



## General Terms and Conditions of Sale & Cartage

### DEFINITIONS

- 1.1 **Carriage** means the whole of the operations and services undertaken by Pit Patrol Pty Ltd ACN 116 921 656 including its trading entities Pit Express and Hunter Vehicle Services, and any Related Entity under Section 50 of the Corporations Act (Cth) 2001 (“we”, “us” or “our”).
- 1.2 **Consequential Loss** means any consequential, indirect, special, remote or unforeseeable loss, exemplary or punitive damages, loss of production, loss of revenue, loss of profit or anticipated profit, loss of business reputation, economic or financial loss, business interruptions of any nature, loss of opportunities, loss of anticipated savings or increased financial costs, wasted overheads and/or exemplary or punitive damage, suffered or incurred.
- 1.3 **Consignor** means you the person with whom we contract with to provide the Carriage.
- 1.4 **Force Majeure Event** means one of the following events:
- explosion, earthquake or other similar natural disaster of a severity that could not normally be expected to occur within a 10 year in the principal place of our business;
  - weather conditions which could not be expected to occur within a 10 year period in the principal place of our business;
  - loss, destruction or damage arising from nuclear weapon material;
  - a strike or industrial action which has national or state-wide application, and lasts for more than 5 consecutive Business Days;
  - ionising radiations or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel (and for the purpose of this definition, combustion includes any self-sustaining process of nuclear fission);
  - war, invasion, act of foreign enemy, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, confiscation or destruction or requisition by order of any Authority;
  - terrorism; or
  - a pandemic which prevents access to, or work at our principal place of business or where the Carriage is to which:
    - was not foreseeable at the date of this Agreement;
    - is beyond the control of the affected party;
    - causes delay in, or prevention of, the performance by the affected party of any of its obligations under this Agreement; and
    - cannot be prevented, overcome or remedied by the exercise by the affected party of a reasonable standard of care and diligence or the expenditure of a reasonable sum of money.
- 1.5 **Goods** means the cargo accepted from the Consignor or on his behalf together with any container, pallet, packaging supplied by or on behalf of the Consignor.

### 2. SCOPE AND TERM OF AGREEMENT

- 2.1 To the extent permitted by law, we are not a common carrier and we accept no liability, as a common carrier. It is acknowledged we have no liability as a common carrier and can elect to accept or refuse providing Carriage services to you. We reserve the right to refuse the Carriage or transport of Goods at our discretion.
- 2.2 This document contains the agreed Terms of Trade for Carriage of Goods between the Consignor (“you”) and us (together “the parties”) and these Terms of Trade will prevail over all prior negotiations, proposals or correspondence or previous dealings between the parties and any other notification purported to be provided or delivered by or on behalf of you.
- 2.3 An order, either verbally or in writing, for the Carriage of Goods (“Purchase Order”) from you shall be deemed to be an offer by you for Carriage and Acceptance of your offer will occur when you receive verbal or written acknowledgement, or upon Carriage of the Goods, whichever occurs first.
- 2.4 Each Purchase Order constitutes a separate agreement for the Carriage described in the Purchase Order (“Supply Agreement”). The terms of each Supply Agreement consists of our quotation (if any), the Purchase Order and these Terms of Trade. All other terms or conditions including those in your offer are excluded, unless agreed in writing at the time of acceptance.
- 2.5 In each Supply Agreement:
- 2.5.1 references to this agreement are to be read as references to the Supply Agreement; and
- 2.5.2 in the event of any inconsistency between these Terms of Trade and the terms of a Purchase Order or our quotation (if any), the Terms of Trade will prevail.
- 2.6 Each Supply Agreement is a separate agreement which is independently terminable. Termination of any Supply Agreement (or of all Supply Agreements) does not have the effect of terminating these Terms of Trade. Except if we expressly provide in writing, termination of the Terms of Trade does not terminate any Supply Agreement that may be in force as at the effective date of termination of the Terms of Trade.

### 3. VARIATION TO CUSTOMERS' BUSINESS STRUCTURE

- 3.1 Should there be any variation to any of the information supplied by you in your credit application or in the structure of your business (such as a conversion to or from a company or trust, or the appointment of new

Directors), we must be immediately notified in writing. Until a new credit application form is signed and approved in writing by us, the original applicant to the credit application and those person(s) who signed as guarantor(s) and indemnifier(s) shall remain liable to us as though Carriage was supplied to the original applicant. You acknowledge that the person who signs any Purchase Order or any other document submitted to us is authorised to do so on your behalf and we are entitled to rely on this warranty.

### 4. PRICE & TAXES

- 4.1 We will supply the Carriage according to our standard published prices from time to time. We reserve the right to claim any additional expenses we incur as a result of any incorrect declaration by the Consignor of the weight, volume, description or packaging of the Goods, and any storage charges or other charges or expenses we incur in relation to the Goods including but not limited to demurrage costs..
- 4.2 Unless otherwise stated, all prices quoted/stated do not include sales tax, goods and services tax or any other tax, duty or impost levied over the Carriage Services in Australia or elsewhere. All such taxes, duties and imposts will be added to the price at the designated rate unless, in the case of Australian sales tax (where it is applicable), a tax exemption number is stated or exemption certificate is provided at the time of order.
- 4.3 If GST is imposed in Australia on any supply made under or in connection with this agreement, we may recover from you an amount on account of GST, such amount to be in addition to the price or any other amount or consideration payable under this agreement and to be calculated by multiplying the price or any other amount or consideration payable by you for the relevant supply, by the prevailing GST rate. Any amount on account of GST recoverable from you under this clause, shall be calculated without any deduction or set-off of any other amount and is payable by you upon demand by us, whether such demand is by means of an invoice or otherwise.
- 4.4 All such taxes, duties & imposts will be added to the price at the designated rate.
- 4.5 Unless stated otherwise, all prices, quotes or other amounts are in Australian Dollars (AUD\$).
- 4.6 We reserve the right to make any changes necessary to the price to cover any cost variation, including (but not limited to):
- 4.6.1 any act or omission on your part or the part of your agents; and/or,
- 4.6.2 to correct any typographical or clerical errors which may be present in the prices, deliveries or specifications in any quote or offer.
- 4.7 Any increases in our costs beyond our control will result in the price being increased by the same amount. In this paragraph the term “costs” includes statutory charges (other than sales tax), the price paid by us for raw materials, components, goods or services (including and dependent on rates of overseas exchange, customs duty, primage, insurance, freight & tariff), variations in commodity prices, labour rates (including and dependent on the statutory hours per week, workers' compensation, long service leave, superannuation, sick and holiday pay & public holidays) and any other costs beyond our control.

### 5. VALIDITY

- 5.1 Unless otherwise stated, quotations are open for a period of seven (7) days from the date of quotation and thereafter are subject to confirmation before acceptance. We reserve the right to withdraw, either verbally or in writing, any quotation prior to acceptance of your offer.

### 6. SUPPLY IN ACCORDANCE WITH SPECIFICATIONS AND POLICY

- 6.1 You must comply with all our policies and procedures in relation to the Carriage including but not limited to our Freight Preparation Policy and Chain of Responsibility Compliance Procedure, as amended.

### 7. RISK

#### 7.1. Delivery Date

- 7.1.1 Whilst we are undertaking the Carriage, it is at your risk at all times, unless agreed otherwise. You warrant that unless specified, the Goods transported as part of the Carriage are not dangerous, poisonous, corrosive, volatile, flammable or radioactive (“Dangerous”). Where they are specified as dangerous, you warrant the Goods the subject of the Carriage are properly described, packed and clearly labelled and can be transported safely according to the Australian Code for the Transport of Dangerous Goods by Road and Rail and in the event that you are in breach of this warranty, you indemnify us to the fullest extent permitted by law, for all loss, costs, liability howsoever arising under, out of or in connection with the breach of this warranty.
- 7.1.2 You are legally bound to declare if the Goods are Dangerous and agree to give us a full and accurate description of them. Whether or not you have told us that any Goods are dangerous, you agrees that if we, our servants, agents and Subcontractors, consider on reasonable grounds that the Goods may cause injury or damage, we or our employees, agents, Subcontractors or parties acting on our behalf can, at your cost and without liability to you, do anything appropriate, including disposing of or destroying the Dangerous



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- Goods. You will always bear all risk or loss or damage to, or arising in connection with the Dangerous Goods.
- 7.1.3. Time will not be of the essence under this Agreement. Dates given for the Carriage are stated in good faith but are not to be treated as a term of this Agreement.
- 7.1.4. Although every reasonable effort will be made by us for Carriage to be completed by the estimated date, any failure by us to deliver by any particular date will not entitle you to cancel this Agreement or void any of these Terms of Trade or claim compensation and you release us to the fullest extent permitted by law for any loss, liability or charge arising from our failure to deliver the Goods by any estimated date.
- 7.1.5. Where we agree in writing to guarantee a delivery date for Carriage of Goods, to the extent permitted by law, we will not be liable for failure to fulfill or delays in fulfilling the order where fulfilment is prevented by a Force Majeure Event.
- 7.1.6. All delivery dates for the Carriage are dependent upon the timely receipt by us of your Purchase Order and all necessary particulars required for Carriage.
- 7.1.7. We will be deemed to have completed the Carriage once we deliver to your address or your nominated receiver's address and we receive signed acknowledgement for the completion of the Carriage.
- 7.1.8. Should you or your nominated recipient not be in attendance during normal trading hours or at the times specified or if we arrive to effect delivery at your premises and are delayed in effecting prompt delivery at the said premises for any reason whatsoever outside our control, then we will charge you for the costs of the re-delivery including any storage costs we may incur.
- 7.2. **Site Conditions**
- 7.2.1. No responsibility or accountability will be held by us for any ground or site conditions, or actions by other parties (including you or your Contractor's), which may cause delay or variation to this Agreement. Any additional cost incurred as a result of ground or site conditions shall be subject to automatic variations under the agreement and any difference shall be to your account.
- 7.3. **Risk**
- 7.3.1. You must effect full insurance on the Goods for the period prior to, during Carriage and after delivery against any loss or damage from such time that the Goods are at your risk.
- 7.4. **Shortage in Delivery or Damage or Loss in Transit**
- 7.4.1. If on delivery there are any breakage or loss of Goods delivered as part of the Carriage, you must advise us immediately on delivery.
- 7.5. **Force Majeure**
- 7.5.1. We shall not be liable for any failure to deliver, or delay in the Carriage of the Goods due to any cause beyond our reasonable control, including but not limited to a Force Majeure Event.
- 8. LIMITATION OF LIABILITY**
- 8.1. You indemnify us to the fullest extent permitted by law for any loss, liability, damages in tort, bailment or otherwise, cost (including solicitor fees on a solicitor and client basis) arising under, out of or in connection with this Agreement and the Carriage of the Goods including but not limited to any loss of or damage to or misdelivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, non delivery of Goods held in our care, custody or control howsoever caused.
- 8.2. Notwithstanding any other provision of this Agreement If you are not a Consumer (as that term is defined under the relevant part of the Australian Consumer Law), then to the extent permitted by law, we will not under any circumstances be liable for any Consequential Losses, damages or injuries arising directly or indirectly from this Agreement or any performance or failure to perform this Agreement, whether in contract, tort, negligence, strict liability or otherwise, including (but not limited to) our negligence, default or misconduct even if informed of the possibility of such damages.
- 8.3. If you are a Consumer as that term is defined under the relevant part of the Australian Consumer Law we acknowledge your rights under the Competition and Consumer Act 2010 (Cth).
- 8.4. This clause survives termination of this Agreement.
- 8.5. **Warranty regarding Information:** We do not warrant the accuracy, sufficiency or completeness of any information provided by you. Liability for any loss or damages arising out of information provided by you remains your sole liability and you indemnify us and hold us harmless to the fullest extent permitted by law for any loss, damages, cost, expense or liability arising under, out of or in connection with the inaccuracy or incompleteness of such information.
- 9. PAYMENT**
- 9.1. Individual deliveries or deliveries of separate instalments may be invoiced separately and shall be paid for accordingly.
- 9.2. Payment is only received by us when the payment is made in cash, or when the proceeds of other methods of payment are cleared and credited to our bank account.
- 9.3. Payments by cheque are not deemed to have been made until such time as the cheque has been duly honoured.
- 9.4. **No Credit Account**
- 9.4.1. Unless a credit account is held by you with us, you must pay for the Goods in full on or before the date of shipment.
- 9.5. Credit Account**
- 9.5.1. A credit account will be opened only if you are approved by our Credit Department.
- 9.5.2. If a credit account is held by you then except where varied in writing, we may:
- at the end of each month submit to you progress invoices for work completed or materials (including imported items) in transit which are purchased by us prior to completion of delivery to you of the Goods;
  - invoice the full value of the Goods on delivery; and
  - charge you storage charges if a delay in delivery occurs for more than two weeks after completion of manufacture due to circumstances beyond our control.
- 9.5.3. All invoices must be paid in full (without any set-off or counterclaim) and payment must be received by us within 30 days of the date of the invoice, unless otherwise agreed in writing.
- 9.5.4. We reserve the right, at any time upon written notice, to alter, suspend or withdraw credit facilities, or to change our standard terms of credit or the credit terms provided in this agreement, when (in our sole discretion) your financial condition so warrants.
- 9.6. Default in Payment**
- 9.6.1. Should payment not be made in accordance with our payment terms, we may in addition to our other rights, charge you weekly interest on the overdue amount based on the prevailing Commonwealth Bank of Australia base corporate overdraft rate for facilities under \$100,000 plus 3%, calculated from the date payment was due to the date of full and final payment.
- 9.6.2. Payment will be first credited against interest accrued.
- 9.6.3. If you fail to pay any amount to us when due, whether in respect of this or any other agreement between us, we may, in addition to any other rights we may have, either suspend further Carriage or terminate this Agreement, in which event we will be entitled to payment all Carriage to date.
- 9.6.4. We shall have a general and/ or particular lien on the Goods and any documents relating thereto or on any other Consignor goods in the possession of us or any documents relating thereto for all sums payable by you to us and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to you.
- 10. CANCELLATION**
- 10.1. To the extent permitted by law, you may only cancel a Purchase Order with our written consent and upon payment of reasonable and appropriate cancellation charges to be determined by us, which will include, but is not limited to, administrative costs and other actual costs already incurred by us in fulfilling the Purchase Order.
- 11. AGENCY AGREEMENT**
- 11.1. We reserve the right to engage agents and consultants to assist with the Carriage.
- 12. BANKRUPTCY, LIQUIDATION AND DEFAULT**
- 12.1. If you default in due observance or performance of any or all of your obligations herein or, if you are a person and die or commit an act of bankruptcy, or if you are a company and you take or have taken against you any action for the winding up or the placing of the company under official management, administration, liquidation or receivership other than for the purposes of reconstruction, we may without prejudice to any other rights herein or at law give notice to you of our intention to do any or all of the following:
- treat the agreement as repudiated and sue for breach;
  - suspend Carriage;
  - sell all Goods the subject of a lien by private treaty or public auction
  - retain any security given or monies paid by you and apply this against the assessed loss and damages incurred by us in performing this Agreement; or
  - make all outstanding amounts immediately due and payable.
- 13. SERVICE OF NOTICE**
- 13.1. Notices are deemed to have been delivered if left at the party's last known address, sent to the party's last known address by pre-paid ordinary mail (or if the address is outside Australia, be pre-paid air mail) or by facsimile to the last known facsimile number of the party, provided the transmitting facsimile records the successful transmission of the facsimile.
- 14. ARBITRATION**
- 14.1. If at any time any question, dispute or difference ("Dispute") whatsoever should arise between the parties in connection with or arising out of this agreement, then either party to this agreement may give to the other notice in writing of the existence of such Dispute.
- 14.2. If the parties are unable to mutually resolve such Dispute within 21 days, then the parties shall submit the Dispute to arbitration by a sole arbitrator appointed jointly by the parties, and if one cannot be agreed upon within 14



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days, to an arbitrator appointed by the President for the time being of the President or Acting President for the time being of the NSW Chapter of The Institute of Arbitrators & Mediators, Australia. In either case, the arbitrator shall not be a person who has participated in any informal dispute resolution procedure in respect of the Dispute. The award of the arbitrator shall be final and binding on the parties, including any determination on the costs. The venue of the arbitration shall be in Newcastle, Australia.

### 15. WAIVER

15.1. No failure to exercise nor any delay in exercising any right, power or remedy under this agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

### 16. GENERAL

16.1. Headings appear as a matter of convenience only and will not affect the interpretation or meaning of the agreement.  
16.2. No right, interest or obligation in this agreement can be assigned or subcontracted by you without our prior written consent. We may assign,

sub-contract or otherwise transfer any right, obligation or benefit under this agreement, or any part thereof, to any other party without your consent.  
16.3. This agreement shall be governed by the laws of New South Wales, Australia and the parties agree to submit to the non-exclusive jurisdiction of the Courts of that State. Any reference to legislation includes references to delegated legislation made under that legislation and to legislation in substitution for or in amendment of the same.  
16.4. In the event of any of the Terms of Trade or terms and conditions of the agreement being declared legally invalid or unenforceable, the provision should be read down to the minimum extent necessary to render it enforceable and valid, and if incapable of being read down, it will be severed from the remainder of these conditions which shall not be affected by such severance. In such a case, we will substitute for the provisions concerned a provision considered substantially equivalent in economic terms.  
16.5. Nothing in this agreement constitutes a joint venture, agency, partnership or other fiduciary relationship between the parties.  
16.6. This agreement may be amended or varied only by agreement in writing, signed by the parties.  
16.7. The United Nations Convention on Contracts for the International Sale of Goods (adopted at Vienna on 10 April 1980) does not apply in any respect of the supply of any Goods by us.

### EXECUTED AS AN AGREEMENT

By executing this agreement the signatory warrants that the signatory is duly authorised to execute this agreement on behalf of the **Consignor**.

SIGNED BY ..... )

[print name]

as authorised representative for the **Consignor**, in the presence of: )

..... )  
[Signature of witness]

Name of witness: ..... )  
[print name]

Name of **Consignor**:

..... )  
[insert name of **Consignor** company]

Date:

..... )  
[insert date upon signing]

EXECUTED by Pit Patrol Pty Ltd ACN 116 921 656 pursuant to s127 )  
of the Corporations Act 2001 )

..... )  
Sole Director/Secretary  
Name: Aaron Goadsby