

Please read the following conditions carefully and in their entirety. You will be bound by these conditions if we carry or store goods for you.

This means:

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

## TRANSPORT AND STORAGE CONDITIONS OPENICA LOGISTICS PTY LTD

### 1. DEFINITIONS

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1.1 The meanings of the terms used in these conditions are set out below.

Term	Meaning
<b>Carriage</b>	the whole of the operations and services undertaken by the Carrier or any Person on behalf of the Carrier in respect of the Goods (whether gratuitously or not) and includes the loading, unloading or storage of the Goods and the towing of a Vehicle
<b>Carrier</b>	Openica Logistics Pty Ltd (ACN 132 362 237) trading under its own name or under any other business name and its officers, employees, agents and Subcontractors
<b>Consequential Loss</b>	any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of these conditions and whether or not foreseeable at the time of entering into these conditions
<b>Customer</b>	the Person who engages the Carrier to provide services of Carriage
<b>Dangerous Goods</b>	Goods that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever
<b>Enforcement Costs</b>	any fees, costs and expenses, including legal expenses, incurred by the Carrier in connection with any default under or enforcement or attempted enforcement of these conditions on an indemnity basis
<b>Force Majeure Event</b>	<p>an act, event or cause that is beyond the reasonable control of the Carrier or its officers, employees or agents or its Subcontractors, including but not limited to:</p> <p>(a) acts of God, lightning, earthquakes, floods, storms, explosions, fires and any natural disaster</p>

<b>Term</b>	<b>Meaning</b>
	(b) acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, sabotage and revolution
	(c) strikes and labour disputes, to the extent they exceed 7 days
	(d) any road closure or congestion of roads
	(e) any quarantine or customs restriction
	(f) any interruption of power supply or scarcity of fuel
	(g) accident, collision or breakdown of vehicle, machinery or equipment
<b>Goods</b>	the property accepted by the Carrier from the Customer for Carriage including any Vehicle, any items contained in a Vehicle and any container or packaging supplied by or on behalf of the Customer
<b>Interest</b>	an amount that is calculated on any Outstanding Amount at the rate fixed under the <i>Penalty Interest Rates Act 1983</i> (Vic) from time to time
<b>Outstanding Amount</b>	any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Customer is otherwise liable, pursuant to these conditions, to the Carrier
<b>Person</b>	includes a corporation, company, partnership or any other entity
<b>PPSA</b>	<i>Personal Property Securities Act 2009</i> (Cth)
<b>Subcontractor</b>	includes any Person who, pursuant to a contract or arrangement with any other Person (whether or not the Carrier), performs or agrees to perform the Carriage or any part of it
<b>Vehicle</b>	any Vehicle accepted by the Carrier from the Customer for Carriage including any car, caravan, camper, boat, trailer, horse float, motorhome, jet ski or machinery

1.2 Terms used in these conditions have the same meaning as under the PPSA.

1.3 A reference in these conditions to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.

## **2. NEGATION OF LIABILITY AS A COMMON CARRIER**

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The Carrier is not a common carrier and will accept no liability as such. All Goods are carried and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage of Goods for any Person and the Carriage of any class of goods at its discretion.

## **3. CUSTOMER'S WARRANTIES**

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3.1 The Customer warrants that:

- (a) the Goods are fit for Carriage and have been suitably prepared or packaged for those purposes;
  - (b) the Customer has the authority of all Persons owning or having any interest in the Goods to accept these conditions on their behalf;
  - (c) the details of description, items, quantity, weight, quality, value, measurements and modifications (including but not limited to roof racks, bull bars and lowered suspensions) supplied by the Customer are correct;
  - (d) it has declared all items contained within the Vehicle to the Carrier;
  - (e) it has complied with all laws relating to the Vehicle;
  - (f) there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be removed and the place to which the Goods are to be delivered; and
  - (g) the Customer will be responsible for the loading and unloading of any Goods that consist of items of machinery for which a licence to operate is required.
- 3.2 The Carrier relies on the details of description, items, quantity, weight, quality, value, measurements and modifications supplied by the Customer, but does not admit their accuracy.
- 3.3 The Customer undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any Person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods.

#### **4. RIGHT TO SUBCONTRACT**

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The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.

#### **5. EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS**

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- 5.1 The Customer agrees that no claim or allegation may be made against any employee, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods or the Carriage of them whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences of any such claim or allegation.
- 5.2 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available and will extend to protect:
- (a) all Subcontractors;
  - (b) every employee or agent of the Carrier or of a Subcontractor;
  - (c) every other Person (other than the Carrier) by whom the Carriage or any part of it is undertaken; and
  - (d) all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within clauses 5.2(a), 5.2(b) or 5.2(c).
- 5.3 For the purposes of clause 5.2 the Carrier is or will 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 will to this extent be or be deemed to be parties to these conditions.

## 6. LIABILITY OF CARRIER

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6.1 The Customer acknowledges and agrees that neither the Carrier nor any employee or agent or Subcontractor of the Carrier nor any other Person who undertakes the Carriage of the Goods at any time pursuant to these conditions will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:

- (a) any loss of or damage to, deterioration, evaporation or contamination of the Goods, or
- (b) misdelivery, delay in delivery or non delivery of the Goods or any of them,

whether in the course of Carriage or otherwise including where loss, damage, deterioration, evaporation, contamination, misdelivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence of the Carrier or its officers, employees or agents or its Subcontractors.

6.2 Without limiting the generality of clause 6.1, the Carrier will not be liable for any loss of or damage to Goods:

- (a) where the Goods comprise an aged, unstable or non-roadworthy Vehicle or a Vehicle that cannot be properly inspected because of weather conditions or because it is not clean and free from dirt;
- (b) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including but not limited to stone, rain, hail or storm damage;
- (c) caused by the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
- (d) caused by inherent vice or the nature of the Goods;
- (e) caused by ordinary leakage or ordinary wear and tear;
- (f) caused by insects, birds or other animals;
- (g) caused by insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary incidents of Carriage; or
- (h) comprising mechanical, electrical or electronic breakdown, derangement, or malfunction of any Vehicle including, but not limited to, failure of electric windows, central locking, noisy bearings, brake failure, snapped cables or leaking seals;
- (i) comprising minor chips, scratches and dents;
- (j) comprising any item inside any Vehicle or caused by the movement of that item or any other item inside any Vehicle.

For the purpose of clause 6.2(g), 'packing' will be deemed to include stowage of any Goods inside a Vehicle.

6.3 The Carrier will be entitled to the benefit of the exclusions of liability provided for in clauses 6.1 and 6.2 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

6.4 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Carrier contained in these conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

- 6.5 Notwithstanding any other provision of these conditions, the Carrier will under no circumstances be liable for any claim arising as a result of a reduction in the value of the Goods due to repairs.
- 6.6 Notwithstanding any other provision of these conditions, the Carrier will under no circumstances be liable for any claim for Consequential Loss.
- 6.7 Where clauses 6.1, 6.2, 6.3, 6.4, 6.5 or 6.6 cannot legally operate and to the extent permitted by law, the Carrier's liability (including for breach of any warranty, guarantee or any term implied by law in these conditions) for
- (a) any loss of or damage to, deterioration, evaporation or contamination of the Goods; or
  - (b) misdelivery, delay in delivery or non-delivery of the Goods or any of them,
- is limited to the cost of having the services that were supplied in respect of those Goods, supplied again.

## **7. INSPECTION OF GOODS**

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- 7.1 The Carrier may open and inspect the Goods at its discretion and at the Customer's expense.
- 7.2 If, during the course of Carriage, the Carrier reasonably believes that the Goods:
- (a) are or may become unsafe, dangerous, flammable or damaging;
  - (b) are or may become liable to damage any property whatsoever,

the Carrier may take reasonable steps to ensure compliance with any relevant safety laws, including unloading the Goods, at the Customer's expense, without notice to the Customer and without payment of any compensation to the Customer.

## **8. ROUTE AND DEVIATION**

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- 8.1 The Customer authorises any deviation from the usual route or manner of Carriage of Goods that may in the absolute discretion of the Carrier be considered desirable or necessary in the circumstances.
- 8.2 If the Customer expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a particular method of Carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier the Customer authorises the Carrier to handle or store or to carry or to have the Goods handled, stored or carried by another method or methods.

## **9. DELIVERY**

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- 9.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Customer for that purpose. The Carrier will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.
- 9.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier or the Consignee otherwise fails to take delivery of the Goods the Carrier may at its option deposit the Goods at that place (which will be conclusively presumed to be due delivery under these conditions) or store the Goods and if the Goods are stored by the Carrier the Customer will pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Carrier the Carrier will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.

## 10. STORAGE

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- 10.1 Where Goods are stored by the Carrier at the request of the Customer, the Customer will furnish an address to which notices may be sent, and will provide samples of the signatures of persons entitled to collect the Goods.
- 10.2 The Carrier will be entitled to remove the Goods from a place of storage to another place of storage at its discretion.
- 10.3 The Customer must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.
- 10.4 The Carrier will not be obliged to deliver any Goods except to the Customer or to a Person authorised in writing by the Customer to receive the Goods without:
- (a) a direction in writing from the Customer;
  - (b) payment of all amounts due by the Customer to the Carrier on any account whatsoever.
- 10.5 The Customer will remove its Goods from storage within 48 hours of receipt of notice from the Carrier.

## 11. GENERAL LIEN

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- 11.1 The Goods are accepted subject to a general lien for all charges now due or that may become due to the Carrier by the Customer on any account whatsoever, whether in respect of the Goods or in respect of any other goods for which the Carrier provides or has provided services of Carriage.
- 11.2 If charges are not paid when due, or the Goods are not collected when so required or designated, the Carrier may, without notice, and immediately:
- (a) remove all or any of the Goods and store them as the Carrier thinks fit at the Customer's risk and expense; and
  - (b) open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.
- 11.3 The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for Carriage.
- 11.4 The Customer agrees that the lien arising under these conditions is a security interest.
- 11.5 If the Carrier requests, then the Customer must promptly upon receipt of a request from the Carrier do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Customer to be done under this clause will be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.
- 11.6 The parties agree that, to the extent permitted by the PPSA:
- (a) sections 125, 142 and 143 of the PPSA do not apply (unless the Customer is otherwise notified in writing by the Carrier);
  - (b) any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived; and

- (c) any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under or provided for by these conditions is waived.

## **12. DELAY IN LOADING OR UNLOADING**

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- 12.1 The Customer will be and remain responsible to the Carrier for all its proper charges incurred for any reason.
- 12.2 A charge may be made by the Carrier in accordance with the Carrier's schedule of rates in respect of any delay in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading.

## **13. CARRIER'S CHARGES**

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- 13.1 Quotations provided by the Carrier are subject to withdrawal or revision by the Carrier without notice.
- 13.2 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier. The Customer agrees to pay all sums due to the Carrier without any deduction, counterclaim or set-off.
- 13.3 The Carrier's charges must be paid:
  - (a) if the Customer holds a valid credit account with the Carrier, within 14 days of receipt of the Goods by the Carrier; or
  - (b) if the Customer does not hold a valid credit account with the Carrier, payment is required on or prior to receipt of the Goods by the Carrier for delivery.
- 13.4 Any special instruction given by the Customer to the effect that charges will be paid by the Consignee or any other third party will be deemed to include a stipulation that if the Consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Goods the Customer will pay such charges.
- 13.5 The Customer acknowledges and agrees that any payment made by credit card will attract a surcharge of 1.77%.
- 13.6 The Customer will be liable for and must pay (in addition to transport and storage charges and any other charges due under these conditions):
  - (a) any proportional additional charges if the Goods are at any time re-quantified, re-weighed or re-measured;
  - (b) the Carrier's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise, warehouse or quarantine authority, or other Person; and
  - (c) any additional expenses incurred by the Carrier as a result of or arising from the Customer supplying incorrect details in respect of the Goods or failing to declare items contained in any Vehicle; and
  - (d) any Enforcement Costs and Interest in respect of any Outstanding Amount from the date of default to the date of payment.
- 13.7 Where the Carrier stores Goods for the Customer, the Customer must:
  - (a) supply or pay for labour or machinery or both to load or unload the Goods; and

- (b) compensate the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the Goods.

#### **14. DANGEROUS GOODS**

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- 14.1 If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full written declaration disclosing the nature of such goods.
- 14.2 The Customer will indemnify the Carrier against all loss, damage or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.
- 14.3 The indemnity in clause 14.2 extends to Consequential Loss.
- 14.4 If in the opinion of the Carrier, the Goods are or are liable to become of a dangerous or flammable or damaging nature, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Carrier's right to charge for the Carriage of the Goods.
- 14.5 The Customer warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or Carriage of any Dangerous Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and agrees to indemnify the Carrier for any liability whatsoever as a result of or arising out of the Customer's failure to comply with each of these warranties.

#### **15. FORCE MAJEURE**

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- 15.1 If, because of a Force Majeure Event, the Carrier is unable to carry out an obligation under this these conditions:
  - (a) the Carrier must give to the Customer written notice and reasonable particulars of the Force Majeure Event and, so far as is known, the probable extent to which the Carrier will be unable to perform or be delayed in performing its obligation; and
  - (b) the obligations of the Carrier, so far as they are affected by the Force Majeure Event, will be suspended during the continuance of the Force Majeure Event.
- 15.2 The Carrier will not be liable for any failure or delay in performance of the Carriage if such failure or delay is due, in whole or in part to, any Force Majeure Event.

#### **16. NOTIFICATION OF CLAIM**

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- 16.1 Notwithstanding any other provision of these conditions (other than clause 17), the Carrier will in any event be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier:
  - (a) in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within five days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; or
  - (b) in the case of Goods allegedly lost or damaged during storage, within five days of the date of removal or attempted removal of the Goods from storage.
- 16.2 The Carrier will be discharged from all liability whatsoever in respect of the Goods unless suit is brought:
  - (a) in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within 12 months of their delivery or of the date on which they should have been delivered; or



- (b) in the case of Goods allegedly lost or damaged during storage, within 12 months of the date of removal or attempted removal of the Goods from storage.

## **17. APPLICABLE LEGISLATION**

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Notwithstanding anything contained in these conditions, the Carrier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

## **18. ENTIRE AGREEMENT**

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- 18.1 These conditions represent the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings between them.
- 18.2 The Carrier will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

## **19. GENERAL**

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### **Governing law**

- 19.1 These conditions will be construed in accordance with the laws in force in Victoria and the parties submit to the jurisdiction of the courts of Victoria.

### **Privacy**

- 19.2 To the extent required by law, the parties will comply with the *Privacy Act 1988* (Cth), including any obligations in relation to collecting, holding, using and disclosing personal information.

### **Confidentiality**

- 19.3 Neither party may disclose any information or documents received by it in connection with the Carriage without the prior consent of the other party except to the extent that:
- (a) disclosure is permitted by these conditions;
  - (b) the information is available to the public generally (except as a result of a previous breach of this clause);
  - (c) the party is required to make the disclosure by law; or
  - (d) the disclosure is made on a confidential basis to the representatives or professional advisers of the party for the purpose of obtaining professional advice.

### **Waiver**

- 19.4 The failure of the Carrier to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the Carrier to enforce the provision at a later time.

### **Headings**

- 19.5 Headings are included for convenience only and do not affect interpretation of these conditions.

### **Singular and plural**

- 19.6 Words importing the singular include the plural and vice versa and words importing a gender include other genders.

**Joint and several**

19.7 Where the Customer or Consignee comprise two or more Persons an agreement or obligation to be performed or observed by the Customer or Consignee binds those Persons jointly and severally.

**Severability**

19.8 If any part of these conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and these conditions will remain otherwise in full force.