

# CARRIAGE AND STORAGE TERMS AND CONDITIONS

## 1. DEFINITIONS

In these terms and conditions ("**Terms**") the following definitions and interpretations apply:

"**Australian Consumer Law**" means Schedule 2 of the *Competition and Consumer Act 2010(Cth)*;

"**Carriage**" means the carriage of the Goods by any mode of transport for and on behalf of the Sender;

"**Charges**" means FBT's quoted or otherwise agreed charges for the Services plus any additional charges payable pursuant to these Terms and any tax, including GST, levied directly upon any supply or transaction made pursuant to these Terms;

"**FBT**" means FBT-Transwest Pty Ltd ACN 110 174 251 carrying on business in its own name and under any business name, its officers, employees, agents, independent contractors and subcontractors;

"**Goods**" means any goods in respect of which the Sender authorises or requests FBT to provide the Services;

"**GST**" has the meaning given to that term in section 195-1 of *A New Tax System (Goods and Services Tax) Act 1999(Cth)*;

"**PPSA**" means the *Personal Property Securities Act 2009(Cth)*;

"**Sender**" means the person, firm or company named in the Transport Document;

"**Services**" means the Carriage and Storage services provided by FBT to the Sender pursuant to these Terms;

"**Storage**" means any necessary storage, for and on behalf of the Sender, of the Sender's Goods at FBT's premises in circumstances where the Goods must await Carriage or further carriage;

"**Transport Document**" means FBT's consignment note, storage document or any other document of FBT's by which the Sender authorises or requests FBT to provide Carriage or Storage of the Sender's Goods;

the words "include" or "including" or cognate words and expressions are to be construed without limitation; and

all italicised terms which are also capitalised below have the meaning given to them in the PPSA.

## 2. FBT NOT COMMON CARRIER

2.1 FBT is not a common carrier and accepts no liability as such. FBT reserves its right to refuse the Carriage and Storage of Goods of any person or corporation and may refuse the Carriage and Storage of any class of goods at its absolute discretion.

2.2 FBT may assign or sub-contract any of its obligations under these Terms including the provision of any services to any person, firm or company at its discretion.

## 3. LIABILITY

3.1 To the maximum extent permitted by law, the only warranties or guarantees that are binding on FBT in respect of the Services to be provided to the Sender are those imposed and required to be binding by the Australian Consumer Law or any other applicable law. All other warranties or guarantees (express or implied) are expressly excluded. If FBT fails to comply with an applicable guarantee under the Australian Consumer Law, FBT's liability (at its option) is limited to either: (a) the supplying of the Services again; or (b) the payment of the cost of having the Services supplied again.

3.2 Without limiting clause 3.1, FBT shall not be liable for any loss or damage to the Goods or any loss, damage (including indirect, economic or consequential loss), death or personal injury in connection with:

- any mis-delivery, delayed delivery or non-delivery of the Goods, or any part or portion of the Goods;
- packing or unpacking the Goods or loading or unloading any Goods into bulk tanks, or vessels, drums or containers;
- the Goods being held in bulk storage tanks;
- residual material being left in any container, vessel or road tanker including where FBT has discharged or loaded the Goods; or
- the use or operation of any crane, gantry or machinery or any part thereof ("**Machinery**") which occurs during the handling or moving of any Goods, containers or rail wagons loaded by the Sender or any other party (including loading or unloading rail cars) or arising from any failure breakdown or defects of or in the Machinery,

regardless of whether such loss, injury, damage, etc occurred during Carriage or Storage and howsoever it was caused including whether by any negligence or breach of contract or wrongful act or default by FBT.

3.3 The Sender indemnifies and must keep FBT indemnified against all claims and liabilities of whatsoever under clause 3.2.

3.4 These Terms, in particular those limiting or excluding FBT's liability, shall continue to apply and to be of full force and effect in all circumstances notwithstanding any breach or alleged breach by FBT of these Terms or any negligence or breach of contract by FBT.

## 4. INSURANCE

The Sender is solely responsible for arranging all appropriate insurance cover for the Goods. Under no circumstances will FBT be responsible for insuring the Goods.

## 5. SENDER'S WARRANTIES

The Sender warrants and acknowledges that:

5.1 the Sender is the owner of the Goods or has the owner's authority or permission to send and arrange for storage of the Goods on behalf of the Sender under these Terms;

5.2 the Sender has complied with the requirements of all applicable laws, statutes, rules, regulations, proclamations, orders of council, ordinance or by-laws ("**Laws**") with respect to the Goods including (where applicable): the Australian Code for the Transport of Dangerous Goods by Road and Rail; the International Maritime Dangerous Goods Code (including with respect to notifications); the description of Goods (on FBT's Transport Document or otherwise) and sending, storing and the packaging of Goods.

5.3 all expenses and charges incurred by FBT in complying with the provisions of any Laws with respect to the Goods and in complying with the requirements of any harbour, dock, railway, shipping, customs, warehouse or any other authority or company and any additional Charges deemed necessary by FBT must be paid by the Sender. If any of the Goods are subject to the control of the Australian Customs Service, the Sender must pay all customs duty, excise duty and costs incurred by FBT in respect of such goods pursuant to any customs or excise Laws;

5.4 it will at all times comply with all laws relating to heavy vehicles including those relating to mass, dimension, load restraint, fatigue and speeding and that it will not directly or indirectly make or impose any demand or requirement upon FBT that would cause FBT to be in breach of its obligations under such laws;

5.5 the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage or Storage (or both) having regard to the nature of the Goods and any method of Storage or mode of Carriage; and

5.6 the Goods are fully and accurately described in the Transport Documents.

The Sender indemnifies and shall keep FBT indemnified against all costs, losses, penalties, expenses and liabilities suffered or incurred by FBT by reason of any breach by the Sender of any of, or all of, the foregoing warranties or acknowledgements.

## 6. LIEN AND SECURITY INTEREST

The Sender:

6.1 acknowledges and agrees that FBT has a particular or general lien over the Goods (and any documents relating to the Goods in FBT's possession) for all amounts owing to FBT on any account including for the provision of Services with respect to Goods comprised herein or in respect of any other Goods for which FBT has previously provided Carriage, Storage or any other services;

6.2 irrevocably waives its right to receive any notice under the PPSA (including notice of a *Verification Statement* or any other notice under the PPSA) unless a requirement for notice cannot be excluded under the PPSA;

6.3 acknowledges and agrees that if the lien is not satisfied by payment of all monies owing by the Sender to FBT on any account and/or the Goods are not collected, FBT may at its option and without notice, in the case of perishable goods immediately, and in any other case upon the expiration of 1 month either:

- remove the Goods or such part thereof and store them in such place and manner as FBT thinks proper at the Sender's risk and expense; or
- open any package and sell the Goods or part thereof upon such terms as FBT thinks fit and apply the proceeds of sale towards discharge of FBT's lien and the costs associated with the sale without being liable to any person for any loss or damage caused.

6.4 Any sale of the Goods by FBT shall not prejudice FBT's right to recover from the person or persons liable to pay the same any charges due or payable in respect of any Carriage, Storage or other service or sale. This right of sale is additional to any other rights conferred upon FBT by statute or general law.

## 7. PALLETS/CONTAINERS

7.1 FBT is not responsible for the return or de-hire of pallets. Pallet control is the responsibility of the Sender and the receiver. FBT will consider all pallets to be supplied on a one way transit basis.

7.2 These Terms apply to any container(s), pallet(s) or other packaging containing or delivered with the Goods to FBT. The Sender is responsible for the conformity of such container(s) packaging and pallet(s) with any requirements of the receiver and for any expenses incurred by FBT arising from any failure to conform.

## 8. MODE OF CARRIAGE AND METHOD OF STORAGE

8.1 If the Sender expressly or impliedly instructs FBT to use a particular method of handling or storing the Goods or a particular mode of Carriage, FBT will give priority to that method or mode, but if it cannot conveniently be adopted by FBT, the Sender authorises FBT to handle or store the goods by any other method or methods or carry or have the goods carried by any other mode or modes.

8.2 FBT is entitled to open any document, wrapping, package or other container in which the Goods are placed or carried, to inspect the Goods to determine their nature or condition or for the purpose of determining their ownership or destination where any transport document or other identifying document or mark is lost, damaged, destroyed or defaced.

## 9. 9. INTERMEDIATE POINTS AND DELAYED/FAILED DELIVERY

9.1 FBT will deliver Goods at intermediate points only by special arrangement between FBT and the Sender, and subject to FBT being satisfied that suitable facilities are available at all hours.

9.2 A Charge may be made by FBT in respect of any delay in loading or unloading the Goods (other than through FBT's fault) and such period commences upon the earlier of FBT reporting for loading or commencing loading. All labour costs for loading or unloading the Goods are the responsibility and are to be paid by the Sender or receiver. Should the receiver not be in attendance during normal trading hours or at the time specified for delivery, FBT reserves the right to make further Charges for every call made until delivery is effected.

9.3 If the consignee refuses, fails or neglects to take delivery of the Goods, or delivery of the Goods cannot be effected or is delayed for any reason beyond the control of FBT, or as a result of the Sender's instructions, FBT may at its sole discretion store the Goods and the Sender must pay to FBT on demand all the associated costs and expenses (including any additional delivery costs).

9.4 If delivery cannot be effected within 21 days of a notice to the Sender, FBT may in its discretion return the Goods to the Sender and recover all charges and expenses which may be due owing or payable to FBT under these Terms or sell the Goods and deduct from the sale proceeds all charges and expenses owing to FBT under these Terms.

## 10. CARRIER'S CHARGES

10.1 The Sender must pay all Charges. FBT's Charges for the Services shall be due and payable at the point in time when Goods are loaded and despatched on the Sender's behalf.

10.2 Where the Sender stipulates that the Charges for the Services will be paid by the receiver or other third party, the Sender agrees that if or insofar as any charges are not paid by the receiver or other third party the Sender will on demand pay the same to FBT.

10.3 The Sender is and remains responsible to FBT for all its proper Charges incurred by FBT in relation to the Services for any reason.

10.4 FBT may charge freight or storage (or both) by weight, measurement or value at its absolute discretion, and may at any time re-weigh, re-measure, re-value or require the goods to be re-weighed, re-measured or re-valued and charge proportional additional freight and storage costs accordingly.

10.5 FBT's terms of payment are 14 days from date of invoice. Interest will accrue of any amounts due and payable 14 days from the due date for payment at a rate not greater than 2% above the prevailing rate set from time to time pursuant to the *Penalty Interest Rates Act 1983 (Vic)*.

## 11. RAIL SERVICE

The Sender may authorise FBT to hire wagon space on the Sender's behalf or to arrange the placement at FBT's terminal of wagons under permanent hire to the Sender and the Sender shall indemnify and keep FBT indemnified in respect of any payments due or liabilities incurred to any rail operator in respect of FBT so doing.

## 12. VESSELS AND CONTAINERS

FBT accepts no liability or responsibility for cleaning or sweeping any deep sea tank or any other vessel following discharge of any Goods or any other matter.

## 13. GENERAL

13.1 These Terms are governed by the laws of the State of Victoria and any proceedings against FBT shall be brought in that State and not elsewhere, with 12-months from the date of issue of the transport document. FBT shall not be bound by any agreement or arrangement purporting to vary these Terms unless such in writing and signed by an authorised officer of FBT.

13.2 If any part of these Terms is or becomes illegal, invalid, unenforceable or void then it is severed and the remainder of these Terms remains in full force and effect.

## 14. BENEFIT OF THESE CONDITIONS

Each and every provision of these Terms and every defence, liberty, right, exemption and immunity of whatsoever nature available or applicable to a carrier or to which FBT is entitled hereunder is available and extends to all sub-contractors, each officer employee or agent of FBT or of any sub-contractor, every other person by whom carriage or storage is provided and all persons who are or may be vicariously liable for the acts or omissions of any persons referred to in this clause 14. As far as may be necessary to give effect to this clause 14, FBT is, or shall be deemed to be, acting as agent and trustee for and on behalf of and for the benefit of all such persons and each of them shall to this extent be deemed to be parties to each contract of carriage or storage (or both) effected pursuant to these Terms.