

K&S CORPORATION

CONDITIONS OF CARRIAGE and/or STORAGE

K&S CORPORATION

CONDITIONS OF CARRIAGE AND/OR STORAGE

1. In these conditions "K&S" means K & S Corporation Ltd (ACN 007 561 837) and its subsidiaries including (without limitation) K & S Freighters Pty Ltd (ACN 007 544 390), DTM Pty Ltd (ACN 002 985 195), Chemtrans Pty Ltd (ACN 085 263 038), Bulktrans Pty Ltd (ACN 085 304 114), and K&S Heavy Haulage Pty Ltd (ACN 134 989 343) carrying on business in its / their own name and under any business name and unless the context otherwise requires its / their officers, servants, agents and sub-contractors. K&S IS NOT A COMMON CARRIER and will accept no liability as such. K&S reserves the right to refuse the carriage, transport or storage of goods for any person corporation or company and the carriage, transport or storage of any class of goods at its discretion.
 2. These conditions shall be governed by the law in South Australia. Any proceedings against K&S shall be brought in South Australia and not elsewhere, within twelve (12) months from the date that the cause of action the subject of the proceedings first arose. K&S shall not be bound by any agreement purporting to vary these conditions unless such agreement shall be in writing and signed by the Managing Director of K&S. K&S may vary or amend these conditions from time to time by notice to the Client, but if the Client does not agree with any variation or amendment the Client may terminate its agreement with K&S without liability by giving K&S seven days written notice.
 3. K&S may have the goods carried, stored or otherwise handled by any servant or agent or sub-contractor of K&S or any servant or agent of any sub-contractor or by any other person and the Client hereby authorises any deviation from the usual route or manner of cartage or method or place of storage of goods which may in the absolute discretion of K&S be deemed desirable or necessary in the circumstances.
 4. The Client acknowledges and agrees that neither K&S nor any servant or agent or sub-contractor of K&S nor any other person who carries or stores the goods at any time pursuant to this consignment note shall in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for any loss or damage to or mis-delivery, delayed delivery or non-delivery or consequential damage or injury caused or allowed to have been caused by the negligence or wrongful act or default of K&S or its servants or agents sub-contractors or the servants or agents of any subcontractors or by any cause whatever.
 5. Nothing in these conditions constitutes K&S as insurers of the goods at any time and it is the Client's responsibility to arrange adequate insurance for the goods.
 6. The Client acknowledges and agrees that:
 - a) should a person require K&S to pick up goods on that person's behalf from a third party, any receipt K&S may give the third party when making the pick-up is no more than a record of the pick-up and cannot be construed as confirmation of the quality or condition of the goods; and
 - b) on receipt of goods into storage, K&S may prepare a record of the goods in such format as K&S reasonably determines and where that record is provided to the Client and the Client does not object to its contents within 7 days of receipt, then that record will be deemed to be conclusive evidence of the goods stored by K&S.
 7. K&S shall not be bound to deliver up any goods stored except to the Client or a person authorised in writing by the Client to receive such goods. K&S may at any time give written notice to the Client by registered or certified mail requiring the Client to remove the goods from storage within 28 days or such longer period specified in the notice and in the event of any failure by the Client so to remove the goods, K&S may (without prejudice to any other rights or obligations which K&S may have under these conditions or at law) sell any or all of the goods by public auction or private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to K&S and hold the balance, if any, on account of the Client.
 8. K&S's charges for carriage shall be deemed fully earned as soon as the goods are loaded and despatched on the Client's behalf and shall be payable and non-refundable in any event. The Client shall pay all storage and related charges calculated in accordance with K&S's schedule of charges from time to time current and payable in respect of the goods. All charges shall be payable in full and inclusive of GST calculated in accordance with the A New Tax System (Goods and Services Tax) Act and 14 days from the date of a valid tax invoice. Interest shall accrue and be payable by the Client on any overdue amounts at the rate being 2% higher than the rate charged by National Australia Bank from time to time on overdrafts of at least \$100,000 compounding daily from the date payment fell due until the date that payment is made.
 9. Where it is agreed that the charges for carriage or storage will be paid by the Receiver or a third party the Client agrees that if or insofar as any charges are not paid by the Receiver or third party on demand the Client will on demand pay the same to K&S.
 10. Any person delivering goods to K&S for carriage or storage is deemed to have authority to sign this consignment note for the Client.
 11. The Client warrants:
 - a) that he is the owner of the goods or otherwise has the authority of the owner to consign and/or store the goods upon and subject to these conditions.
 - b) that the goods comply with the requirement of any applicable law (including the Australian Code for the Transport of Dangerous Goods by Road and Rail (as amended)) relating to the storing, consigning and packaging of the goods and the reasonable and direct expenses and charges of K&S in complying with the provisions of any such law or with any order or requirement there under or with the requirement of any harbour, dock, railway, shipping, customers warehouses or other authority or company shall be paid by the Client.
 - c) if any of the goods are subject to the control of Customs all customs duty, excise duty and costs which K&S becomes liable to pay and shall pay in respect of such goods pursuant to any law relating to Customs or excise shall be paid by the Client.
 - d) that if any goods are containerised, the Client will provide to K&S an accurate and complete container weight declaration at the time that the goods are presented for carriage in accordance with all applicable laws.
 - e) that the Client has complied with all applicable laws relating to dangerous goods by fully describing in writing whether on the consignment note or separately their name and nature and the value of all goods of a noxious, dangerous, hazardous or inflammable nature or capable of causing damage or injury to any other goods, to any person or animals, or to any store, vessel, vehicle, wagon, person, aircraft or conveyance of any kind whatsoever which they may be loaded, carried, packed or stored and regardless of whether they are liquid or partly liquid and additional freight charges shall be paid on such goods if deemed necessary by K&S (acting reasonably) to reflect the reasonable and direct additional costs incurred by K&S to the extent that the Client has not complied fully with all applicable laws relating to dangerous goods.
 - f) that the goods are packed in a manner adequate to withstand the ordinary risks of carriage and storage having regard to their nature.
- The Client will indemnify K&S against all reasonable and direct loss and expense suffered or incurred by K&S by reason of any breach of the foregoing warranties, but excluding always to the extent that the loss or expense is caused directly by the negligence of K&S.
12. The goods are accepted subject to a general lien for all charges now due or which may hereafter become due to K&S by the Client on any account whether in respect of the goods comprised herein or in respect of any other goods for which K&S provides transport, storage or any other service. If the lien is not satisfied and/or the goods are not collected, K&S may at its option and without any notice, in the case of perishable goods forthwith, and in any other case upon the expiration of one month either:
 - a) remove such goods or part thereof and store them in such place and manner as K&S (in its reasonable opinion) shall think proper and at the risk and expense of the Client or as the case may be, or
 - b) open any package and sell such goods or part thereof upon such terms as it shall think fit and apply the proceeds in or towards discharge of the lien and costs of sale without being liable to any person for any loss or damage thereby caused.

- Any such sale shall not prejudice the right of K&S to recover from the person or persons liable to pay the same any charges due or payable in respect of any carriage or other service or sale.
13. These conditions and in particular and without limiting the generality the limitations and exclusions of K&S's liability herein contained, shall continue to apply and to be of full force and effect in all circumstances notwithstanding any breach or alleged breach by K&S of the contract of carriage and in particular (but without limitation of the generality) notwithstanding any departure by K&S from the conditions of this contract of carriage or storage whether by way of deviation or otherwise howsoever.
 14. The provisions of these conditions of carriage and storage shall apply to the container or other packaging containing goods and to any pallets delivered with the goods to K&S. The Client shall be responsible for the conformity of such containers packaging and pallets with any requirements of the Receiver and for the reasonable and direct expense incurred by K&S arising from any failure so to conform.
 15. Any instruction to K&S to exchange or transfer consigned pallets to the Carriers pallet hire account or to de-hire containers is accepted only on the basis that the Client will indemnify K&S against any loss or non-recovery of consigned pallets or loss or damage to, or late or failure to de-hire containers howsoever arising. Evidence of the instruction to the Carrier and any non-recovery shall be as shown on the face of the consignment note which shall be deemed conclusive proof of the instruction and/or non-recovery. A charge may be made by the Carrier to recoup the reasonable and direct cost of hiring, recovery and replacement (if applicable) of all pallets hired by the Carrier unless exchange pallets are available at the time of delivery.
 16. If the Client expressly or impliedly instructs K&S to use or it is expressly or impliedly agreed that K&S will use a particular method of handling or storing the goods or a particular method of carriage whether by road, rail, sea or air, K&S will give priority to that method but if it cannot conveniently be adopted by K&S, the Client hereby authorises K&S to handle or store or to carry or to have the goods carried by another method or methods. K&S shall be entitled to open any document wrapping package or other container in which the goods are placed or carried, to inspect the goods to determine their nature or condition or for the purpose of determining their ownership or destination where any consignment note or other identifying document or mark is lost, damaged, destroyed or defaced.
 17. The Client will be and remain responsible to K&S for all its proper charges incurred for any reason. A charge may be made by K&S to recover the reasonable and direct costs in respect of any delay in excess of 30 minutes in loading or unloading occurring other than from the default of K&S. Such permissible delay period shall commence upon K&S reporting for loading or unloading. Labour to load or unload goods shall be the responsibility and expense of the Client or Receiver. Should the Receiver not be in attendance during normal trading hours or at the time specified, K&S reserves the right to make a further charge for every call made until delivery is affected.
 18. K&S may charge freight by weight, measurement or value, and may at any time re-weigh or re-measure or re-value or require the goods to be re-weighed, re-measured or re-valued and charge proportional additional freight accordingly.
 19. K&S will deliver goods at intermediate points only by special arrangement and then only provided suitable facilities are available at all hours.
 20. In regard to goods which K&S has been requested by the Client to pack and which are described on the face hereof K&S shall not be liable for any damage or loss whatsoever whether in the course of packing or in transit or otherwise and howsoever occasioned to the said goods or any of them. Where K&S is required to load or unload any liquids, partly liquids, substance or any commodities or products into bulk tanks or vessels, drums or containers it shall not be liable for any loss, damage or contamination of the product during any such loading or unloading operation or packing, whilst such product is in transit by any means of transportation or whilst goods are held in store or bulk storage tanks for any reason whatsoever.
 21. Subject to clause 22 hereof, the Client hereby releases and indemnifies K&S from and against any claims, demands and/or liabilities arising out of or in connection to any personal injury, illness or death to any person, damage to any property, or any other loss or damage of any kind whatsoever (including consequential loss) caused or contributed to by the goods (whether or not occurring whilst the goods are in the possession of K&S), and howsoever arising, but excluding always where the foregoing is caused directly by any breach of contract or negligence by K&S.
 22. Notwithstanding the provisions hereof these conditions shall be read subject to any implied terms, conditions or warranties imposed by the Australian Consumer Law ("ACL") as comprised in Schedule 2 of the Competition and Consumer Act 2010 (as amended) or any other Commonwealth or State legislation in so far as such may be applicable and prevents either expressly or impliedly the exclusion or modification of any such term, condition or warranty. In the case where Division 1 of Part 3.2 of the ACL (or equivalent part of any state or territory legislation) applies to enable K&S to limit its liability, K&S's liability shall be limited as K&S determines to the:
 - a) supplying of the carriage or storage services again; or
 - b) payment of the reasonable cost of having the carriage or storage services supplied again.
 23. In respect of any clause herein which excludes or in any way limits the liability of K&S in respect of the carriage or storage of goods or which contains an indemnity in favour of K&S, K&S in addition to acting for itself is acting as agent of and trustee for each of its subsidiaries and subcontractors and their employees and agents involved in the carriage or storage of the goods so that each of its subsidiaries and subcontractors and their employees and agents are parties to these conditions so far as the said clause or clauses containing exclusions, limitations of liability, or indemnities are concerned and insofar as it may be necessary to give effect to this clause K&S shall hold the benefit of these clauses for its subsidiaries and subcontractors and their servants and agents.
 24. If at any time a Carbon Scheme is imposed or varied, K&S shall be entitled to pass on to the Client the reasonable Carbon Costs that K&S incurs in providing transport and/or storage services to the Client under this Agreement. For the purposes of this clause 24, "Carbon Cost" shall mean any liability, cost or expense that K&S incurs directly or indirectly arising out of or incidental to the implementation of a Carbon Scheme and "Carbon Scheme" shall mean any law, regulation or requirement with respect to greenhouse gas emissions, including without limitation, any statutory emissions trading scheme, carbon pollution reduction scheme, and the Safeguard Mechanism enacted through the National Greenhouse and Energy Reporting Act 2007 (Cth) and the National Greenhouse and Energy Reporting (Safeguard Mechanism) Rules 2015 (Cth).
 25. The Client shall not solicit for employment or employ any employee of K&S at any time while K&S is providing services to the Client and for a period of six months thereafter.
 26. If at any time the Fair Work Commission (or any court, tribunal, statutory authority or regulatory body) issues, imposes or varies any order, directive, code, guidelines, minimum standards or equivalent provisions with which K&S is required by law to comply (including without limitation any minimum standards to ensure that the road transport industry is safe, sustainable and viable) (collectively "Minimum Standards") and which relates in any way to or impacts on the services being provided to the Client by K&S, K&S shall be entitled to pass on to the Client the reasonable and direct costs that K&S incurs in complying with the Minimum Standards in the course of providing the services to the Client, including without limitation additional costs arising out of any requirement on the part of K&S to pay to its employees and/or contractor higher or different rates of remuneration under the Minimum Standards
 27. The parties must at all times comply with their respective obligations under the Heavy Vehicle National Law (as adopted or amended from time to time) ("HVNL"), including with their primary duties to eliminate or minimise potential harm or loss associated with the transport activities to be performed by K&S by doing all that is reasonably practicable to ensure safety. The client agrees and acknowledges that:
 - a) It is not entitled to direct, procure or encourage a breach by K&S of the HVNL; and
 - b) K&S is not required to comply with any direction that the Client (or anyone on its behalf) gives that may cause K&S to breach the HVNL.
 28. The Client agrees and acknowledges that prior to entry into these conditions, it:
 - a) was advised by K&S to seek independent legal advice in relation to these conditions;
 - b) has read and understood the conditions and the terms contained in these conditions are, in all of the circumstances (including having regard to the charges payable to K&S relative to the costs incurred by K&S in providing the services to the Client), fair and reasonable;
 - c) was afforded a reasonable opportunity to obtain independent legal advice in relation to these conditions;
 - d) was afforded a reasonable opportunity to negotiate the terms contained in these conditions; and
 - e) obtained independent legal advice in relation to these conditions (or it specifically elected not to obtain independent legal advice).