

1. Definitions

"Customer" means the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person at whose request the Services are performed.

"Dangerous Goods" means such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other Goods or to any person or animals or to any thing in which those Goods are carried, handled or stored.

"Goods" means any consignment or other items which are the subject of the Services provided by K&W to the Customer under these Terms and Conditions.

"Insolvency Event" means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes liquidation, official management, administration, compromise arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.

"K&W" means K&W Haulage Pty Limited (ACN 002 478 908), its related bodies corporate and its employees, agents and contractors.

"K&W Terms and Conditions" means these standard terms and conditions of contract as apply to all K&W Services.

"Personal Property Securities Act or PPSA" means the Personal Property Securities Act 2009 (Cth).

"Security Interest" has the same meaning as within the Personal Property Securities Act.

"Services" mean the whole of the operations undertaken by K&W in respect of the Goods.

"Subcontractor" includes any other person who pursuant to a contract or arrangement with any other person (whether or not K&W) provides or agrees to provide the Services or any part of the Services.

Not a Common Carrier

2. K&W is not a common carrier and accepts no liability as such. K&W reserves the right at its discretion to refuse to carry any Goods for any Customer or provide any other Service whether before or after the Services have commenced.
3. All Services are arranged or performed by K&W subject to the K&W Terms and Conditions which constitute the entire agreement between K&W and the Customer. No person has the authority of K&W to waive or vary these conditions except with written confirmation of a Director of K&W.

Subcontracting

4. (a) K&W may subcontract with any other person, firm or company (**"Subcontractor"**) to perform the Services or any part of the Services on the same terms and conditions (including all conditions as to the exclusion of liability of the Subcontractor) as apply to K&W under the K&W Terms and Conditions.
- (b) The Customer authorises K&W to contract as agent of the Customer, either in the Customer's name or its own, on any terms whatsoever, the whole or part of the provision of the Services, including on terms which may limit or completely exclude liability in respect of the Services.
- (c) K&W may retain for its own benefit, without accounting to the Customer, any difference between charges and surcharges payable to the Subcontractor and charges and surcharges payable by the Customer to K&W under the K&W Terms and Conditions.
- (d) No officer, employee, agent, sub-contractor or other party employed or engaged by or on behalf of K&W, or whose services or equipment have been used in order to provide the Services, (collectively, **K&W's Service Providers**) is in any circumstances whatsoever under any liability whatsoever to the Customer for any loss, damage, costs and/or expenses of any kind whatsoever, and howsoever arising, including in contract, bailment, tort (including negligence), under statute or otherwise and whether or not arising out of or in connection with the Services and/or the performance or non-performance of the Services.
- (e) Without prejudice to the generality of clause 4(d) above, every exemption, limitation, condition and liberty contained in the K&W Terms and Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to K&W, or to which K&W is entitled under the K&W Terms and Conditions, is available and extends to each of K&W's Service Providers as if such terms and conditions were expressly for their benefit, who are entitled to enforce the same against the Customer.
- (f) The aggregate of the amounts recoverable from K&W and K&W's Service Providers will in no case exceed the limits provided for in the K&W Terms and Conditions.
- (g) The Customer undertakes:

- i. that no claim or allegation whether arising in contract, bailment, tort (including negligence), under statute or otherwise will be made against any of K&W's Service Providers by any person, which imposes or attempts to impose upon any of them, or any vessel owned or chartered by any of them, any liability whatsoever in connection with the Services. K&W's Service Providers are entitled to enforce the foregoing covenant against the Customer;
 - ii. to indemnify K&W against any claim or allegation made against it by any person in connection with the Services and/or the performance or non-performance of the Services;
- (h) For the purpose of sub-paragraphs 4(d)-(g) K&W is or shall be deemed to be acting as agent and/or trustee on behalf of and for the benefit of K&W's Service Providers who shall to this extent be or be deemed to be a party to the K&W Terms and Conditions.

Routes and Procedures

5. If K&W is instructed by the Customer and agrees to use a particular method or mode of transport and/or approach to performance of the Services, K&W shall give due consideration to the method or mode suggested but shall at all times have the right to choose or vary such method or mode of transport and/or approach to performance of the Services or route to be used. The Customer hereby authorises K&W to substitute alternative carriers or other Service providers without notice to the Customer.

Warehousing

6. The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of K&W. In every case, whether warehousing is incidental or the primary Service provided by K&W, it will be provided at the Customer's risk and expense.

Delivery

7. (a) K&W is authorised to deliver the Goods to the consignee or its agent at the address nominated to K&W by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that K&W shall be deemed to have delivered the Goods if it obtains a receipt, signed delivery docket for the Goods or signature on its consignment note from any person at that address.
- (b) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected, K&W in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.
- (c) Any dispute in relation to delivery or receipt of the items by the Customer, shall be advised in writing to K&W by the Customer before the expiration of seven (7) days from the expected date of delivery. Unless otherwise provided in writing by K&W at the time of pick up (or later as the case may be), the expected date of delivery shall be deemed to be no later than three (3) days from the date of pick up for intrastate deliveries and no more than 14 (fourteen days) from the date of pick up for interstate deliveries (as the case may be).
- (d) Dates specified for completion of carriage or any other Service are estimates only and K&W shall not be liable for failure to complete carriage or any other Service on such date or dates.

Warranties by the Customer

8. The Customer warrants that it is either the owner, or the authorised agent of the owner of the Goods and any other person with an interest in the Goods, and by accepting the K&W Terms and Conditions the Customer accepts these Terms and Conditions for all other principals or other persons on whose behalf the Customer is acting.
9. The person delivering Goods to K&W for the Services represents and warrants that he or she is authorised to sign the K&W Consignment Note incorporating the K&W Terms and Conditions for and on behalf of the Customer.
10. The Customer warrants that the person delivering Goods to K&W for the Services is authorised to do so and has authority to accept the K&W Terms and Conditions for and on behalf of the Customer.
11. The Customer warrants that it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations, and the Goods are packed in a manner adequate to withstand the ordinary risks of the Services.
12. If any identifying document or mark is lost, damaged, destroyed or defaced K&W may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them to determine their nature and/or condition and/or to determine their ownership and/or destination without notice to the Customer.
13. The Customer warrants that any Goods presented for storage are securely and properly packed in compliance with all applicable laws and recognised standards and in such condition as to not cause damage or injury to K&W property or any other Goods, whether by the spreading of damp, infestation, leakage or the escape of fumes or substances or otherwise howsoever.
14. Before the Customer presents any Goods to K&W for storage, the Customer will inform K&W in writing of any special precautions necessitated by the nature, weight or condition of the Goods.

Dangerous Goods

15. Unless otherwise expressly agreed in writing, K&W does not carry, store or perform any Services in relation to Goods which are Dangerous Goods including, but not limited to, those specified in the latest edition of the Australian Dangerous Goods Code and those declared as Dangerous Goods for the purposes of any State or Commonwealth legislation ("**Dangerous Goods**").
16. K&W may at its sole discretion accept some Dangerous Goods for carriage, storage or for the performance of other Services. Dangerous Goods will not be accepted by K&W unless the Customer has made full disclosure to K&W of such Goods and K&W has expressly agreed in writing to carry, store or perform any Services in relation to such Goods.
17. The Customer warrants that all Dangerous Goods provided to K&W for carriage, storage or for the performance of other Services, fully comply with all applicable legislation, codes and technical instructions relating to the notification, classification, labelling, transport, storage, condition and packaging of such Goods. Any expenses incurred by K&W in complying with any such legislation, codes and technical instructions or with any order or requirement of any government or authority in relation to such legislation, codes and technical instructions (including any harbour, port, customs, warehouse or other authority) shall be at the cost of the Customer.
18. If Dangerous Goods not previously disclosed by the Customer are discovered by K&W in carriage or storage, K&W may, at its discretion, remove, sell, destroy or otherwise dispose of the same at the Customer's cost, and shall not be responsible or accountable for the costs, disbursements and any liabilities incurred in the disposal or destruction of such Goods and shall be indemnified by the Customer for any losses howsoever arising in connection with the Dangerous Goods tendered for K&W Services.

Compliance

19. The Customer warrants that it is familiar with the road safety regime contained in State and Commonwealth legislation that provides that all parties who can exercise control over the transportation of Goods may be held liable for breaches of road safety laws, and all State and Commonwealth road safety and road related laws applicable to the performance of the Services including all laws directly or indirectly related to fatigue, mass, dimension and load restraint requirements for the carriage of Goods, as amended from time to time ("**chain of responsibility laws**"). The Customer warrants that it will comply with all applicable chain of responsibility laws in connection with the Services. The Customer will not do anything that will cause K&W to breach its obligations under the chain of responsibility laws and will assist K&W to comply with its obligations under the chain of responsibility laws.
20. The Customer warrants that it is familiar with all applicable workplace health and safety and environmental protection laws ("**safety laws**"). The Customer warrants that it will comply with all applicable safety laws in connection with the Services. The Customer will not do anything that will cause K&W to breach its obligations under the safety laws and will assist K&W to comply with its obligations under the safety laws.

Fees

21. The Customer will pay K&W for the Services, as set out in K&W's current rates schedule or as otherwise agreed, whether by acceptance of a written or verbal quotation, within thirty (30) days of the date of K&W's invoice.
22. K&W may vary the charges payable by the Customer from time to time. Without limiting the foregoing, the Customer expressly agrees that K&W may increase the charges payable by the Customer if:
 - (a) K&W's cost of providing the Services increases due to an increase in the cost of labour, materials and other delivery costs and overheads such as fuel, road toll charges, mobile phone charges or administrative costs. In this circumstance, K&W shall first give the Customer not less than seven (7) days notice of such variation;
 - (b) additional costs are incurred by K&W as a result of a variation to the Services specified by the Customer;
 - (c) K&W is required to pay any amount on account of any duties, including excise duty, customs duty or stamp duty, or other taxes, charges, costs, fines, penalties and/or minimum statutory obligations which may be levied or required by any government or authority, whether Commonwealth, State or local; and
 - (d) K&W agrees to provide Services at special rates in respect of Goods which are potentially Dangerous Goods and/or fragile and which require special treatment or conditions of carriage and/or storage.
23. Rate and service quotations provided by K&W are based upon information provided by the Customer, but final rates and Services may vary based upon the application of the K&W Terms and Conditions to the Services actually required. Any conflict or inconsistency between the K&W Terms and Conditions and any other written or oral statement concerning the rates and Services will be controlled by the K&W Terms and Conditions, as modified, amended or supplemented by K&W from time to time.

24. The Customer will pay K&W for all charges incurred by K&W in relation to the provision of the Services, including charges for any delay in the loading or unloading of the Goods other than delays caused solely by K&W. Such delay period will commence upon K&W reporting for loading or unloading.
25. The Customer is responsible for the cost of, and arranging for, the loading and unloading of the Goods from K&W's vehicles.
26. K&W may require the Customer to pay all or part of the charge for the Services upon requesting the provision of Services.
27. If the Customer fails to make any payment when due, then, without limiting any other rights which K&W may have in accordance with the K&W Terms and Conditions or otherwise:
 - (a) any and all payments to K&W which are not yet due shall immediately become due and payable by the Customer;
 - (b) the Customer shall be liable to K&W for any costs or damage incurred by K&W as a result of the Customer's default, including any legal and other costs associated with recovering any moneys owed by the Customer to K&W; and
 - (c) interest shall accrue on the unpaid amount at a rate of the Reserve Bank of Australia cash target rate plus 2%.
28. If the Customer fails to make any payment when due, and fails to rectify that default within fourteen (14) days of being given written notice by K&W to do so, then without limiting any other rights which K&W may have in accordance with the K&W Terms and Conditions or otherwise, K&W may:
 - (a) Upon notice in writing, require the Customer to remove all of the Customer's Goods from K&W's premises within seven (7) days of the date of the notice; and
 - (b) if the Customer fails to remove Goods the subject of a notice under paragraph 290 within seven (7) days of the date of the notice, K&W may remove the Goods and deliver the Goods to the Customer's last known address at the expense and risk of the Customer.
29. K&W may deduct or set-off from any amounts due from K&W to the Customer under any contract, any amounts due from the Customer to K&W under the K&W Terms and Conditions.
30. K&W will not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure or inability of K&W or its Subcontractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the K&W's servants, agents, employees, Subcontractors or otherwise.
31. The customer shall notify K&W within seven (7) days of K&W sending their invoice if there is any dispute in relation to any charges contained in such invoice.

Lien and Security Interest

32. From the time K&W receives Goods into its custody and/or possession, K&W will have a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice, for any and all amounts due to be paid to K&W by the Customer. In addition, the lien shall cover all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal and administrative costs. The lien and rights granted by this paragraph shall survive delivery of the Goods and K&W is entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this clause. Any sums due and owing by the Customer are secured debts and any payment made to K&W in discharge of K&W's lien does not amount to a preference, priority or advantage in any way.
33. From the time K&W receives Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of K&W for any and all amounts due to be paid to K&W by the Customer. In addition, the continuing security interest shall cover all costs and expenses of exercising the security interest, including the costs of a public or private sale or auction, including legal and administrative costs.
34. K&W sells or otherwise disposes of Goods pursuant to paragraph 31 as principal and not as agent and is not the trustee of the power of sale.
35. K&W shall be deemed to have custody and possession of the Goods if the Goods are in the actual possession of K&W, and/or if K&W is in possession of any documents of title to the Goods. K&W has possession of the Goods within the meaning of section 24 of the *Personal Property Securities Act 2009* (Cth) as amended from time to time ("**PPSA**"), even if the Goods are in the possession of K&W's employees, agents and contractors.
36. K&W may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under the PPSA.
37. The Customer will immediately inform K&W if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying K&W in writing at least fourteen (14) days before such change takes effect.

38. K&W need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
39. K&W and the Customer agree pursuant to section 115 of the PPSA that sections 125,142 & 143 of the PPSA do not apply to the K&W Terms and Conditions.
40. The Customer, pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from K&W under sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.
41. The Customer will not:
- permit any other security interest to exist in relation to the Goods which would rank ahead of K&W's interest; or
 - except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of the Goods.
42. In addition to any rights that K&W has under the PPSA, at any time while any amounts owing by the Customer to K&W under the K&W Terms and Conditions remains unpaid K&W may, as the Customer's agent, and upon seven (7) days notice in writing to the Customer, enter into the premises where the Goods are stored and remove them and will not be responsible for any damage caused in doing so. The Customer shall indemnify K&W for all losses, damages, costs and expenses of any kind whatsoever incurred in connection with K&W exercising its rights under this paragraph.
43. K&W and the Customer agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7)(b) to (e) of the PPSA. Unless K&W otherwise agrees in writing, the Customer may only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d). Nothing in this paragraph prevents any disclosure by K&W that it considers necessary to comply with its other obligations under the PPSA or any other law.
- Insurance**
44. K&W is not an insurer. The Customer will effect and maintain, at its own cost and expense, such policies of insurance as are necessary to ensure full cover for any damage to or loss of the Goods.
- Liability and Indemnity**
45. Except as expressly provided in paragraph 47, K&W excludes all liability for, and the Customer releases and indemnifies K&W from and against all losses, damages, costs and expenses of any kind whatsoever, and howsoever arising, including in contract, tort (including negligence), under statute or otherwise and whether or not arising out of or in connection with the Services and/or the performance or non-performance of the Services.
46. The exclusions, releases and indemnities set out in paragraph 45 extend to indirect or consequential losses, including but not limited to loss of profits, loss of revenue, loss of business, loss or reduction of goodwill, loss of or corruption of data, loss of production and opportunity costs, even if K&W knows they are possible or otherwise foreseeable.
47. Where any applicable legislation:
- implies any term, condition or warranty into the relationship between K&W and the Customer or into the K&W Terms and Conditions;
 - imposes a consumer guarantee in respect of the Services; and/or
 - otherwise gives the Customer a particular remedy against K&W,
- and that legislation or any legislation avoids or prohibits provisions excluding or modifying the application of, or exercise of, or liability under, such term, condition, warranty, consumer guarantee or remedy, (a "**Non-Excludable Condition**"), then:
- that Non-Excludable Condition shall be deemed to be included in these Terms and Conditions or apply to that relationship; or
 - in the case of a consumer guarantee imposed on the Services, that Non-Excludable Condition shall apply in respect of those Services.
48. However, K&W's liability for any breach of such Non-Excludable Condition shall be limited, at K&W's option, in any one or more of the ways permitted by that legislation including, where so permitted, to the supplying of those Services again or the payment of the cost of having those Services supplied again.
49. In all other cases where liability has not been, or cannot be, excluded by the K&W Terms and Conditions because of mandatory applicable statute, convention or law, the liability of K&W is limited to the lesser of AUD\$100.00 or the value of the Goods the subject of the agreement at the time the Goods were received by K&W.
50. It is hereby agreed between the Customer and K&W that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:
- any claim for damage to Goods must be lodged in writing to K&W within seven (7) days of delivery of the Goods or the date Services are completed, whichever date occurs first;
 - any claim for loss/non-delivery of Goods must be notified in writing to K&W within sixty (60) days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first;
- (c) any right to any legal remedy against K&W shall be extinguished unless legal proceedings are brought against K&W in the state of New South Wales and not otherwise within six (6) months from the date of the contract or the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.
51. The K&W Terms and Conditions shall continue to have their full force and effect notwithstanding any breach of these Terms and Conditions by K&W, even if the breach is of a fundamental term.
52. The Customer warrants that it will not:
- hire any K&W driver; or
 - solicit, interfere with or endeavour to entice any K&W driver away from K&W;
- either whilst the driver is employed or engaged by K&W or within six (6) months of the termination of their employment or engagement with K&W.
- General**
53. K&W may from time to time, at its discretion, use electronic communications for transactions made under the K&W Terms and Conditions. Electronic communications include, but are not limited to, signature capture.
54. If a dispute arises out of or in connection with the Services and/or these Terms and Conditions, the parties shall in the first instance endeavour to settle the dispute in good faith within 14 (fourteen) days. Where a dispute cannot be settled by such means, the parties will endeavour to settle the matter with the assistance of a mediator. The costs of the mediation shall be borne equally by both parties. Both parties shall participate in any mediation in good faith. If the dispute is not resolved by mediation, the dispute may be referred to arbitration in accordance with the rules of the Australian Maritime and Transport Arbitration Commission ("**AMTAC**"). If the dispute is referred to arbitration, the parties shall abide by the arbitrator's decision, including any costs order made by the arbitrator. The seat of arbitration shall be Sydney, Australia. The language of the arbitration shall be English. If the dispute concerns a claim for an amount of \$100,000 or less, the parties agree to use the AMTAC rocket docket procedure.
55. All notices required to be given by either party to the other shall be in writing and may be given as follows:-
- personally; and/or
 - by post to the addressee at their last known address as notified from time to time, in which case such notice shall be deemed to have been received on the next business day following the date of posting; and/or
 - via email to an email address provided by either party in relation to the service undertaken.
57. K&W Terms and Conditions are available at www.kwhaulage.com.au. Upon K&W advising customers of the availability of these Terms and Conditions, both parties shall be bound by the K&W Terms and Conditions in relation to any current or future service provided by K&W. K&W may update the K&W Terms and Conditions from time to time and the last revision date shall be displayed on the Terms and Conditions.
56. If a condition or part of the K&W Terms and Conditions is unenforceable, the unenforceability does not affect any other part of the condition or any other condition.
57. If K&W waives a breach of the K&W Terms and Conditions, the waiver does not operate as a waiver of another breach of the same or any other term or condition or as a continuing waiver.
58. The K&W Terms and Conditions shall be governed by and construed exclusively in accordance with the laws in force in the State of New South Wales.
59. In the interpretation of the K&W Terms and Conditions, the singular includes the plural and vice versa; and words importing corporations mean and include natural persons and vice versa.
60. Where K&W is unable to carry out any obligation under the contract due to any circumstance, matter or thing beyond its reasonable control ("force majeure"), K&W shall be excused from such obligations to the extent of such prevention, restriction or interference so caused.

Reviewed and amended 31st March 2015