; and
 - (b) the fee for carrying out the Services (**Fee**).
5. **Basis of Quotation**
 - (a) Quotations make no allowance for waiting time and all extra costs arising from waiting time shall be an additional charge to the Owner.
 - (b) Quotations are based upon prompt availability of the Goods for loading and the ability to make prompt delivery, and a charge shall be made by Hi-Haul in respect of any delay in excess of one hour (commencing at the time Hi-Haul reports for loading or unloading) in loading or unloading occurring otherwise than by default of Hi-Haul, and that charge will constitute the extra costs to Hi-Haul incurred as a result of the excess delay.
 - (c) Quotations are subject to the vehicle, haulage equipment and equipment required for loading and unloading having clear access for manoeuvring into loading and unloading site positions and the ground surface being firm and consolidated to withstand wheel loadings of the vehicle, haulage equipment and the equipment for loading or unloading and Hi-Haul's costs involved in any site preparation shall be borne by the Owner.
 - (d) Quotations do not include the cost of obtaining or operating cranes to load or unload and those costs shall be borne by the Owner.
 - (e) The Quotation and the Contract are subject to all necessary permits being issued by all relevant authorities.
6. **Payment deemed to be earned:** The Fee shall be deemed earned by Hi-Haul as soon as the Goods are loaded and dispatched from the Owner's premises.
7. **Trading terms:** Trading terms are strictly 14 days from the date of the invoice.
8. **Hazardous, dangerous etc Goods**
 - (a) The Quotation is made on the basis that goods of a hazardous, dangerous, noxious, offensive, volatile, inflammable or explosive nature will not be tendered to Hi-Haul and if the Owner requires goods of that nature to

be carried, the Owner shall make full disclosure of the nature of the goods and the same will be carried by Hi-Haul only if express written agreement is made between the Owner and Hi-Haul in relation to the carriage thereof.

- (b) The Owner warrants that except as specified in the Contract the Goods which are tendered to Hi-Haul for carriage shall not be of a hazardous, dangerous, noxious, offensive, volatile, inflammable or explosive nature and will be goods the carriage of which is not illegal or prohibited by any law of the Commonwealth of Australia or of any State or Territory of the Commonwealth of Australia by reason of their nature, packaging, labelling or otherwise.
- (c) The Owner hereby indemnifies Hi-Haul in respect of any liability for death, bodily injury, loss and/or damage incurred by Hi-Haul arising directly or indirectly as a result of the Owner's failure to comply with this warranty.

9. **Weight and dimensions of Goods**

- (a) Where the Owner has declared the weight of the Goods and Hi-Haul relies or has relied on that declaration then the Owner shall be responsible for all extra costs and risks incurred by Hi-Haul and shall be liable to Hi-Haul for any loss or damage occasioned either directly or indirectly to Hi-Haul by reason of Hi-Haul relying or having relied upon a declared weight.
- (b) If weights and dimensions of the Goods exceed those declared by the Owner and stipulated in the Contract, the Quotation and/or the Contract shall be null and void at the option of Hi-Haul.

10. **Invoice and payments**

- (a) Hi-Haul will issue an invoice to the Owner for the Fee.
- (b) Payment must be made to Hi-Haul by the Owner in cleared funds and in full without any deductions whatsoever strictly within seven (7) days of the date of the invoice.

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

12. **Carriage**

- (a) Hi-Haul may, in its absolute discretion, arrange with any Sub-Contractor to undertake the carriage of the Goods, and the Sub-Contractor shall be entitled to the benefit of these Terms to the same extent as Hi-Haul, and insofar as it may be necessary to ensure that the Sub-Contractor shall be so entitled, Hi-Haul shall be deemed to enter into the Contract for its own behalf and as agent for the Sub-Contractor, and the Owner shall be deemed to have ratified the sub-contracting arrangement upon delivery of the Goods by Hi-Haul to the Sub-Contractor.
- (b) Where the Owner expressly or by implication instructs Hi-Haul to use, or if it is agreed by Hi-Haul and the Owner that Hi-Haul will use a specific method of carriage (whether by road, sea, rail or air) Hi-Haul shall endeavour to give priority to that specified method. However, if, in Hi-Haul's reasonable opinion, carriage by the specified method cannot be conveniently undertaken, the Owner authorises Hi-Haul to carry or arrange for the carriage of the Goods by any other method(s) to be determined by Hi-Haul in its absolute discretion.
- (c) Any deviation from the usual route or manner of carriage of Goods which may, in the absolute discretion of Hi-Haul, be deemed necessary, reasonable or desirable in the circumstances shall be deemed to have been authorised by the Owner.

13. **Risk**

- (a) All Goods are carried entirely at the Owner's risk.
- (b) Hi-Haul shall not be responsible:
 - (i) in tort, contract or otherwise;
 - (ii) for any loss of, damage to or deterioration of the Goods, the misdelivery or failure to deliver the Goods, or any delay in the delivery of the Goods for any reason, in any of the following circumstances:
 - (A) in the course of performance by Hi-Haul of the Contract;
 - (B) in events which are in the contemplation of Hi-Haul or the Owner;
 - (C) in events which are foreseeable by them or either of them; or
 - (D) in events which would constitute a fundamental breach of the Contract or a breach of a fundamental term thereof.

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

15. **Delay**

- (a) If a vehicle is delayed by any cause beyond the control of Hi-Haul or is delayed as a result of Hi-Haul following instructions of the Owner, the Owner shall be liable for any extra costs incurred by Hi-Haul as a consequence of the delay.
- (b) If a vehicle is bogged whilst Hi-Haul is following instructions of the Owner, the Owner shall be liable for the costs incurred by Hi-Haul in recovering the vehicle from the bog and shall be liable for any damage to the vehicle, equipment or plant so caused or the recovery thereof.
- (c) If the Goods have not been loaded within 60 days of the date of the Quotation or the Contract (as the case may be), and the delay in loading is due to any cause beyond the control of Hi-Haul, the Owner shall be liable to pay to

Hi-Haul in addition to the Quotation an amount equal to the increase in Hi-Haul's costs of carrying out the Services.

- (d) For the avoidance of doubt, the Owner is not relieved of any obligation to accept or pay for the Services due to any delay in delivery.

16. Insurance:

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

17. Obligations of the Owner

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

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

- 19. Acceptance of these Terms:** The Owner expressly represents and warrants to Hi-Haul that it is either the Owner or the authorised agent of the Owner, and by entering into the Contract, accepts these Terms.

- 20. Indemnity:** The Owner hereby indemnifies Hi-Haul from all actions, claims, demands, proceedings, costs, damages and expenses brought or recovered by any of those persons arising out of, or in connection with, these Terms, the Contract or the Services.

- 21. Recovery costs:** The Owner must pay to Hi-Haul all and any costs, expenses or losses incurred by Hi-Haul as a result of the Owner's failure to pay to Hi-Haul all sums outstanding (including any debt collection and legal costs) on a full indemnity basis.

- 22. Jurisdiction:** The Owner agrees that all Contracts made with Hi-Haul shall be deemed to be made in the State of Victoria and subject to the non-exclusive jurisdiction of the courts of Victoria.

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

- 24. Attornment:** For the purpose of giving effect to the Owner's obligations pursuant to these Terms, the Owner hereby irrevocably appoints the public officer of Hi-Haul as its attorney in all things.

25. Default in payment

Notwithstanding any other provision of these Terms, if the Owner (or any other person liable to make payment to Hi-Haul for the Services) fails to make payment to Hi-Haul in accordance with clause 10, Hi-Haul may, in its absolute discretion:

- (a) retain and sell all or any of the Goods in its possession, and use the proceeds of such sale towards all expenses of the sale and shall render the surplus moneys from the sale, if any, and any of the Goods should they remain unsold, to the person to whom Hi-Haul appears to be entitled thereto, and any sale by Hi-Haul of the Goods, or any of them shall not prejudice or affect charges due or payable in respect of the Services or the sale of the Goods; and
- (b) charge interest on any overdue accounts at the rate provided for by the *Penalty Interest Rates Act 1983 (Vic)* as amended from time to time plus 2%.

- 26. Severability:** Any part hereof being a whole or part of a clause shall be capable of severance without affecting any other part of these Terms.

- 27. Waiver:** The waiver by Hi-Haul of any breach by the Owner of any of these Terms shall not prevent the subsequent enforcement of that term and shall not be deemed a waiver of any other or subsequent breach.

28. Limitation of Liability

- (a) Subject to clause 28(b), any condition or warranty (including, but without limitation, any implied warranty of merchantability, satisfactory quality or fitness for a particular purpose) which would otherwise be implied in these Terms or in relation to any Goods and/or Services is hereby excluded.
 - (b) Where legislation implies in these Terms any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty shall be deemed to be included in these Terms. However, the liability of the Company for any breach of such condition or warranty shall be limited to one or more of the following:
 - (i) supplying of the Services again; or
 - (ii) payment of the cost of having the Services supplied again.
- 29. GST:** To the extent that a supply of Services provided by Hi-Haul, or any other supply made under or pursuant to these Terms, is a “taxable supply” as defined in the GST Act, Hi-Haul will increase its price in respect of that supply its makes by the amount of GST payable on the supply.
- 30. Privacy Act:** The Owner agrees that Hi-Haul can make any inquiries it deems necessary to investigate the Owner’s creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers (the **Sources**). The Owner authorises the Sources to disclose any information concerning its creditworthiness in their possession to Hi-Haul. The Owner agrees that Hi-Haul may disclose any information in its possession concerning the Owner’s creditworthiness to the Sources.
- 31. Statement by Hi-Haul:** A statement by any officer of Hi-Haul is conclusive evidence of any fact, matter or thing.