

## SUBCONTRACT AGREEMENT

### 1. DEFINITIONS

- 1.1 “Agreement” means this document.
  - 1.2 “Carriage” means and includes the whole of the operations and services undertaken by the subcontractor pursuant to this Agreement.
  - 1.3 “Carrier” means **Subcontractor Transport Services Pty Ltd (ACN 127 741 860)** carrying on business in its own name and under any business name including any subsidiary or affiliate companies and its officers, servants, agents or subcontractors and their employees.
  - 1.4 “Goods” means the goods accepted by the subcontractor from the Carrier pursuant to this Agreement. The term includes plant and equipment.
  - 1.5 “Customer” means the person or persons on whose behalf or at whose request the Carrier is arranging or allocating the Carriage.
2. The relationship between the parties to this Agreement is that of independent contractors, and nothing contained or implied herein shall be construed so as to constitute or imply the existence of any relationship of master and servant, or any partnership between the subcontractor and the Carrier.
  3. Words importing the singular include the plural and vice versa and words importing a gender including other genders.
  4. Person includes a corporation and vice versa.
  5. Notwithstanding anything herein contained, this Agreement shall be read subject to any condition or warranty implied by the *Australian Consumer Law*, if and to the extent that the said Act is applicable to this Agreement and prevents the exclusion, restriction or modification of any such condition or warranty.
  6. This Agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on the parties with respect to the storage and carriage or the matters to which this Agreement relates.
  7. This Agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
  8. Should any term, covenant, condition, provision or restriction in this Agreement be or become illegal or unenforceable, then in such case this Agreement shall be read and construed as if such term, covenant, condition, provision or restriction had been severed, and the remaining part of this Agreement shall remain in full force and effect.

9. The subcontractor is not a common carrier and will accept Goods for carriage only on these conditions.
10. The parties further agree that the subcontractor is not in any manner whatsoever the agent of the Carrier.
11. The subcontractor shall not represent himself to be the servant or agent or partner of the Carrier.
12. The Carrier shall not be liable to the subcontractor for any loss sustained by him by reason of the subcontractor's truck or trucks not being operated for any reason at any time, nor for the payment of any holiday pay, superannuation, long service leave or sickness benefits or any like benefit or payment, nor to obtain or maintain any policy in respect of worker's compensation under any Act or at all.
13. The Carrier warrants that:
  - 13.1 The Goods are fit for Carriage; and
  - 13.2 The Carrier has the authority of all persons owning or interested in the Goods to enter into this Agreement on their behalf.
14. The Carrier warrants that, in respect of all the Carriage to be undertaken by the subcontractor pursuant to this Agreement, the Customer has signed a copy of the consignment note used by the Carrier containing standard terms and conditions of carriage printed on its reverse.
15. The Carrier agrees that in its dealings with the Customer, the Carrier will neither expressly nor by implication forego, vary or in any way derogate from the terms and conditions of carriage contained in its consignment note, without giving express prior notice thereof to the subcontractor.
16. The Carrier undertakes to forthwith advise the subcontractor of any alteration to or amendment of the form or content of the Carrier's consignment note.
17. The Carrier shall not be responsible whether in tort or contract or otherwise in respect of loss or damage to property or any person, including but not limited to the property of the subcontractor, or in respect of any death of or injury to any person, including but not limited to the subcontractor, for any reason whatsoever, including without limiting the foregoing, negligence or breach of contract, or wilful act or default on the part of the Carrier, its servants and agents, or others.
18. The subcontractor agrees to exercise all reasonable care in the Carriage of the Goods pursuant to this Agreement.
19. The subcontractor agrees to indemnify the Carrier against:
  - 19.1 Any claim in respect of loss or damage to or deterioration of the Goods, or mis-delivery or failure in delivery of the Goods, either in transit or in storage or any reason whatsoever, whilst the Goods are in the subcontractor's custody or control; and

- 19.2 All reasonable costs expenses and charges incurred in and arising from the recovery of all or any part of the Goods in an accident, rollover or failure to deliver the Goods; and
- 19.3 All other claims or demands whatsoever, by whomsoever made, including claims for consequential loss, which arise as an incident to the Carriage.
20. The subcontractor agrees to be responsible for loss or damage to the property of the Carrier of whatsoever nature and howsoever caused which results from the Carriage, and to indemnify the Carrier against the consequences thereof.
21. The subcontractor acknowledges and agrees that any person engaged by him for the purposes of performing the Carriage pursuant to this Agreement shall be paid in accordance with any relevant award, determination or agreement as may be applicable from time to time.
22. The subcontractor warrants that at all times whilst performing Carriage pursuant to this Agreement, the subcontractor or any driver engaged by him shall comply with all laws and regulations relating to: -
  - 22.1 The licensing, operating and maintenance of the motor vehicle used for such Carriage;
  - 22.2 The licensing of the manner of driving the motor vehicle used for such Carriage; and
  - 22.3 The medical condition of the driver whilst driving the motor vehicle used for such Carriage.
23. Without prejudice to the generality of paragraph 22, the subcontractor warrants that:
  - 23.1 The motor vehicle used for the Carriage shall be roadworthy in every respect and fitted with speed limiters and tachographs if required;
  - 23.2 The driver shall be licensed to drive such motor vehicle, and shall not drive whilst under the influence or drugs, nor when he or she has a blood alcohol content in excess of the legally prescribed limit; and
  - 23.3 The driver shall observe all speed limits and road traffic directions, drive within the prescribed driving hours and comply with log book requirements.
  - 23.4 The Goods shall be transported to the destination described overleaf by the most direct route and the subcontractor shall only deviate from the most direct route if it is necessary to prevent the integrity of the Goods carried by him.
  - 23.5 No Goods or persons other than those described overleaf shall be carried without the written permission of the Carrier.

- 23.6 Upon delivery of the Goods he shall check the same with the load report and any discrepancies in number or quantity shall be noted on the said load reports which shall be sufficient evidence of the existence of any discrepancy or damage; and
- 23.7 The subcontractor shall be responsible for the cost to the Carrier of any such discrepancy or damage.
24. The subcontractor hereby indemnifies the Carrier for any liability whatsoever as a result of, or arising out of any failure to comply with each of the warranties referred to in paragraphs 22 and 23.
25. The subcontractor shall insure and keep insured himself, his employees, drivers, assistants, servants and agents to the satisfaction of the Carrier in respect of each of the risks set out in paragraphs 19 and 20, and shall produce to the Carrier evidence of the currency of such policy of insurance upon demand.
26. Should the subcontractor fail to maintain insurance pursuant to paragraph 25, the Carrier may, at its option but without any obligation so to do, effect any such insurance, pay any outstanding premium or reinstate any such policy to the satisfaction of the Carrier, and the subcontractor shall reimburse the Carrier on demand in respect of any expenses incurred in relation thereto.
27. The subcontractor shall abide with all rules and directions (not inconsistent with the terms of this Agreement) given to him by the Carrier from time to time.
28. This Agreement shall endure for the benefit of the Carrier and its assigns. The Carrier and any assignee may at any time assign its interest in this Agreement to any person or corporation it shall think fit, and upon notice of transfer or assignment being given to the subcontractor, any liability of the Carrier to the subcontractor, or any liability of any subsequent assignee from the Carrier, shall cease without prejudice to any right or action which shall have accrued prior to that time.
29. The Carrier shall be entitled, at its absolute discretion, to subcontract on any terms the whole or any part of the Carrier's undertaking pursuant to this Agreement.
30. Every servant, agent, and subcontractor of the, shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit.
31. This Agreement shall bind the subcontractor, his executors, administrators and permitted assigns. Where the subcontractor consists of more than one person, the obligation on their and each of their parts shall be joint and several.
32. Where the subcontractor is in default under the terms of this Agreement, or at the request of the subcontractor, the Carrier may expend moneys to remedy any such default or to meet any such request as the case may be, and shall in any such event be entitled to deduct such moneys expended from any payments due to the subcontractor under this Agreement.
33. Where a party is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the party affected ("force majeure"), to carry out any obligation under this Agreement, and that party:

33.1 Gives the other party prompt notice of such force majeure with reasonably full particulars thereof, and insofar as known, the probable extent to which it will be unable to perform or be delayed in performing that obligation; and

33.2 Uses all possible diligence to remove that force majeure as quickly as possible;

that obligation is suspended, so far as it is affected by force majeure, during the continuance thereof.

34. Any obligation to pay money under this Agreement shall not be excused for force majeure.

35. The requirement that any force majeure shall be removed with all possible diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the party affected.

36. The subcontractor shall pay the costs of and incidental to the stamping of this Agreement.

37. This Agreement shall continue in full force and effect until termination as provided in this paragraph:

37.1 Either party may determine this Agreement by giving fourteen (14) days notice in writing to such effect to the other. Such notice shall be sufficiently served for the purposes of this Agreement if left at or posted to the address of the other party last known to the party giving such notice.

37.2 Without prejudice to any other right of action available to the Carrier, the Carrier may terminate this Agreement upon one (1) days notice in writing given to the subcontractor where, in the opinion of the Carrier:

37.2.1 The subcontractor is in breach of the provisions of this Agreement;

37.2.1 A Sequestration Order is made against the estate of the subcontractor;

37.2.3 A Petition for Bankruptcy is presented against the subcontractor; or

37.2.4 The subcontractor makes a composition or executes any assignment or arrangement pursuant to the provisions of the *Bankruptcy Act*; or,

37.2.5 Where the subcontractor is a company, a winding up order is made in respect of the subcontractor.

38. It is agreed that no servant or agent of the Carrier nor any other person has any power to waive or vary any of the provisions hereof unless such waiver or variation is in writing signed by an executive officer of the Carrier.
39. The subcontractor shall deliver Goods to their destination within a reasonable time. Should Carriage of the Goods be delayed beyond that estimated time the Carrier shall be entitled to deduct from any moneys owing to the subcontractor any costs or losses incurred by the Carrier due to the delay.
40. The subcontractor acknowledges that in undertaking the delivery of Goods pursuant to this Subcontract that it will do so without breaching *Transport Operations (Road Use Management) Act 1995* (as amended) and the Regulations made thereunder insofar as they relate to the regulated management of fatigue of drivers of heavy vehicles and load mass limits. The subcontractor agrees to indemnify the Carrier and hereby does so in respect of any loss, damage, expense including any fines and penalties that the Carrier may sustain or incur as a result of any breach of the said legislation by the subcontractor.