



JOYCE KRANE ABN: 98 631 296 823
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TERMS AND CONDITIONS OF TRANSPORT CONTRACT WITH JOYCE KRANE

DEFINITIONS

In these conditions:

"Address" means the address provided to Joyce Krane by the Sender, to which the Consignment is to be delivered.

"Charges" means costs, fees, monies and other charges payable by the Sender to Joyce Krane in consideration of the Services provided to the Sender, including but not limited to:

- (a) costs caused by delays that are not at the fault of Joyce Krane;
- (b) taxes, fines and duties including customs and excise duties payable by Joyce Krane in respect of the Consignment;
- (c) any goods and services tax;
- (d) all other costs and expenses incurred in the provision of the Services including demurrage at the rate charged by the railway or shipping authority; and
- (e) Charges referred to in this contract.

"Consignment" means the goods provided by the Sender to Joyce Krane, together with any containers, packaging or pallets supplied by, or on behalf of, the Sender, to be Delivered to the Address.

"Damage" means any loss of, damage to, deterioration of, non-delivery of, or delay in delivery of the Consignment and includes consequential economic or ancillary loss damage, expenses or liability.

"Delivery" has the meaning given in clause 3 of this Agreement.

"Due date" means:

- where the Sender has an existing account with Joyce Krane, fourteen (14) days from the date of Delivery in relation to any Consignment; and
- where the Sender does not have an existing account with Joyce Krane, upon acceptance of the Quote by the Sender.

"Joyce Krane" means **Joyce Krane Australia Pty Ltd (ACN 631 296 823)** it's offices, agents and where applicable, subcontractors, and the subcontractors officers, agents and employees.

"Person" includes a natural person, firm, corporation, government authority or other body or organisation.

"Receiver" means the person, their officers, employees and agents to whom the Sender consigns, sends or directs the Consignment.

"Sender" means the person their officers, employees and agents to whom the Sender consigns, sends or directs the Consignment.

"Services" means the whole or part of the operations and services undertaken by Joyce Krane in connection with the Consignment, including but not limited to, the collection, loading, unloading, carriage, transportation delivery and storage of the consignment, and the use of Joyce Krane's intellectual property but excluding crange unless otherwise specified.

"Quote" means a written quote for the provision of the Services provided by Joyce Krane to the Sender.

1. AGREEMENT

- This agreement means this instrument of agreement and includes all schedules and attachments ("Agreement").
- Joyce Krane will supply the Services to the Sender on the basis of the terms and conditions set out in this **Agreement**.
- The parties will be bound by the terms of this Agreement upon acceptance (either verbally or in writing) of the Quote by the Sender.
- For the avoidance of doubt, the Sender will be deemed to have accepted the Quote if the Sender directs Joyce Krane to carry out the Services after the Quote has been provided to the Sender.

2. NOT A COMMON CARRIER

- Joyce Krane is not a common carrier and accepts no liability as such. All Services are provided subject to these conditions and Joyce Krane has absolute discretion to refuse to provide Services to any Person, or in relation to any Consignment.
- The Sender acknowledges that Joyce Krane relies on the details supplied by the Sender in order to carry out the Services.
- Joyce Krane does not verify or confirm the accuracy of any details or information (including the Address) provided by the Sender, and the Sender acknowledges and agrees that Joyce Krane will not be liable for any loss or claim by the Sender or any third party caused or contributed to be inaccurate information provided to Joyce Krane.
- A signature or other acknowledgement by Joyce Krane in connection with a Consignment cannot be construed as a verification of the details or information provided to Joyce Krane, and is merely an acknowledgement of the items received.

3. DELIVERY

- Joyce Krane must deliver the Consignment to the Address and delivery occurs when:
- The Consignment is delivered to the Address, and:
- Joyce Krane obtains from any person present at the Address, a receipt, signed docket or other acknowledgement in relation to the Consignment; or
- if the Address is unattended, Joyce Krane leaves the Consignment at the Address; or

- the Consignment is accepted for transport by rail to an Address in a place where Joyce Krane has no receiving depot, and the consignment is delivered to the nearest rail head,
- **(Delivery).**
- Notwithstanding clause 3(a)(i)(B), if the Address is unattended at the time that Joyce Krane attempts Delivery, Joyce Krane may elect, at its absolute discretion, to store and redeliver the Consignment, and the Receiver shall indemnify Joyce Krane for all expenses and other costs incurred in respect of storage, attempted delivery and redelivery.

4. METHOD AND ROUTE

- If the Sender instructs (expressly or impliedly) [ME Note: What's the intent here?] Joyce Krane to use a particular route or other method for providing the Services, Joyce Krane will use its best endeavours to give priority to that route or method, but the Sender agrees that Joyce Krane may provide the Services by another route or method at Joyce Krane's absolute discretion.
- Joyce Krane may change the usual or directed route or method for provision of any Services if Joyce Krane believes it is necessary or desirable to do so.

5. SUB-CONTRACTING

Joyce Krane may have a subcontractor or subcontractors perform all or any part of the Services. Joyce Krane acts as the agent and trustee for subcontractors who have the benefit of these conditions as if this contract was entered into by the subcontractor.

6. PACKAGING

- Containers, packaging and pallets within the Consignment must conform with Joyce Krane's requirements, and the sender is liable for any expense caused by non-conformance.
- If a pallet weight is not included in the consignment weight nominated by the Sender, each pallet will be charged at a rate determined by Joyce Krane.

7. DANGEROUS AND HAZARDOUS CONSIGNMENT

- The Sender must not tender a Consignment containing:
- dangerous, potentially dangerous, hazardous, harmful, or damaging goods (**Dangerous Consignment**), unless a full description disclosing the nature of the Dangerous Consignment and the extent of the danger, hazard or harm is provided to Joyce Krane and Joyce Krane confirms in writing to the Sender that it accepts the Dangerous Consignment; or
- goods, if the carriage of those goods is illegal or prohibited by any law or regulation of a State, Territory or the Commonwealth of Australia.
- Details provided by the Sender in relation to any Consignment are warranted by the Sender as correct.
- The Sender is liable for any and all losses, costs, claims, expenses and damages caused wholly or partially by a breach of clause 7(a) and must indemnify Joyce Krane for and against all losses, costs, claims, expenses and damages caused or contributed to by a breach of clause 7(a).
- Joyce Krane, at the Sender's expense, may return to the Sender or destroy, dispose or make harmless a Consignment that is tendered in breach of clause 7(a) or in breach of any law, regulation or rule that has effect in Australia.

8. STORAGE

- The Sender acknowledges that Joyce Krane may be required to store the Consignment prior to Delivery, or if Delivery cannot be achieved as contemplated by clause 3(b) of this Agreement.
- Any costs associated with storing the Consignment will be part of the Charges and will be borne by the Sender.
- If Joyce Krane is unable to achieve Delivery of the Consignment, Joyce Krane may provide notice to the Sender requiring that the Consignment be removed, and the Sender must pay the Charges and remove the Consignment within twenty eight (28) days of that request.
- Where storage Charges in respect of any Consignment are unpaid for three (3) months Joyce Krane require the Sender to pay the storage charges on any future Consignment within seven (7) days.
- If the Sender fails to comply with conditions 8(b), 8(c) or 8(d), title in the Consignment passes to Joyce Krane and Joyce Krane may deal with the Consignment in any way it sees fit including, opening and selling the consignment at the Sender's risk and expense, and applying the proceeds of any sale into the Charges then in arrears. The Sender indemnifies Joyce Krane in respect of any costs incurred, Charges which remain owing and any claims by any other party with an interest in the Consignment.

9. CARRIER'S CHARGES

- The Sender will pay the Charges on or before the Due Date without any entitlement to deduct, withhold or set-off any amount.
- The Sender must pay interest at the rate of 18% per annum calculated on a daily basis on any unpaid Charges calculated from the Due Date until the date on which the overdue Charges are paid.
- A further Charge may be levied for any delay exceeding two (2) hours from the time of reporting for leaving or unloading.
- No Charges are refundable to the Sender.
- Charges are exclusive of GST unless stated otherwise. The Sender will pay Joyce Krane the GST payable by Joyce Krane for the Services.
- Charges may, at Joyce Krane's discretion, be calculated by weight or volume.

10. CASH ON DELIVERY

Joyce Krane will not collect any payment on Delivery on behalf of the Sender even if instructed to.

11. CHARGES COLLECT

If the Sender specifies that some other Person will pay the Charges and that Person fails to pay the Charges by the Due Date, the Sender must pay the Charges within five (5) days of a request by Joyce Krane.

12. POSSESSORY LIEN

- Joyce Krane has a possessory general lien over the Consignment and any other property of the Sender in its possession or under its control from time to time with respect to any Charges due from the Sender or other Person's to Joyce Krane under this Agreement.
- Joyce Krane may sell the Consignment and apply proceeds to pay Charges due after providing written notice to the Sender's last known place of business or registered office of its intention to do so.

- The Sender indemnifies Joyce Krane against any claims by any party with an interest in the Consignment.

13. INDEMNITIES AND EXCLUSIONS

The parties acknowledge and agree that:

- The Consignment is at the risk of the Sender and not Joyce Krane and, unless expressly agreed in writing, Joyce Krane will not be liable for any damage to, loss or theft of the Consignment, or any part of the Consignment, whether or not the damage, loss or theft occurs in the course of performance by Joyce Krane of the Services or when otherwise in the possession of Joyce Krane, for any reason whatsoever including without limitation, negligence, breach of contract, bailment or wilful act or default of Joyce Krane.
- The Sender indemnifies Joyce Krane against any claim or allegation made against Joyce Krane, or actual or potential liability to any Person including but not limited to any damage, expense, loss, personal injury (including death or disease to the extent permitted by law) or other loss or injury arising out of, or in connection with, the provision of the Services including any legal cost or expense incurred by Joyce Krane, irrespective of any negligence, breach of contract, bailment or wilful act or default of Joyce Krane.
- Subject to any implied warranty provided by the Competition and Consumer Act 2010 (Cth) (CCA) or the Fair Trading Act 2010 (WA) (FTA) (as amended from time to time) which may not be excluded by law, no warranty, condition or representation is given on the part of Joyce Krane, and any express or implied warranty as to quality, fitness for purpose or otherwise of the Services is hereby excluded from the operation of this Agreement.
- To the extent that Joyce Krane is subject to any implied warranties provided by the CCA or the FTA, Joyce Krane limits its liability to the maximum extent allowed under the Act.
- For the avoidance of doubt, notwithstanding anything in this clause 13, the Consignment remains at the risk of the Sender at all times.

14. CLAIM FOR DAMAGE

- Where the Sender claims that Joyce Krane is responsible for any loss or damage under the Agreement, the Sender must provide written notice to Joyce Krane, setting out details of:
 - the Consignment;
 - the loss or damage that the Sender is claiming;
 - the conduct by Joyce Krane that the Sender claims caused the loss or damage; and
 - any other details required by Joyce Krane to assess the Sender's claim,
- **(Claim Notice).**
- In order to be valid, a Claim Notice must be submitted within seventy two (72) hours of the Consignment being Delivered by Joyce Krane. Any Claim Notice received more than seventy two (72) hours after Delivery of the Consignment will be invalid, and Joyce Krane will have no liability in relation to the claim the subject of the Claim Notice, the Services or the Agreement.
- If Joyce Krane accepts the Claim Notice, Joyce Krane will assess the loss or damage claimed by the Sender and advise the Sender of the outcome of Joyce Krane's assessment within [15] Business Days of receipt of the Claim Notice by Joyce Krane.

- Time is of the essence in this clause 14.

15. INSURANCE

- The Sender must take out its own insurance cover for the Consignment. At the request of Joyce Krane, the Sender will make Joyce Krane a co-insured to the Sender's insurance policy.
- For the avoidance of doubt, Joyce Krane is not required to, and will not, arrange procure or maintain insurance in connection with this Agreement or any Consignment.

16. LAWS, CUSTOMS AND REGULATIONS

- The Sender warrants that the Consignment complies with all the applicable laws, customs and other government regulations of any State or Territory of Australia, and any federal laws, customs and other government regulations applicable in Australia.
- The Sender is liable for any taxes and duties levied in respect of the Services or the Consignment.
- In respect of any Services provided in Queensland:
- this Agreement will be read subject to the Carriage of Goods Liability Act 1967 (Qld) (as amended from time to time) (CGL) and the terms of this Agreement will continue to apply except to the extent that any provision of the Agreement conflicts with the CGL, in which instance the CGL will prevail to the extent of that inconsistency; and
- Joyce Krane limits its liability in connection with this Agreement and the Services to the maximum extent allowed under the CGL.

17. SENDER ACCEPTS TERMS

- The Sender warrants that in relation to the Consignment, it is either the owner or authorised agent of the owner and the authorised agent of the Receiver.
- The Sender accepts the terms of this Agreement on behalf of the owner of the Consignment (if the Sender is not the owner), the Receiver and any other Person on whose behalf the Sender is acting.

18. DISPUTE RESOLUTION

If a dispute arises between the parties out of or in connection with this Agreement, either party may give notice to the other requesting a meeting between a Director or a nominee of Joyce Krane and a Director or a nominee of the Sender. The parties will use their best endeavours to arrange such a meeting at a mutually convenient time and place, within seven (7) days after service of the notice, to discuss and seek to resolve the dispute. If the dispute is not resolved within seven (7) days after the meeting or 14 days after service of the notice, whichever is the sooner, either party may commence proceedings.

19. ENTIRE AGREEMENT

This Agreement is the entire agreement between Joyce Krane and the Sender. No purported variation or modification of this contract will have any effect unless it is in writing and signed by an authorised agent of Joyce Krane.

20. SEVERABILITY

If any part of this Agreement is or becomes unenforceable that part is severed from the Agreement with the rest remaining in full force.

21. PROPER LAW AND JURISDICTION

The Agreement is governed by the laws of Western Australia and where applicable, the laws of the Commonwealth of Australia and the parties submit to the non-exclusive jurisdiction of the Courts of Western Australia.

