

Kwik 'n' Kool



Because You Deserve More

REFRIGERATED COURIERS

TERMS AND CONDITIONS OF CONTRACT

1. In these conditions:- "Carrier" shall mean Kwik 'N' Kool Pty Ltd, its servant and agents; "Consignor" shall include any person (or Company) who delivers goods to the carrier for the provision of services; "Goods" shall mean the cargo, or any part of the cargo, accepted from the Consignor, including any containers, packaging, or anything utilised in the carriage and/or storage to contain the cargo, or any part of the cargo: "Sub-Contractor" shall mean any person, firm or Company, or Railways operated by the Commonwealth of any State who, pursuant to the Contract or arrangement with any other person (whether or not the Carrier), performs or agrees to perform the cartage and/or storage, or any part thereof, of the goods, or any part thereof.

2. The Carrier is not a common carrier and will accept no liability as such. All goods are carried or transported and all storage and other services are performed by the Carrier subject only to these terms and conditions. THE CARRIER RESERVES THE RIGHT TO REFUSE THE CARRIAGE OR TRANSPORT OR STORAGE OF GOODS FOR ANY PERSON, CORPORATION OR COMPANY AND THE CARRIAGE OR TRANSPORT OR STORAGE OF ANY CLASS OF GOODS AT ITS SOLE DISCRETION.

3. It is agreed that the person delivering the goods to the Carrier is authorised to sign this Consignment Note for the Consignor. Where goods are accepted for forwarding by rail to an address to a town or other person where the Carrier has no receiving depot the goods will be deemed duly delivered according to the Contract if they are delivered to the nearest rail head.

4. The Consignor warrants with the Carrier that the Consignor is either the owner or the authorised agent of the owner of any goods or property the subject matter of the Contract of Cartage and, by entering into this Contract, the Consignor accepts these Conditions of Contract for the Consignee as well as for all other persons on whose behalf the Consignor is acting.

5. Without prejudice to the generally of the foregoing, the Consignor undertakes to indemnify the Carrier in respect of the liability whatsoever in respect of the goods to any person (other than the Consignor) who claims to have or who has or who may hereafter have any interest in the goods, or any part thereof.

6. Every exemption, limitation, condition, and liberty herein contained and every right, exemption from liability, defence, and immunity or whatsoever nature applicable to the Carrier of to which the Carrier is entitled hereunder shall also be available and shall extend to protect:- a. All Sub-Contractors; b. Every servant or agent of the Carrier or a Sub-Contractor. c. Every other person (other than the Carrier) by who the carriage, transport and/or storage of the goods, or any part thereof, are provided, and d. All persons who are or may be vicariously liable for the acts or omission of any person filling with (a), (b), or © hereof and, for the purpose of this clause, the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall, to this.

7. In any event, subject only the Clause 22 thereof, the goods are at the risk of the consignor and not the Carrier and the Carrier shall not be responsible, tort or Contract or otherwise for any (and the consequences of any) loss of or damage to or deterioration of the goods or mis-delivery or failure to deliver or delay in delivery of the goods, including any perishable goods, either in loading or unloading, in transit or in storage for any reason whatsoever, including but without limiting the foregoing, the negligence or breach of Contract or wilful act or default of the Carrier or others and this clause shall apply to all (and the consequences of all) such loss of or damage to or deterioration of the goods of mis-delivery or failure to deliver or delay in delivery of the goods as aforesaid, whether or not the same occurs in the course of performance by or on behalf of the Carrier of the Contract or in events which are the contemplation of the Carrier and/or the Consignor or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of this Contract or a breach of a fundamental term hereof. The disclaimer extends to include not only loss of or damage to the goods but loss damage or injury to any person, property or thing damaged during any loading of the goods (in the event of this contact of carriage including any loading or unloading) and to include any loss consequentially or otherwise arising from any loss, damage or injury aforesaid however caused including but no limited to any negligence or breach of contract or wilful act or default of the Carrier or others, whether or not the loss, damage or injury occurs in the course of performance by or on behalf of the Carrier of the Contract or in events which are in the contemplation of the Carrier and/or the Consignor or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of this contract or a breach of a fundamental term hereof.

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- 8.** The Consignor acknowledges and agrees that the loss of or damage to the goods, or any part thereof, shall not of itself constitute prima facie evidence of negligence by the Carrier or breach by the Carrier of the agreement made by it in respect of the goods or of any matter, fact or circumstance which may give rise to any liability whatsoever on the part of the Carrier.
- 9.** The terms and conditions and, in particular and without limiting the generality of the limitations and exclusion of the Carrier's liability herein contained shall continue to have their full force and effect in the circumstances and notwithstanding any breach of the Contract of any conditions hereof by the Carrier.
- 10.** The Consignor hereby authorises any deviation from the usual route of carriage of goods which may, in the absolute discretion of the Carrier, be deemed desirable or necessary in the circumstances. The Carrier is authorised to deliver the goods at the address nominated to the Carrier by the consignor for that purpose and, without prejudice to the foregoing. It is expressly agreed that the Carrier shall be conclusively, presumed to have delivered the goods in accordance with the Contract if, at the address, the Carrier obtains from any person a receipt or sine delivery docket for the goods.
- 11.** If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier, then the Carrier may, at its option, deposit the goods at the place (which shall be conclusively presumed to be due delivery hereunder).
- 12.** The Consignor shall be and remain responsible to the Carrier for all the Carrier's proper charges incurred for any reason by the Carrier in the performance of the Contract, including but without limiting the foregoing, the cost of loading and unloading the goods, and all fees, taxes (other than income tax), custom duties, stamp duties and other imports payable to the public authority by reason of the performance of the Contract and also by any demurrage caused by reason outside the Carrier's control. **13.** The Carrier's charges shall be deemed fully earned as soon as the goods are loaded and dispatched from the Consignor's premises and whether the goods are delivered to the Consignee or not, and whether damaged or otherwise. Under no circumstances will any payment of the Carrier's charges be refunded.
- 14.** The goods and any document relating thereto are accepted subject to a general lien for all charges now due or which may hereafter become due to the Carrier by the Consignor on any account, whether in respect of the goods comprised herein or in respect of any other goods for which the Carrier provides transport or any other service. If the lien is not satisfied and/or the goods are not collected, the Carrier may, at its option and without any notice, in the case of perishable goods forthwith and in any other case upon the expiration of one (1) month either:- (a) Remove such goods, or part thereof, and store them in such place or manner as the Carrier shall think proper and at the risk and expense of the Consignor, as the case may be, or (b) Open any package and sell such goods, or part thereof, upon such term as it shall think fit and apply the proceeds in or towards the discharge of the lien and costs of sales without being liable to any person for any loss or damage thereby caused.
- 15.** The Consignor warrants with the Carrier that the Consignor has complied with all laws (including, where necessary, the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) relating to the notification, description (on the Consignment Note or separately), packaging, labelling, carriage, or storage of the goods and the goods are packed in a manner adequate to withstand the ordinary risks of carriage and/or storage, having regard to their nature, and the expenses and charges of the Carrier in complying with any such law or with any order or requirement, thereunder or with the requirements of any harbour, dock, railway, shipping, customs warehouse, or other authority or Company shall be paid by the Consignor. Additional freight charges shall be paid on such goods if deemed necessary by the Carrier.
- 16.** The Consignor authorises the Carrier to open the goods or any documents, wrapping, packaging, or other container in which the goods are placed or carried at any time to determine their nature or condition or to determine their ownership or destination (where any Consignment Note or identifying document or mark is lost, damaged, destroyed or defaced) or for any other purpose which the Carrier, in its absolute discretion, may consider desirable or necessary and the Carrier shall not be under any liability whatsoever as a result of so doing.

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- 17.** When the Carrier is required to load or unload any liquids, part liquids, substances, or any commodities or products into bulk tanks or vessels, drums, or containers, the Carrier shall not be liable for any loss, damage, or contamination of the product during any such loading or unloading operation or packing, whilst such product is in transit by any means of transportation or whilst goods are held in store or bulk storage tanks for any reason whatsoever.
- 18.** It is agreed that no servant or agent of the Carrier or any other person has power to waive or vary any of the terms and conditions hereof unless such waiver or variations is writing, signed by the Carrier's principals.
- 19.** Notwithstanding any other provision hereof other than Clause 22, hereof, if by express agreement or operation of law the Carrier becomes responsible for loss, damage or injury (and the consequences of loss, damage or injury) to the goods, or any part thereof, or to any person property or thing, no claim in respect of such loss, damages or injury (or the consequences of any such loss, damage or injury) may be made unless notice of the claim is lodged in writing at the principal place of business of the Carrier within seventy-two (72) hours after delivery was effected or would, in the ordinary course of business, have been effected and , further, the Carrier shall in any event, be discharged from all liability whatsoever in respect of the goods, person, property or thing unless suit is brought with six (6) months from the date on which such notice is lodged; and time shall be the essence of this clause.
- 20.** All goods received by the Carrier for carriage are accepted subject to the condition that the Carrier shall accept no responsibility for the collection of cash on delivery or any other payments on behalf of the Consignor or any other person. When goods are tendered by any person with instructions for the Carrier to collect any such payments, the Carrier shall not be bound by such instructions, notwithstanding that the Carrier may accept the goods as tendered and perform other services of carriage in relation to those goods.
- 21.** It is hereby agreed that if any provision, or part of any provision, of this Contract is unenforceable, such unenforceability shall not affect any other part of such provision or any other provision hereof.
- 22.** Notwithstanding anything herein contained, the Carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this Contract and prevents the exclusion, restriction ,or modification of any such warranty.
- 23.** TERMS - We reserve the right to cancel special rates and recharge for our services where unauthorised extended terms are taken.
- 24.** The current standard Terms and Conditions of contract are subject to alteration from time to time without notice and customers should ensure that they obtain an up to date copy.