

1. Definitions

- 1.1 "O'Connors" shall mean D.P.W.P Investments Pty Ltd T/A O'Connors Carrying Service, and its successors and assigns or any person acting on behalf of and with the authority of D.P.W.P Investments Pty Ltd T/A O'Connors Carrying Service.
- 1.2 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom O'Connors may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clauses 1.2(a) and 1.2(b).
- 1.3 "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of O'Connors' Services.
- 1.5 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of O'Connors' Services, or for storage by O'Connors.
- 1.6 "Services" shall mean all services supplied by O'Connors to the Customer (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto including the offering of any advice or recommendations.
- 1.7 "Price" shall mean the cost of the Services as agreed between O'Connors and the Customer subject to clause 6 of this contract.

2. The Commonwealth Competition and Consumer Act 2010 (CCA) and Fair Trading Acts

- 2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 2.3 Liability of O'Connors arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by O'Connors:
- (a) rectifying the Services; or
 - (b) supplying the Services again; or
 - (c) paying for the Services to be supplied again.
- 2.4 If O'Connors is required to rectify, re-supply, or pay the cost of re-supplying the Services under clause 2.3 or the CCA, but is unable to do so, then O'Connors may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Customer which were not defective.

3. Acceptance

- 3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts Services provided by O'Connors.
- 3.2 These terms and conditions may only be amended with O'Connors' consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and O'Connors.
- 3.3 These terms and conditions are to be read in conjunction with O'Connors' quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by O'Connors to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

4. Electronic Transactions Act 2000

- 4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Change in Control

- 5.1 The Customer shall give O'Connors not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by O'Connors as a result of the Customer's failure to comply with this clause.

6. Price and Payment

- 6.1 At O'Connors' sole discretion the Price shall be either;
- (a) as indicated on invoices provided by O'Connors to the Customer in respect of Services supplied; or

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- (b) O'Connors' quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon O'Connors provided that the Customer shall accept in writing O'Connors' quotation within thirty (30) days.
- 6.2 O'Connors may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to O'Connors beyond the reasonable control of O'Connors (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 6.3 O'Connors may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 6.4 At O'Connors' sole discretion;
- (a) payment shall be due on delivery of the Goods, or
- (b) payment for approved Customer's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 6.5 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 6.6 Payment will be made by cheque, or by credit card, or by direct credit/electronic banking, or by any other method as agreed to between the Customer and O'Connors.
- 6.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to O'Connors an amount equal to any GST O'Connors must pay for any supply by O'Connors under this or any other agreement for providing O'Connors' Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7. O'Connors not a Common Carrier**
- 7.1 O'Connors is not a common carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by O'Connors subject only to these conditions and O'Connors reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 8. Customer-Packed Containers**
- 8.1 If a container has not been stowed by or on behalf of O'Connors, O'Connors shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.
- 9. Nomination of Sub-Contractor**
- 9.1 The Customer hereby authorises O'Connors (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as O'Connors. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled O'Connors shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 10. O'Connors' Servants or Agents**
- 10.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of O'Connors which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify O'Connors and any such servant or agent against all consequences thereof.
- 11. Method of Transport**
- 11.1 If the Customer instructs O'Connors to use a particular method of carriage whether by road, rail, sea or air O'Connors will give priority to the method designated but if that method cannot conveniently be adopted by O'Connors the Customer shall be deemed to authorise O'Connors to carry or have the Goods carried by another method or methods.
- 12. Route Deviation**
- 12.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of O'Connors be deemed reasonable or necessary in the circumstances.
- 13. Charges Earned**
- 13.1 O'Connors' charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

14. Demurrage

- 14.1 The Customer will be and shall remain responsible to O'Connors for all its proper charges incurred for any reason. A charge may be made by O'Connors in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of O'Connors. Such permissible delay period shall commence upon O'Connors reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.

15. Dangerous Goods

- 15.1 Unless otherwise agreed in advance in writing with O'Connors the Customer or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Customer shall be liable for and hereby indemnifies O'Connors for all loss or damage whatsoever caused by any Dangerous Goods.

16. Consignment Note

- 16.1 It is agreed that the person delivering any Goods to O'Connors for carriage or forwarding is authorised to sign the consignment note for the Customer.

17. Customer's Responsibility

- 17.1 The Customer expressly warrants to O'Connors that the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.

18. Delivery

- 18.1 O'Connors is authorised to deliver the Goods at the address given to O'Connors by the Customer for that purpose and it is expressly agreed that O'Connors shall be taken to have delivered the Goods in accordance with this contract if at that address O'Connors obtains from any person a receipt or a signed delivery docket for the Goods.
- 18.2 O'Connors may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 18.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
- 18.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 18.5 Any time specified by O'Connors for the delivery of Goods is an estimate only and O'Connors will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that O'Connors is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then O'Connors shall be entitled to charge the Customer any additional costs incurred by O'Connors as a direct consequence of any resultant delay or rescheduling of the delivery.

19. Loss or Damage

- 19.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- (a) O'Connors shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of O'Connors or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Customer will indemnify O'Connors against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by O'Connors in connection with the Goods.

20. Insurance

- 20.1 The Customer acknowledges that:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of O'Connors; and
- (b) O'Connors is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will O'Connors be under any liability with respect to the arranging of any such insurance and no claim will be made against O'Connors for failure to arrange or ensure that the Goods are insured adequately or at all.

21. Claims

- 21.1 Notwithstanding clauses 19 and 20 in the event that the Customer believes that they have any claim against O'Connors then they must lodge any notice of claim for consideration and determination by O'Connors within seven

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(7) days of the date of delivery, or for non delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.

21.2 The failure to notify a claim within the time limits under clause 21.1 is evidence of satisfactory performance by O'Connors of its obligations.

22. Default and Consequences of Default

22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at O'Connors' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

22.2 If the Customer owes O'Connors any money the Customer shall indemnify O'Connors from and against all costs and disbursements incurred by O'Connors in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, O'Connors' contract default fees, and bank dishonour fees).

22.3 Further to any other rights or remedies O'Connors may have under this contract, if a Customer has made payment to O'Connors by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by O'Connors under this clause 22, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this agreement.

22.4 Without prejudice to any other remedies O'Connors may have, if at any time the Customer is in breach of any obligation (including those relating to payment) O'Connors may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. O'Connors will not be liable to the Customer for any loss or damage the Customer suffers because O'Connors exercised its rights under this clause.

22.5 Without prejudice to O'Connors' other remedies at law O'Connors shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to O'Connors shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to O'Connors becomes overdue, or in O'Connors' opinion the Customer will be unable to meet its payments as they fall due; or

(b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

23. O'Connors' Rights to a Lien on Goods

23.1 O'Connors shall have a right to take a particular and general lien on any Goods the property of the Customer or a third party owner which are in the possession or control of O'Connors (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to O'Connors (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and O'Connors shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. O'Connors shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

23.2 Notwithstanding clause 23.1 nothing shall prejudice O'Connors' rights to use any of O'Connors' other rights and remedies contained in this agreement to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 23.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

24. Personal Property Securities Act 2009 ("PPSA")

24.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

24.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:

(a) all Incidental Items previously supplied by O'Connors to the Customer;

(b) all Incidental Items will be supplied in the future by O'Connors to the Customer; and

(c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to O'Connors for Services – that have previously been provided and that will be provided in the future by O'Connors to the Customer.

24.3 The Customer undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which O'Connors may reasonably require to;

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 24.3(a)(i) or 24.3(a)(ii);

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- (b) indemnify, and upon demand reimburse, O'Connors for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Incidental Items charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of O'Connors;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Incidental Items in favour of a third party without the prior written consent of O'Connors.
- 24.4 O'Connors and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 24.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 24.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 24.7 Unless otherwise agreed to in writing by O'Connors, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 24.8 The Customer must unconditionally ratify any actions taken by O'Connors under clauses 24.3 to 24.5.
- 24.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

25. Security and Charge

- 25.1 In consideration of O'Connors agreeing to supply Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 25.2 The Customer indemnifies O'Connors from and against all O'Connors' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising O'Connors' rights under this clause.
- 25.3 The Customer irrevocably appoints O'Connors and each director of O'Connors as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 25 including, but not limited to, signing any document on the Customer's behalf.

26. Privacy Act 1988

- 26.1 The Customer agrees for O'Connors to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by O'Connors.
- 26.2 The Customer agrees that O'Connors may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 26.3 The Customer consents to O'Connors being given a consumer credit report to collect overdue payment on commercial credit.
- 26.4 The Customer agrees that personal credit information provided may be used and retained by O'Connors for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 26.5 O'Connors may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 26.6 The information given to the CRB may include:
- (a) personal information as outlined in 26.1 above;
 - (b) name of the credit provider and that O'Connors is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and

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O'Connors has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);

(g) information that, in the opinion of O'Connors, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

26.7 The Customer shall have the right to request (by e-mail) from O'Connors:

(a) a copy of the information about the Customer retained by O'Connors and the right to request that O'Connors correct any incorrect information; and

(b) that O'Connors does not disclose any personal information about the Customer for the purpose of direct marketing.

26.8 O'Connors will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

26.9 The Customer can make a privacy complaint by contacting O'Connors via e-mail. O'Connors will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

27. Cancellation

27.1 O'Connors may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Customer shall repay to the Customer any sums paid in respect of the Price. O'Connors shall not be liable for any loss or damage whatever arising from such cancellation.

27.2 In the event that the Customer cancels the delivery of Goods or the provision of any Services then the Customer shall be liable for any loss incurred by O'Connors (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

28. General

28.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

28.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

28.3 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Murwillumbah in New South Wales.

28.4 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by O'Connors.

28.5 O'Connors reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which O'Connors notifies the Customer of such change. Except where O'Connors supplies further Services to the Customer and the Customer accepts such Services, the Customer shall be under no obligation to accept such changes.

28.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

28.7 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.

28.8 The failure by O'Connors to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect O'Connors' right to subsequently enforce that provision.