

**VTM VICTORIAN TRUCK MOVERS PTY LTD**  
**(ACN 105 364 930)**  
(The Supplier)

**TERMS & CONDITIONS OF TRADE**

**1. General**

These Terms and Conditions apply to the exclusion of all others including terms and conditions incorporated in any purchase order. By accepting the services provided by the Supplier (“**Services**”), the Customer agrees to these Terms and Conditions to the exclusion of all others. If a provision of these Terms and Conditions is wholly or partly invalid or unenforceable, that provision or that part of it that is invalid or unenforceable must, to the extent, be deleted from these terms and conditions. Nothing affects the validity or enforceability of the remaining Terms and Conditions. In these Terms and Conditions:

- (a) “**Customer**” means the party accepting the terms and where applicable includes their\its directors, employees, contractors or agents; and
- (b) “**Vehicles**” means the vehicle, truck, trailer, machinery or equipment transported, hauled, driven, stored, collected or delivered by the Supplier to the Customer (or the Customer’s nominated delivery address).

**2. Prices**

All Services are supplied at the rate advised by the Supplier from time to time. Any rates quoted by the supplier exclusive of GST. The Customer is liable for (and indemnifies the Supplier) and must pay on demand, costs incurred by the Supplier in undertaking the Services, in addition to the cost of the Services, including (but not limited to):-

- (a) breakdown towing and call out costs;
- (b) replacement of parts to Vehicles, including tyres; and
- (c) additional driver waiting time in the event of a breakdown;
- (d) additional waiting time, loading delays, unloading delays, redelivery charges, storage charges and depot transfer fees;
- (e) any additional costs arising from inaccurate information provided by the Customer regarding the Vehicle's dimensions, weight, condition, modifications, permits, escorts, access requirements or transport requirements; and
- (f) fuel levy, tolls, or NHRV compliance costs.

The Customer authorises the Supplier to undertake or arrange any work, action or repair the Supplier deems necessary for the safe operation and transport of any Vehicle\’s under the Supplier’s control.

**2A. Haulage Services**

Where the Services include the transportation of Vehicles by trailer, float, tilt tray or other transport equipment (“Haulage Services”), the following additional terms apply:

- (a) the Customer warrants that all information provided regarding the Vehicle's dimensions, weight, condition, modifications and transport requirements is accurate and complete;
- (b) the Customer must ensure that safe, suitable and lawful access is available at all pickup and delivery locations. Where access is restricted, unsafe or unsuitable, the Supplier may refuse collection or delivery and charge any additional costs incurred;
- (c) delivery times are estimates only and may be affected by weather conditions, road closures, permit requirements, traffic conditions, mechanical breakdowns, accidents or other circumstances beyond the Supplier's reasonable control;
- (d) the Supplier is not responsible for personal effects, tools, equipment, spare parts or any loose items contained within or attached to a Vehicle unless specifically agreed in writing, and any such items are transported entirely at the Customer's risk;

- (e) the Customer acknowledges that loading, unloading and transportation of Vehicles involve inherent risks and releases the Supplier from liability for minor cosmetic damage, stone chips, wear and tear or damage arising from pre-existing defects, modifications or inadequate securing points;
- (f) additional charges may apply where loading or unloading is delayed due to circumstances outside the Supplier's control;
- (g) the Supplier has the right to refuse unsafe, overloaded, non-compliant vehicles without liability; and
- (h) the Supplier has the right to recover additional fees from the Customer should delivery instructions change.

### **3. Payment**

Terms of payment will be cash prior to delivery unless the Customer has written approval for a 30-day account. The Supplier reserves the right to withhold further services if payment terms are not met by the Customer. If the Customer fails to pay any moneys owing to the Supplier within 30 days, such overdue moneys shall accrue interest from day to day at a rate equal to 10% per annum on such moneys after 30 days from the date of invoice, until all moneys are paid in full. In addition to any payment or interest due to the Supplier in accordance with this clause, the Customer shall be liable for all reasonable legal and debt collection costs incurred by the Supplier in relation to collection of any payment due by the Customer on a full indemnity basis.

### **4. Risk and Insurance**

- (a) The risk of loss or damage to the Vehicles shall remain with the Customer at all times.
- (b) The Customer acknowledges that the Supplier is not a common carrier and accepts no liability as an insurer of any Vehicle or goods transported.
- (c) The Customer must effect and maintain the following insurances during the provision of the Services:
  - (i) full comprehensive insurance for replacement value of the Vehicle\; and
  - (ii) public liability insurance of no less than \$20 million.
- (d) The Customer acknowledges and agrees that the Supplier's maximum liability for any damage or loss to a Vehicle\ or any direct, indirect or consequential loss or expense, to which the Supplier may be held liable or accountable, shall be the insurable loss covered by any applicable insurance held by the Supplier.
- (e) The Customer must immediately provide evidence of insurances upon request from the Supplier.

### **5. Storage Insurance Disclaimer**

The Supplier does not provide storage insurance for the Vehicles or any other items stored on its premises. The Customer is responsible for ensuring that adequate storage insurance is in place. The Supplier will not be liable for any damage or loss to trucks, equipment, or other items while they are in storage.

### **6. Exclusion/Limitation of liability**

- (a) In so far as is possible all warranties whether by statute or common law in relation to the supply of services by the Supplier are expressly negated and do not apply. The Supplier is not liable to the Customer, and the Customer releases the Supplier from any breach of contract or duty of care.
- (b) The Customer acknowledges that the Supplier is not responsible for, and releases and discharges the Supplier from, any direct, indirect or consequential loss or expense suffered by the Customer or any third party, howsoever caused from the supply of the Services including breach of statutory or common law warranties and negligence. If any dispute arises, as a result of or supply of or the use of the Services, the Customer will exclude the Supplier from any dispute or claim, action or court proceeding. Further, the Customer agrees to indemnify and hold harmless the Supplier (its employees, servants, agents, contractors, subcontractors) from and against all claims, damages, liabilities, and expenses (including legal costs on a full indemnity basis) arising from or in connection with any third-party claims relating to the Services, including but not limited to claims for personal injury, property damage, or breach of intellectual property rights. This indemnity shall apply regardless of whether the claim arises from the negligence or misconduct of the Supplier or its subcontractors.
- (c) To the extent permitted by law, the absolute limit of the Supplier liability under any condition or warranty that cannot be legally excluded is limited to the re-supply of equivalent products or services.

- (d) The Supplier may have the Vehicles operated by any employee, servant, agent, contractor, or sub-contractor of the Supplier or any employee, servant, or agent of any contractor or sub-contractor. The Customer hereby authorises any deviation from the usual or agreed route which may in the absolute discretion of the Supplier be deemed desirable or necessary in the circumstances.
- (e) The Customer acknowledges and agrees that neither the Supplier nor any employee, servant, agent, contractor, or sub-contractor of the Supplier, will at any time or in any circumstances be under any liability whatever (whether in contract, tort or otherwise) for any personal injury or loss or damage to or mis-delivery, delayed delivery or non-delivery of the Vehicles or any of them whether in transit or in storage or otherwise nor for any consequential loss or injury of any kind whatever whether such personal injury, loss, damage, mis-delivery, delayed delivery, non-delivery or consequential damage or injury is caused or alleged to have been caused by the negligence or wrongful act or default of the Supplier or its servants or agents or sub-contractors.

#### **6A. Subcontracting**

- (a) The Supplier may, at its absolute discretion, engage subcontractors, carriers, owner-drivers, storage providers, depot operators or other third parties to perform all or part of the Services.
- (b) The Customer authorises the Supplier to subcontract the Services without further notice.
- (c) The Supplier may transfer possession, custody or control of any Vehicle to any subcontractor, carrier, storage provider or other third party engaged in connection with the Services.
- (d) Every subcontractor engaged by the Supplier shall be entitled to the benefit of all rights, exclusions, limitations of liability, indemnities and protections contained in these Terms and Conditions as if they were expressly named as the Supplier.
- (e) The Supplier shall not be liable for any act, omission, delay, loss or damage arising from the acts or omissions of any subcontractor except to the extent such liability cannot be excluded by law.

#### **7. Customer Warranties**

- (a) The Vehicles supplied by the Customer for transport by the Supplier are:-
  - (i) legally the property of the Customer or the Customer is entitled to possession and control of the Vehicles; and
  - (ii) the Vehicles are roadworthy and fit for operation on public roads.
- (b) The Customer is not aware of any latent or patent defects to the Vehicles which will affect the Supplier's ability to undertake the Services.
- (c) the Vehicle does not contain any dangerous goods, hazardous substances, explosives, firearms, ammunition, cash, valuables, illegal items or prohibited goods unless such items have been disclosed to and accepted in writing by the Supplier.
- (d) the Supplier reserves the right to refuse transport of any Vehicle containing undisclosed dangerous goods, prohibited items or other goods which may create a safety, legal or operational risk, and the Customer shall be liable for any additional costs incurred by the Supplier as a result of such non-disclosure.
- (e) The Customer will comply with all obligations imposed under applicable transport legislation, including the Heavy Vehicle National Law and Chain of Responsibility requirements, and indemnifies the Supplier against any loss, damage, penalty, fine, liability or expense arising from any breach of those obligations.
- (f) The Supplier indemnifies and holds harmless the Customer from and against any loss, damage, liability, cost, or expense suffered or incurred by the Customer arising out of, or in connection with, any breach of these warranties.

#### **8. Suspension and Termination**

##### **(a) Suspension**

The Supplier may, without liability and without prejudice to any other rights, immediately suspend all or part of the Services if:

- (i) the Customer is in breach of these Terms and Conditions (including non-payment of any amount when due);
  - (ii) the Supplier reasonably considers that the continued provision of Services may pose a safety, legal or operational risk;
- or

(iii) the Supplier reasonably believes the Customer may not be able to meet its payment obligations.

(b) Termination for Cause

The Supplier may terminate these Terms and Conditions and/or any Services immediately by written notice to the Customer if:

- (i) the Customer breaches any provision of these Terms and fails to remedy that breach within 7 days of written notice (or immediately if the breach cannot be remedied);
- (ii) the Customer becomes insolvent, is unable to pay its debts as and when they fall due, enters into liquidation, administration, receivership or any arrangement with creditors, or ceases or threatens to cease carrying on business; or
- (iii) the Customer repudiates or abandons any agreement for Services.

(c) Termination for Convenience

The Supplier may terminate the provision of Services at any time by giving the Customer reasonable written notice.

(d) Consequences of Suspension or Termination

Upon suspension or termination:

- (i) all amounts owing by the Customer to the Supplier become immediately due and payable;
- (ii) the Supplier may retain possession of any Vehicles pursuant to its lien rights until all amounts are paid;
- (iii) the Customer must promptly arrange (at its cost) collection of any Vehicles, failing which storage and related charges will continue to accrue; and
- (iv) any accrued rights, indemnities, limitations of liability and obligations intended to survive will continue in full force and effect.

## 9. Privacy

The Supplier may collect, use and disclose personal information about the Customer and any Guarantor for the primary purpose of providing the Services to the Customer, including but not limited to determining whether to accept an account application of the Customer, start, stop or limit the supply of the Services to the Customer, and billing and account management. The Supplier may also share personal information or documents about the Customer or any Guarantor to or from:

- (a) credit providers or credit reporting agencies for the purposes permitted under the Privacy Act; and
- (b) law enforcement agencies to assist them in prevention of criminal activity or as provided for in any account application.

## 10. Guarantee

- (a) The Guarantor(s) expressly and unconditionally personally guarantee to the Supplier the due and punctual performance of all terms and conditions and obligations of the Customer, and indemnify the Supplier from and against all loss, damage, costs and expenses which may be suffered or incurred by the Supplier in consequence of or in relation to or arising out of any default by the Customer under any provision of the attached Terms and Conditions of Trading or any sale invoice.
- (b) The guarantee provided under this clause shall be a continuing guarantee and shall remain in full force and effect notwithstanding the liquidation of or the appointment of a receiver or a receiver and manager or a scheme manager or an administrator to the Customer or a controller to the assets of the Customer, and shall be irrevocable and shall remain in full force and effect until all terms and conditions and obligations of the Customer have been discharged and satisfied in full. This guarantee and the liability of the Guarantors shall not be affected, prejudiced or abrogated by the granting of time, credit or other indulgence or concession by the Supplier to the Customer or by any variation or alteration of or modification to the terms of the Terms and Conditions of Trading or any Sales Agreement, whether with or without my\our Consent.
- (c) I\We agree to grant to the Supplier a charge over any real property, assets and undertakings at any time held by me\us as security for the payments required to be made and performance of the Customers obligations under the Terms and Conditions of Trading or any associated sales agreement and me\our obligations as guarantor.

## 11. Force Majeure

The Supplier shall not be liable for any failure or delay in performing its obligations under these Terms and Conditions if such failure or delay is due to circumstances beyond its reasonable control, including but not limited to natural disasters, acts of terrorism, war, labour disputes, government actions, or interruptions in transportation or utilities. In such cases, the Supplier may suspend its obligations until the force majeure event is resolved, and the Customer shall not be entitled to any compensation for delays caused by such events.

## **12. Lien**

- (a) The Supplier shall have a particular and general lien over any Vehicle or other property in its possession for all monies owing by the Customer to the Supplier, whether relating to the Services provided in respect of that Vehicle or otherwise.
- (b) The Supplier may retain possession of the Vehicle until all outstanding amounts have been paid in full.
- (c) If payment remains outstanding for more than 60 days after written demand, the Supplier may, to the extent permitted by law, sell the Vehicle and apply the proceeds towards satisfaction of the debt and any costs incurred.
- (d) The Customer shall be responsible for all costs associated with the exercise of the Supplier's lien rights, including storage, legal, recovery, auction, administration and sale costs.

## **13. Variation of Terms**

The Supplier reserves the right to vary these Terms and Conditions at any time by providing the Customer with written notice of the changes. The continued use of the Services by the Customer after such notice shall be deemed acceptance of the revised Terms and Conditions. Any variations requested by the Customer must be agreed upon in writing by the Supplier to be effective.

## **14. Governing Law**

The parties agree to submit exclusively to the jurisdiction of the courts of New South Wales.