



JSS Logistics Pty Ltd T/AS JSS Logistics – Terms & Conditions of Cartage

1. Definitions

- 1.1 "JSS Logistics" shall mean JSS Logistics Pty Ltd T/A JSS Logistics and its successors and assigns or any person acting on behalf of and with the authority of JSS Logistics Pty Ltd T/A JSS Logistics
- 1.2 "Sub-Contractor" shall mean and include:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom JSS Logistics may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clauses 1.2(a) and 1.2(b).
- 1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of JSS Logistics' Services.
- 1.5 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of JSS Logistics' Services, or for storage by JSS Logistics.
- 1.6 "Services" shall mean all services supplied by JSS Logistics to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by JSS Logistics to the Client and includes any advice or recommendations.
- 1.7 "Price" shall mean the cost of the Services as agreed between JSS Logistics and the Client subject to clause 3 of this contract.

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

- 2.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 2.3 Liability of JSS Logistics arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by JSS Logistics:
 - (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again; or
 - (c) where the Client is a consumer as defined in the Competition and Consumer Act 2010 then the Client may also be entitled to a refund.

3. Acceptance

- 3.1 Any instructions received by JSS Logistics from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of JSS Logistics.
- 3.3 These terms and conditions are to be read in conjunction with JSS Logistics' quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by JSS Logistics to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 3.4 The Client shall give JSS Logistics not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by JSS Logistics as a result of the Client's failure to comply with this clause.

4. Price And Payment

- 4.1 At JSS Logistics' sole discretion the Price shall be either;
 - (a) as indicated on invoices provided by JSS Logistics to the Client in respect of Services supplied; or
 - (b) JSS Logistics' quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon JSS Logistics provided that the Client shall accept in writing JSS Logistics' quotation within thirty (30) days.
- 4.2 JSS Logistics may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to JSS Logistics beyond the reasonable control of JSS Logistics (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 4.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.



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- 4.4 At JSS Logistics' sole discretion a deposit may be required.
- 4.5 At JSS Logistics' sole discretion;
 - (a) payment shall be due on delivery of the Goods, or
 - (b) payment for approved Client's shall be due on thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and JSS Logistics.
- 4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. JSS Logistics Not Common Carrier

- 5.1 JSS Logistics is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by JSS Logistics subject only to these conditions and JSS Logistics reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

6. Client-Packed Containers

- 6.1 If a container has not been stowed by or on behalf of JSS Logistics JSS Logistics shall not be liable for loss of or damage to the Goods caused by:
 - (a) the manner in which the container has been stowed; or
 - (b) the unsuitability of the Goods for carriage or storage in containers; or
 - (c) the unsuitability or defective condition of the container.

7. Nomination Of Sub-Contractor

- 7.1 The Client hereby authorises JSS Logistics (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as JSS Logistics. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled JSS Logistics shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

8. JSS Logistics' Servants or Agents

- 8.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of JSS Logistics which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify JSS Logistics and any such servant or agent against all consequences thereof.

9. Method Of Transport

- 9.1 If the Client instructs JSS Logistics to use a particular method of carriage whether by road, rail, sea or air JSS Logistics will give priority to the method designated but if that method cannot conveniently be adopted by JSS Logistics the Client shall be deemed to authorise JSS Logistics to carry or have the Goods carried by another method or methods.

10. Route Deviation

- 10.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of JSS Logistics be deemed reasonable or necessary in the circumstances.

11. Charges Earned

- 11.1 JSS Logistics' charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

12. Demurrage

- 12.1 The Client will be and shall remain responsible to JSS Logistics for all its proper charges incurred for any reason. A charge may be made by JSS Logistics in respect of any delay in excess of one hour per trailer for loading and unloading occurring on all Trip and Quoted Rates, thereafter applicable hourly rates or agreed demurrage rates will be charged for the specific combination. Such permissible delay period shall commence upon JSS Logistics



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reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee unless otherwise agreed to in writing.

13. Dangerous Goods

13.1 Unless otherwise agreed in advance in writing with JSS Logistics the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies JSS Logistics for all loss or damage whatsoever caused by any Dangerous Goods.

14. Consignment Note

14.1 It is agreed that the person delivering any Goods to JSS Logistics for carriage or forwarding is authorised to sign the consignment note for the Client.

15. Client's Responsibility

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

16. Delivery

- 16.1 JSS Logistics is authorised to deliver the Goods at the address given to JSS Logistics by the Client for that purpose and it is expressly agreed that JSS Logistics shall be taken to have delivered the Goods in accordance with this contract if at that address JSS Logistics obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 JSS Logistics may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 16.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.
- 16.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 16.5 The failure of JSS Logistics to deliver shall not entitle either party to treat this contract as repudiated.

17. Insurance

- 17.1 JSS Logistics maintains a policy of carrier's liability insurance to cover loss of, or damage to, the Client's Goods whilst under the control and care of JSS Logistics.
- 17.2 JSS Logistics' insurance policy shall only cover damage caused by JSS Logistics' employees or agents and shall not cover damage caused by any third party or external source, therefore JSS Logistics recommends that the Client ensures that the Client has a suitable insurance policy in place to protect themselves against physical loss or damage to their Goods including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks.
- 17.3 In the event of potential delay in delivery, JSS Logistics undertakes to advise the Client immediately that JSS Logistics becomes aware of the same, however JSS Logistics shall not accept any liability for any consequential or indirect loss, loss of market or consequences of delay unless clearly due to the negligence of JSS Logistics or its employees.

18. Default & Consequences Of Default

- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at JSS Logistics' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes JSS Logistics any money the Client shall indemnify JSS Logistics from and against all costs and disbursements incurred by JSS Logistics in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, JSS Logistics' collection agency costs, and bank dishonour fees).
- 18.3 Without prejudice to any other remedies JSS Logistics may have, if at any time the Client is in breach of any obligation (including those relating to payment) JSS Logistics may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. JSS Logistics will not be liable to the Client for any loss or damage the Client suffers because JSS Logistics exercised its rights under this clause.
- 18.4 Without prejudice to JSS Logistics' other remedies at law JSS Logistics shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and



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all amounts owing to JSS Logistics shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to JSS Logistics becomes overdue, or in JSS Logistics' opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Unpaid JSS Logistics' Rights to Dispose of Goods

19.1 JSS Logistics shall have a lien on any Goods owned by the Client and in the possession or control of JSS Logistics (and any documents relating to those Goods) for all sums payable by the Client to JSS Logistics, and JSS Logistics shall have the right to sell such Goods, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. JSS Logistics shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

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

20.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Client and JSS Logistics by these terms and conditions; and
- (d) security interest has the meaning given to it by the PPSA.

20.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in all Goods being transported by JSS Logistics.

20.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which JSS Logistics may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
- (b) indemnify, and upon demand reimburse, JSS Logistics for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of JSS Logistics;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of JSS Logistics.

20.4 JSS Logistics and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

20.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

20.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

20.7 Unless otherwise agreed to in writing by JSS Logistics, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

20.8 The Client shall unconditionally ratify any actions taken by JSS Logistics under clauses 20.3 to 20.5.

21. Security And Charge

21.1 Despite anything to the contrary contained herein or any other rights which JSS Logistics may have howsoever:

- (a) where the Client is the owner of land, realty or any other asset capable of being charged, the Client agrees to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to JSS Logistics or JSS Logistics' nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client acknowledges and agrees that JSS Logistics (or JSS Logistics' nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.



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(b) should JSS Logistics elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client shall indemnify JSS Logistics from and against all JSS Logistics' costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint JSS Logistics or JSS Logistics' nominee as the Client's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 21.1.

22. Privacy Act 1988

22.1 The Client agrees for JSS Logistics to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by JSS Logistics.

22.2 The Client agrees that JSS Logistics may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by the Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

22.3 The Client consents to JSS Logistics being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

22.4 The Client agrees that personal credit information provided may be used and retained by JSS Logistics for the following purposes (and for other purposes as shall be agreed between the Client and JSS Logistics or required by law from time to time):

(a) the provision of Services; and/or

(b) the marketing of Services by JSS Logistics, its agents or distributors; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.

22.5 JSS Logistics may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client;

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

22.6 The information given to the credit reporting agency may include:

(a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);

(b) details concerning the Client's application for credit or commercial credit and the amount requested;

(c) advice that JSS Logistics is a current credit provider to the Client;

(d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;

(e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;

(f) information that, in the opinion of JSS Logistics, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);

(g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;

(h) that credit provided to the Client by JSS Logistics has been paid or otherwise discharged.

23. Cancellation

23.1 Whilst JSS Logistics will make every effort to provide its Services, JSS Logistics may cancel any contract to which these terms and conditions apply or cancel the Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice JSS Logistics shall repay to the Client any sums paid in respect of the Price. JSS Logistics shall not be liable for any loss or damage howsoever arising from such cancellation.



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- 23.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by JSS Logistics as a direct result of the cancellation (including, but not limited to, any loss of profits).
- 23.3 The Client acknowledges and agrees that any jobs cancelled after 3PM, the day prior to the date of job completion, the Client will incur a fifty percent (50%) charge of the applicable Trip Rate. Any jobs cancelled on the day of job completion or if JSS Logistics' transport vehicle has already departed, the full Trip Rate or estimated hourly rate shall be charged to the Client and become immediately due and payable.

24. General

- 24.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 24.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 24.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 24.4 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by JSS Logistics.
- 24.5 JSS Logistics reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which JSS Logistics notifies the Client of such change. Except where JSS Logistics supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 24.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 24.7 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 24.8 The failure by JSS Logistics to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect JSS Logistics' right to subsequently enforce that provision.