

31 May 2019

To whom it may concern

RE: TRANSPORT TERMS AND CONDITIONS

Please find **attached** our company's Transport Terms and Conditions. As Tong Sing does not issue Consignment Notes upon delivery of goods and, for insurance purposes, we request that you please read the attached conditions carefully and in their entirety.

You will be bound by these conditions if we carry or store goods for you. This means that:

- You must take out your own insurance cover over the goods;
- If you are operating a business:
 - the goods will be at your sole risk and our services are priced on this basis; and
 - we will not be liable for any loss or damage to the goods, or any other losses you suffer, regardless of the cause of such loss or damage.

Any further services carried out by us will be considered as an acceptance of these Terms and Conditions.

If you have any queries regarding this matter, please don't hesitate to contact us.

Yours faithfully

Cheralee Pike
Finance Officer
Tong Sing (Trading) Pty Ltd

TERMS AND CONDITIONS – ROAD CARRIAGE OF GOODS

1. Definitions.

In these conditions:

“Carrier” means **TONG SING (TRADING) PTY LTD ACN 617 968 064**, and its related body corporate within the meaning of the expression in Section 9 of the *Corporations Law Act (Commonwealth)*, carrying on business in its own name or under any other business name and unless otherwise requires includes its officers, servants, agents and sub-contractors.

“Charges” mean the Carrier’s quoted charges for Transport calculated under its rates schedule or other agreed rates, the charges in clause 6 and any tax including a Goods and Services Tax (“GST”) levied directly on a transaction or supply under these conditions.

“Dangerous Goods” means all such goods as are in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable, volatile or capable by their nature of causing damage or injury to other goods or persons or animals or any other thing in which such dangerous goods are carried or stored, or any goods which in the opinion of the Carrier are likely to cause damage or injury to persons, other goods or property.

“Goods” mean the articles or goods, perishable or otherwise (including animals of any description), accepted from the Sender with any container, packaging or pallets supplied by or for the Sender.

“Person” includes any person, firm, corporation, governmental authority or state or federal government.

“Receiver” means a person to whom goods are consigned by the sender. This includes any person who is a servant, agent, employee, or sub-contractor of the Receiver.

“Receiver’s Address”, can also be referred to as **“Delivery Address”**, means the address where the Carrier is instructed to deliver to.

“Sender” means the person or company for whom any business is done by the Carrier or with whom any contract for the rendering of services by the Carrier is made. This includes any person who is a servant, agent, employee, or sub-contractor of the Sender.

“Sub-Contractor” means:

- 1.1 any person the Carrier arranges to transport the goods; and
- 1.2 any person who is a servant, agent, employee or sub-contractor of the Carrier or any person in 1.1.

“Transport” means the whole of the operations and services undertaken by the Carrier for the goods.

2. Transport Basis.

2.1 THE CARRIER IS NOT A COMMON CARRIER and does not accept any liability as a common Carrier and may refuse to transport goods or any class of goods for any person.

2.2 The Carrier relies on the details supplied to them, but the Carrier cannot verify and does not admit their accuracy or completeness and a signature by the Carrier is only an acknowledgement for the number of items received.

TERMS AND CONDITIONS – ROAD CARRIAGE OF GOODS

- 2.3 The Carrier will deliver goods to other than the Receiver's Address only by special arrangement in writing and provided suitable delivery facilities are available at all hours.
 - 2.4 Unless otherwise agreed the Carrier will not exchange any pallets with any person and the Sender must not transfer any pallets to any account the Carrier may have with a pallet hirer.
3. Sender's Obligations – The Sender must:
- 3.1 not tender for transport any volatile or explosive goods or goods which are or may become dangerous, inflammable or offensive (including radioactive materials) or which are or may become liable to damage any person or property without first presenting to the Carrier a full written description disclosing the nature of those goods;
 - 3.2 make the goods conform to the Receiver's requirements and must pay any expense incurred by the Carrier if the Sender fails so to do.
4. Sender's Warranties and Indemnities. The Sender warrants:
- 4.1 it has fully and adequately described the goods, their nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the Goods and that, given their nature, the goods are packed in a proper way to withstand the ordinary risks of transport;
 - 4.2 the person delivering the goods to the Carrier for transport is authorised to do so;
 - 4.3 it is either the owner or the authorised agent of the owner of the Goods and it accepts these conditions for itself and the Receiver as well as for any other Person for whom the Sender is acting; and
 - 4.4 neither it nor any other person will make an allegation or claim against the Carrier or any other person about the transport and the Sender indemnifies the Carrier from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties, the Sender's obligations or these conditions.
5. The Carrier's Rights.
- 5.1 If, in the Carrier's opinion, the goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the Carrier may at any time and at the Sender's cost destroy, dispose of, abandon or render them harmful without compensation to the Sender, Receiver or Third Party and without prejudice to the Carrier's right to any charges.
 - 5.2 If the Sender instructs the Carrier to use a particular method of transport or to use sea, rail, road or air the Carrier will give priority to that method but if the Carrier cannot conveniently adopt it, the Carrier may transport the goods by another method.

TERMS AND CONDITIONS – ROAD CARRIAGE OF GOODS

- 5.3 The Carrier is authorised to deliver the goods at the address given to the Carrier by the Sender or any other address directed by the Receiver and the Carrier will be taken to have delivered the goods if at either address the Carrier obtains from any person an acknowledgement of delivery.
- 5.4 If the address is unattended or the Receiver fails to take delivery of the goods, the Carrier may:
- 5.4.1 Deposit the Goods at the Receiver's address;
 - 5.4.2 Store the Goods; or
 - 5.4.3 Return the Goods to the Sender and its action under 5.4.1, 5.4.2 or 5.4.3 will constitute delivery.
- 5.5 If the transport method is rail and the Receiver's address is a town or place where the Carrier does not have a receiving depot, the Carrier will be taken to have delivered the Goods if they are delivered to the nearest railhead.
- 5.6 If any identifying document or mark is lost, damaged, destroyed or defaced the Carrier may open any document, wrapping, package or other container in which the goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership or destination.
- 5.7 The Carrier may consolidate the goods with others and as principal or agent may arrange for transport of the goods by any sub-contractor on any terms.
- 5.8 The Carrier may lease, hire or use any container, pallet or rail wagon in which or on which the goods may be placed or packed and subject to the terms of any Bill of Lading, hire lease agreement, equipment hand-over agreement, interchange receipt or other contract for transport whether by sea, rail, road or air and to give any receipt for any container or pallet or rail wagon.
- 5.9 If the Carrier believes it is necessary or desirable, the Carrier may deviate from the usual route or method of transport.
6. Charges.
- 6.1 The Sender must or, if a person other than the Sender is nominated on the front, then that person must:
- 6.1.1 unless otherwise agreed, pay the Carrier the charges in Australian dollars within seven (7) days of the date of the Carrier's Tax Invoice;
 - 6.1.2 pay freight by weight or measurement as the Carrier selects;
 - 6.1.3 if the goods are at any time re-weighted or re-measured, pay any proportional freight and, if required by the Carrier, an additional charge of \$15.00 per item;
 - 6.1.4 pay any charge for demurrage at the rate charged to the Carrier directly or indirectly by any railway or shipping authority or other person;
 - 6.1.5 pay the Carrier's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise, or warehouse authority or other Person;

TERMS AND CONDITIONS – ROAD CARRIAGE OF GOODS

- 6.1.6 if any of these goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) which the Carrier becomes liable to pay or pays;
 - 6.1.7 supply or pay for labour or machinery or both to load or unload the goods;
 - 6.1.8 if the Carrier requires, pay an additional charge at industry rates if the Receiver is not present during normal trading hours or the time specified, or if there is any delay outside the Carrier's control in loading or unloading greater than 30 minutes;
 - 6.1.9 pay the cost, expense or loss to the Carrier of destruction or disposal under Clause 5.1, storage and return under clause 5.4 or of opening or inspecting under Clause 5.6;
 - 6.1.10 compensate the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the goods;
 - 6.1.11 if any charges are not paid on the due date for payment, pay interest to the Carrier on the unpaid charges at a rate of 4% above the rate charged by the NAB Bank to Prime Borrowers on overdraft accounts in excess of \$100,000.00, such interest being added to the Sender's account monthly, however such interest will not be charged whilst all payments are being made within time and pay any charge or amount owing to the Carrier under any other contract;
 - 6.1.12 if a copy of a contract or any part is required, pay the Carrier a charge of \$5.00; and
 - 6.1.13 pay the Carrier any costs not recouped out of the proceeds of sale of the Goods under 7.2.
- 6.2 If a person other than the Sender is nominated to pay the charges and doesn't do so within seven (7) days of the date for payment, the Sender must pay the charges and a transfer charge of \$10.00 immediately upon the Carrier's demand.
- 6.3 The Carrier's charges are earned as soon as the goods are picked up and whether they are delivered to the Receiver or not and whether damaged or not.
- 6.4 The Carrier will not refund any payment for charges under any circumstances.
- 6.5 The Carrier's quoted charges represent the exclusive value of the supply for GST purposes.
7. Lien.
- 7.1 The Carrier has a general lien on the goods and on any other goods of the Sender for all charges due or which become due on any account whether for transport of the goods or any other goods or any other service of the Carrier.
 - 7.2 If the charges are not paid or the Sender or Receiver fails to take delivery or return of the goods, the Carrier may without notice and, in the case of perishable goods immediately:
 - 7.2.1 store the goods as the Carrier thinks fit at the Sender's risk and expense, or
 - 7.2.2 open any package and sell all or any of the goods as the Carrier thinks fit and apply the proceeds to discharge the lien and costs of sale.

TERMS AND CONDITIONS – ROAD CARRIAGE OF GOODS

- 7.3 The Carrier may deduct or set-off from any monies due from the Carrier to the Sender under any contract, debts and monies due from the sender to the Carrier under these conditions or any contract.
8. Claims.
- 8.1 If the Carrier is liable for damage to or loss of the goods or any part of the goods, no claim for the loss or damage may be made unless notice of the claim is lodged in writing at the office of the Carrier within 48 hours of the date of delivery or, for non-delivery, within seven (7) days of the anticipated date of delivery.
- 8.2 The failure to notify a claim within a time under 8.1 is evidence of satisfactory performance by the Carrier of its obligations.
- 8.3 Despite any other condition except Clause 10, the Carrier will be discharged from all liability for loss or damage or the transport of the goods unless an action is brought within six (6) months of delivery or the anticipated date of delivery.
9. Exclusions and Limitations.
- 9.1 Subject to Clause 10, the Carrier excludes from these conditions all conditions, warranties and terms implied by statute, general law or custom.
- 9.2 Subject to Clause 10, the Carrier excludes all liability to any person, including the Sender, for acts or omissions of the Carrier in tort (including negligence), contract, bailment or otherwise for loss of, damage to or deterioration or contamination for the goods, or any delay, non-delivery or other failure to supply the transport or arising out of the goods, the transport or these conditions.
- 9.3 Subject to Clause 10, the Carrier excludes all liability for, and the Sender and Receiver release and indemnify the Carrier against all loss, damage, cost and expense from any claim by any person in tort (including negligence), contract, bailment or otherwise for loss or damage to any property, injury to, or death of any person arising out of any acts or omissions of the Carrier or any or all of the goods, the transport, any delay, non-delivery or other failure to supply the transport of these conditions.
- 9.4 The exclusions, releases and indemnities in Clause 9.2 and 9.3 extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if the Carrier knows they are possible or otherwise foreseeable.
- 9.5 These conditions apply in all circumstances arising from a fundamental breach of contract or breach of a fundamental term.
- 9.6 The Carrier, in addition to acting for itself, also acts as agent of the trustee or each of its servants, agents and sub-contractors so they are entitled to the full benefit of these conditions, including any exclusions or limitations of liability, to the same extent as the Carrier.
- 9.7 Even if the Carrier breaches any of these conditions, all the rights immunities and limitations of liability in these conditions continue to have their full force and effect in all circumstances.

TERMS AND CONDITIONS – ROAD CARRIAGE OF GOODS

9.8 Despite the Transport, the Carrier is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for any person.

10. Trade Practices Act.

These conditions are subject to any applicable implied warranty in the Trade Practices Act 1974 which cannot be excluded, restricted or modified.

11. Law.

These conditions are governed and must be construed under the laws of the State of Queensland and the parties submit to the exclusive jurisdiction for the courts of that State.

12. Severability.

If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.

13. Variations and Waiver.

13.1 The Carrier is not bound by any waiver, discharge or release of a condition or any agreement which varies these conditions unless it is in writing and signed for the Carrier by an authorised officer.

13.2 If the Carrier waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.