

# TERMS & CONDITIONS OF CARRIAGE

## 1. Introduction

- 1.1. These terms and conditions of carriage, Credit Application, any purchase orders and Our Privacy Policy, comprise the terms of a legal agreement between the person or entity listed in the Credit Application (“**Sender**” or “**Your**”) and DNR Logistics Pty Ltd (ACN 102 989 426) (“**Carrier**”, “**Us**” or “**Our**”) (“**agreement**”) for the provision of delivery and collection services, as more particularly described in the relevant purchase order (“**Order**”). The Sender acknowledges that it has read and agree to the terms contained herein, and agree to be bound by them.
- 1.2. The parties may enter into one or more Orders. Each Order will constitute a separate agreement for the provision of Services on the terms and conditions of that Order (and will incorporate the terms and conditions of this agreement).
- 1.3. In the event of any inconsistency between this agreement and any Order, the Order shall take precedence. Further, no terms or conditions set out in any invoice or purchase order (or similar), issued by the Sender, will override this agreement or Order (and the agreement and Order will prevail, as the context permits).

## 2. Definitions

The definitions in this clause apply in this agreement and each Order (unless otherwise expressly stipulated in any Order):

- 2.1. **Affiliate** means in relation to any party, a person which, directly or indirectly, (i) is Controlled by that party; or (ii) Controls that party; or (iii) is Controlled by a person referred to in (ii) above, and for this purpose **Control** means the power of a person to secure (whether by the holding of shares, possession of voting rights or by virtue of any powers conferred by articles of association, constitution, partnership agreement or other document regulating such person) that the affairs of another are conducted in accordance with its wishes;
- 2.2. **Attaches** has the meaning in the PPSA;
- 2.3. **Carrier** has the meaning in clause 1.1 and where the context permits, includes Our Representatives and Affiliates;
- 2.4. **Chain of Responsibility Policy** means the Carrier’s policy for complying with Our chain of responsibility obligations under the National Heavy Vehicle Law Act 2012 and associated legislation, regulations and codes.
- 2.5. **Credit Application** means the application for credit completed by the Sender;
- 2.6. **Dangerous Goods** has the meaning in section 3 of the Dangerous Goods Act 1985 (Vic). For example, Goods that are volatile, explosive, flammable, hazardous or otherwise damaging or dangerous;
- 2.7. **Force Majeure Event** means any cause affecting the performance by of its obligations under this agreement arising from acts, events, omissions or non-events beyond its control, including acts of God, failure of a utility service or transport or telecommunications network, riots, civil commotion, computer hacking, war, acts of terrorism, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or earthquake or any

disaster or adverse weather, pandemic or epidemic, governmental actions, default or non-performance of hosting or data centre providers or other suppliers or Sub-contractors, labour disputes, or any other failure, act or omission in the Carrier’s supply chain;

- 2.8. **Goods** means the cargo to be carried by the Carrier and includes any accompanying container, packaging, pallets or handling equipment;
- 2.9. **Insolvency Event** means a liquidation or winding up, the appointment of a controller, administrator, receiver, manager or similar insolvency administrator to a party or any substantial part of its assets or any event that has a substantially similar effect to the above events;
- 2.10. **Permitted Goods** means Goods which: (a) are not, or may not become, Dangerous Goods; (b) are not fragile; or (c) the Carrier, at its absolute discretion, has agreed in writing may be consigned;
- 2.11. **PPSA** means the Personal Property Securities Act 2009 (Cth) and where applicable includes all regulations made pursuant to it;
- 2.12. **Privacy Laws** means any applicable laws and codes of practice dealing with privacy, including the Privacy Act 1988 (Cth) (as amended) and the Australian Privacy Principles, and any other legislation, codes and policies relating to the handling of Personal Information applicable to the jurisdiction in which the Sender carries on its business;
- 2.13. **Privacy Policy** means Our privacy policy available at [www.dnrlogistics.com.au](http://www.dnrlogistics.com.au) or any other website notified by Us from time to time;
- 2.14. **Register** has the meaning in the PPSA;
- 2.15. **Relevant Laws** means any relevant rules of common law, principles of equity, international, federal, state and local laws, statutes, rules, regulations, proclamations, ordinances and by-laws and other subordinate legislation, rulings, or legal requirements anywhere in the world, including the (i) Privacy Laws; (ii) Dangerous Goods Act 1985 (Vic); and the (ii) Australian Code for the Transport of Dangerous Goods by Road and Rail;
- 2.16. **Representative** means, in respect of a party, any person acting for or on behalf of the party and includes any director, officer, employee, contractor or agent, of the party (and in the case of the Sender, includes Sub-Contractors);
- 2.17. **Security Interest** has the meaning in the PPSA;
- 2.18. **Sender** has the meaning in clause 1.1 and where the context permits, includes Your Representatives and Affiliates;
- 2.19. **Services** means the (i) consignment, collection and delivery services; and/or (ii) storage, loading, unloading, freight forwarding, packing and unpacking of Goods, to be provided by the Carrier to the Sender pursuant to an Order; and
- 2.20. **Sub-Contractor** means any person, not being a Carrier employee, who the Carrier engages to perform all or any part of the Services.

## 3. Not common carrier

The Carrier is not a common carrier and does not accept any liability as such, and may, at its absolute discretion, refuse to carry any goods or classes of goods for any Sender, including Permitted Goods.

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### 4. Sender obligations and warranties

- 4.1. The Sender will: (a) only consign Permitted Goods; (b) comply with all Relevant Laws in respect of the Permitted Goods, including, without limitation, all Relevant Laws relating to their notification, classification, description, labelling, transport and packaging. The Sender acknowledges that the Carrier is reliant on the Sender alone for direction that the Permitted Goods are accurately described, labelled and packaged for transport in manner to withstand the ordinary risks of their transportation, storage and handling; (c) ensure the Permitted Goods conform to the requirements of any party who is to receive the Permitted Goods and must pay any expense incurred by the Carrier if it fails to do so; and (d) immediately notify the Carrier of any change in the number, weight or dimensions of the Permitted Goods and/or any changes to the Services, including, but not limited to postponement, cancellation, change of address and change of consignee.
- 4.2. The Sender warrants that: (a) the Sender has fully and accurately described the Permitted Goods and all other information provided by the Sender is true and accurate; (b) the Sender will comply with all Relevant Laws in respect of the Permitted Goods; (c) the Sender will not consign Dangerous Goods; (d) any third party delivering the Permitted Goods to the Carrier is the Sender's authorised agent (and is authorised to enter into this agreement); and (e) the Sender is authorised to enter into this agreement and consign the Permitted Goods.
- 4.3. Without prejudice to the Carrier's rights under this agreement or under any Relevant Law, if in the Carrier's opinion, the Goods are not, or may not be, a Permitted Good, the Carrier may at any time and with or without notice to the Sender and at the Sender's cost, store, destroy, dispose of, abandon or render the Goods harmless without compensation or liability to the Sender or any third party.

### 5. Performance of the Services

- 5.1. Subject to the Sender complying with its obligations under this agreement, the Carrier will provide the Sender with the Services in accordance with the relevant Order and at all times in accordance with Our Chain of Responsibility Policy (as amended from time to time) (which is incorporated into this agreement by reference).
- 5.2. In the event Carrier fails to provide the Services in accordance with clause 5.1, the Carrier will, at its expense, use reasonable endeavours to correct any such non-conformance, or provide the Sender with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Sender's sole and exclusive remedy for any breach of clause 5.1.
- 5.3. The method of carrying out the Services, including the mode of transportation, route and handling of the Permitted Goods, will be at the Carrier's absolute discretion. The Carrier may, at its absolute discretion and without notice to the Sender, deviate from the usual method, mode or route of carriage where the Carrier, in its absolute discretion, deems necessary or desirable in the

circumstances (including where necessary to comply with Our Chain of Responsibility Policy).

### 6. Delivery

- 6.1. The Carrier shall use reasonable endeavours to deliver the Permitted Goods as specified in the Order. The Carrier is deemed to have delivered the Permitted Goods when the Permitted Goods are delivered to the delivery address given by the Sender, and the Sender will ensure that any person who collects or takes delivery of the Permitted Goods is authorised to receive the Permitted Goods.
- 6.2. Acceptance of delivery by such representative shall constitute conclusive evidence that the Permitted Goods were delivered. If required, the duly authorised representative shall sign a receipt confirming acceptance.
- 6.3. If the Carrier is unable to effect delivery of the Permitted Goods to the delivery address given by the Sender for any reasons (including the failure on the consignee to take delivery within a reasonable time), the Carrier shall, in its absolute discretion, be entitled to: (a) effect delivery of the Permitted Goods by leaving the Permitted Goods at the delivery address. Delivery by the Carrier will constitute conclusive evidence that the Permitted Goods were delivered to the delivery address and the Carrier will not be required to provide proof of delivery from any person present at the delivery address; or (b) handle and store the Permitted Goods at the Sender's risk and in such manner as the Carrier may determine. The Sender will pay any handling and storage fees at the Carrier's prevailing rates at the time. The Carrier will charge the Sender additional fees to effect delivery of the Permitted Goods, and Carrier will not be liable to the Sender or anyone else for any costs, losses or damages caused to the Sender (or anyone else) by any delays or failure to effect delivery.
- 6.4. The Permitted Goods will remain at the sole risk of the Sender at all times, including the risk of loss, theft, damage or destruction of the Permitted Goods, even where the Carrier has breached this agreement. The Sender will, at its own expense, maintain insurance in respect of the Permitted Goods to a value no less than the full replacement value and comprehensively insurer against Force Majeure Events, and such other risks as the Carrier may nominate.
- 6.5. If any identifying document or mark is lost, damaged, destroyed or defaced, the Carrier may (without liability to the Sender or anyone else) take any appropriate measures to identify the Permitted Goods (including by opening any packaging).
- 6.6. The time for delivery of the Permitted Goods will not be regarded as being of the essence and delivery times are estimates only. If the delivery of the Permitted Goods is delayed for any reason, the Carrier will not be liable to the Sender, consignee or anyone else for any costs, losses or damages caused to the Sender, consignee or anyone else by any delays in delivery. The Carrier will use reasonable endeavours to promptly notify the Sender of any delays in delivering the Permitted Goods.

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### 7. Fees

- 7.1. The Sender will pay the fee for each of the Services as set out in the relevant Order (**Fees**). The Sender acknowledges that the Fees are payable to the Carrier irrespective of whether the Permitted Goods are: (a) delivered or not; and/or (b) lost, stolen or damaged prior to, or after delivery.
- 7.2. In addition to the Fees, the Sender will pay: (a) good and services tax (**GST**), tariffs, import and export taxes and duties and any other taxes and government charges, levies or fines in relation to the delivery of the Permitted Goods; (b) charges for payments made by credit card; (c) charges for the delivery of the Permitted Goods, including, without limitation, handling, storage and loading or unloading of the Permitted Goods; (d) any costs the Carrier may charge or incur where the Permitted Goods have been inaccurately or incompletely described, weighed or measured; (e) any other costs the Carrier may incur in connection with, or arising out of, the Services (where or not contemplated at the date of this agreement), including insurance costs and third party costs; and (f) any costs incurred by the Carrier arising out of, or in connection with, any delay outside the Carrier's control in the loading or unloading of the Permitted Goods that exceeds 30 minutes.
- 7.3. To maximum extent permitted by Relevant Laws, the Carrier will not refund any Fees or any other amount paid under this agreement.

### 8. Payment

- 8.1. If requested by the Carrier, the Sender must pay for the Services in full before delivery will be made. All other amounts payable under this agreement, must be paid within 7 days of the invoice date, unless otherwise agreed by the Carrier in writing.
- 8.2. If the Sender fails to pay any amount to Carrier under this agreement by the due date, without limiting any other remedies available to it under this agreement or under any Relevant Law, the Carrier may, at its absolute discretion, either: (a) charge interest on all outstanding invoices, charged at an interest rate of 1.25% per month (15% per annum). Interest will accrue daily and be payable upon demand; (b) cancel any Order or suspend the delivery of any Permitted Goods until all outstanding invoices are paid in full (including any interest); or (d) set off any and all outstanding invoices against any amounts owing to the Sender by the Carrier under this agreement.
- 8.3. The Sender will pay Carrier all costs and expenses incurred in recovering any outstanding invoices, fees or charges (including interest), legal costs (on a solicitor/client basis) or expenses paid by Carrier to mercantile or collections agents.
- 8.4. The Carrier reserve its rights to request at any time upfront payment, bank guarantee or some other form of security if the Carrier considers the terms of payment of any Permitted Goods delivered by the Carrier have not been strictly adhered to by the Sender, or Carrier has reasonable concerns about the Sender's ability to pay for any Permitted Goods or otherwise perform its obligations herein.

### 9. Carrier liability

- 9.1. To the maximum extent permitted by Relevant Laws, the Carrier excludes all express or implied representations, conditions, statutory guarantees, warranties and provisions (whether based on statute, common law or otherwise), in connection with the provision or use of the Services, any Order and this agreement.
- 9.2. Nothing contained in this agreement or any Order excludes, restricts or modifies the application of any condition, warranty or other obligation, the exercise of any right or remedy, or the imposition of any liability under the Competition and Consumer Act 2010 (Cth) or any other equivalent legislation in other jurisdictions (as the context permits) where to do so is unlawful.
- 9.3. To the maximum extent permitted by Relevant Laws, the Carrier will not be liable to the Sender, consignee or anyone else for: (a) direct, indirect, consequential, incidental, special or exemplary damages, expenses, losses or liabilities; or (b) loss of anticipated or actual profits, loss arising from business interruption, loss of anticipated or actual revenue, economic loss, loss of goodwill, loss, corruption or alteration of data, downtime costs, loss of use, failure to realise anticipated savings, loss of contracts or interest, loss of opportunity or expectation loss or loss of production; or (c) loss of or damage to Permitted Goods or any other property or any personal injury or death to the Sender, consignee or any third person, arising out of, relating to or connected to the provision or use of the Services, any Order and this agreement, regardless of the cause of action on which they are based, even if advised of the possibility of such damage occurring.
- 9.4. Under no circumstances will the Carrier's aggregate liability, whether based upon warranty, contract, statute, tort (including negligence) or otherwise, exceed the Fees (or any other amount) paid by the Sender to the Carrier under the relevant Order (that is the subject of the claim) in the preceding 1 month of the claim.
- 9.5. To the maximum extent permitted by Relevant Laws, the Sender agrees to defend, indemnify and hold the Carrier, its Affiliates and its Representative (collectively, the "**Indemnified**") harmless from and against any and all actions, claims, proceedings, demands, liabilities, losses, damages, expenses and costs (including legal costs on a full indemnity basis) that may be brought against the Indemnified or which the Indemnified may pay, sustain or incur as a direct or indirect result of or arising out of: (a) the provision and use of, the Services by the Sender or any third party; and (b) any breach by the Sender or its Representative of this agreement or any Order.
- 9.6. Any claim for loss or damage to the Permitted Goods or relating to the provision of the Services under this agreement or any order must be notified in writing to the Carrier within 2 days of the date of delivery, or 7 days of the date the Permitted Goods should have been delivered. Should the Carrier not receive any such notice in writing, the Permitted Goods will be deemed to have been delivered and constitute conclusive evidence that the Carrier performed its obligations under the Order and this agreement. In addition, the Carrier will be deemed to have

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been discharged from all liability, whether under the law of contract, tort or otherwise upon the expiration of 6 months after the delivery of the Permitted Goods or when the Services should have been provided or when the Permitted Goods should have been delivered, whichever the earlier.

### 10. Confidentiality

Save as required by law, all information supplied by the Carrier, or otherwise brought to the attention of the Sender, in relation to the Services, the Permitted Goods, the Fees or any other terms of this agreement is confidential and must not be disclosed by the Sender to a third party (except to the Sender's professional advisors) without the Carrier's written consent. This includes, without limitation, information provided to the Sender in any form (including written and electronic) and by any means (including during any conversations with the Sender). This clause survives termination of this agreement.

### 11. Privacy

11.1. The Sender authorises the Carrier to collect Personal Information and credit information about its personal, consumer and commercial credit worthiness from any credit provider or credit reporting agency ("CRA") for the purpose of assessing an application for credit in connection with the Carrier providing the Sender with the Services.

11.2. The Sender authorises the Carrier to use, transfer, disclose or exchange Personal Information and credit-related Personal Information about the Sender in order to assess an application for credit and monitor credit worthiness in connection with the Carrier providing the Sender with the Services. If the Sender fail to meet its payment obligation under this agreement or any Order, the Carrier will be entitled to disclose this to the CRAs.

11.3. The Sender warrants that: (a) any Personal Information that is disclosed to the Carrier has been collected in accordance with Privacy Laws; (b) it has the authority to provide to the Sender, or otherwise make available, such Personal Information as required in order for the Carrier to perform its obligations under this agreement or any Order; and (c) the Sender has obtained the informed consent of the individuals the subject of such Personal Information in order for the Sender to use, disclose, store, transfer, process or handle it.

### 12. Lien and Security Interest

12.1. The Sender hereby grants to the Carrier: (a) a general lien upon the Permitted Goods (and upon any other goods of the Sender); and (c) a first ranking Security Interest in the Permitted Goods (and in any other goods of the Sender and the proceeds arising in respect of any dealings in the Permitted Goods), that secures all amounts now or in the future owing under any Order or this agreement, including any third party costs owing under clause 7.2. The Carrier's Security Interest Attaches to the Permitted Goods, or any other goods of the Sender, when the Carrier becomes entitled to its Fees (or any other amount) under any Order or this agreement.

12.2. The Sender will: (a) at all times provide all complete and accurate information. The Sender

will promptly notify the Carrier of any changes in writing of the Sender's details set out in the Credit Application; and (b) do all things necessary (such as obtaining consents and executing all documents), for the Carrier to register and perfect its Security Interest in the Permitted Goods (including any other goods of the Sender and the proceeds of the Permitted Goods) on the Register.

12.3. The Sender agrees that all costs in relation to registration and any amendments to registration are to be borne by the Sender.

12.4. The Sender waives its right to receive any notices (including notice of a verification statement after registration) unless a requirement for notice cannot be excluded under the PPSA.

12.5. The Sender will not: (a) register, or permit to be registered, a financing charge statement in the respect of any Security Interests completed or constituted by this agreement without the Carrier's prior written consent; and (b) create, grant, or seek to grant, any Security Interest in the Permitted Goods in favour of a third party without the Carrier's prior written consent.

12.6. Where any Permitted Goods are in the possession of the Carrier and the Fees (or any other amount owing under any Order or this agreement) is 90 days overdue, the Carrier may, after giving the Sender 14 days' written notice (to the Sender's last known address), at its absolute discretion, destroy the Permitted Goods or sell them by public or private sale in which event the proceeds are to be applied towards any of part of the amounts owing under any Order or this agreement (including sale, storage and handling fees). If any monies are remaining the Carrier will send a cheque to the Sender for such monies and if such cheque is not cashed within 6 months then the monies will be given to any charity of the Carrier's choosing.

12.7. To the extent permitted by the PPSA, sections 95, 96, 117, 118, 121(4), 125, 127, 129(2) and (3), 130, 132, 134(2) 135, 136, (3), (4) and (5), 137, 142 and 143 of the PPSA do not apply to the obligations owed between the Carrier and the Sender in accordance with this agreement and the Sender has no rights under them.

### 13. Term and termination

13.1. This agreement commences on the date of execution of the Credit Application by both parties, and continues unless terminated pursuant to its terms.

13.2. Either party may terminate this agreement or any Order immediately by notice in writing if: (a) the other party is in breach of any term of this agreement or any Order and such breach is not remedied within 7 days after receiving notice requiring it to do so; (b) the other party is in breach of any term of this agreement or any Order and such breach is not capable of remedy; or (c) an Insolvency Event occurs in respect of the other party.

13.3. The Carrier may terminate any Order or the agreement at any time upon 7 days' notice in writing to the Customer.

13.4. On termination of this agreement for any reason, the Sender must immediately pay all outstanding Fees and any other amount owing to the Carrier

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under this agreement and any Order (including interest).

### 14. Sub-Contractors

The Carrier may, at its absolute discretion, sub-contract the whole or any of part of the Services without the Sender's or anyone else's prior written consent. Any clause of this agreement which excludes or limits the liability of Carrier in respect of the provision of Services will extend to protect the Carrier's Representatives, including Sub-Contractors.

### 15. Dispute resolution

The parties must, before resorting to court proceedings (except interlocutory or interim relief), refer any dispute under or relating to this agreement or any Order initially to a nominated representative of each party to endeavour to resolve the dispute within 20 days. If the dispute is not resolved within this period, then either party may initiate court proceedings. Notwithstanding the existence of a dispute, each party must continue to perform its obligations

### 16. Non-solicitation

The Sender undertakes and agrees not to, directly or indirectly, during the term of this agreement and for 12 months after the termination or expiry of this agreement (or, if this is deemed invalid, for 6 months from the date of termination of this agreement): (a) solicit, approach, canvass or endeavour to entice away from Carrier the business, orders, customers or clients of the Carrier by any means, with a view to providing (directly or indirectly) goods or services to such customer or client in competition with the Carrier; or (b) offer to employ or engage or otherwise endeavour to entice away from the Carrier any Representatives of the Carrier.

### 17. Force Majeure Event

The Carrier will not be liable to the Sender or anyone else for any delay or non-performance of its obligations under any Order or this agreement to the extent that such non-performance is due to, or arises as a result of, a Force Majeure Event.

### 18. General

- 18.1. The covenants, obligations, conditions and provisions of this agreement that by their terms or sense are intended to survive the expiration or termination of this agreement are to so survive.
- 18.2. A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 18.3. If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 18.4. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.
- 18.5. This agreement, each Order, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.6. Neither party shall, without the prior written consent of the other party (which will not be unreasonably withheld), assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement, except that the Carrier may assign, sell or transfer its rights or obligations under this agreement to a m Affiliate or or bona fide third party purchaser of Carrier's business.
- 18.7. Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 18.8. The laws of the State of Victoria, Australia govern this agreement. the Sender agrees to submit to the exclusive jurisdiction of the Courts of Victoria.