

# CURRIE CARGOES

## GENERAL TERMS AND CONDITIONS OF CARRIAGE

### 1. DEFINITIONS

In these Conditions, unless the contrary intention is expressed, defined terms have the meanings set out below and in the Consignment Note:

**Abandoned Goods** means Goods which have not been accepted for delivery and which have remained in the possession of Currie Cargoes for 60 days.

**ADG Code** has the meaning given in the *Dangerous Goods (Road and Rail Transport) Regulations 2010* (Tas.) or any other comparable legislation within any other jurisdiction within which all or any part of the Services are carried out.

**Agreement** means the agreement comprising the Consignment Note, the conditions contained in any credit application made by the Client to Currie Cargoes, the Conditions and any schedules and appendices to these Conditions.

**Business Day** means any week day on which banks are generally open for business in Currie, King Island, Tasmania.

**Claim** means any claim or cause of action in contract, tort, under statute or otherwise.

**Client** means the Person:

- a) identified on any credit application made by that Person to Currie Cargoes;
- b) identified as the Client on the Consignment Note;
- c) identified as the authorised agent of the Client on the Consignment Note; and/or
- d) identified as the Consignor on the Consignment Note, but only where the Consignor is not the authorised agent of the Client.

**Conditions** means these General Terms and Conditions of Carriage.

**Consignment Note** means the consignment note issued by Currie Cargoes outlining details and instructions in respect of Services (including, but not limited to the Consignor, Client and payment details and a description of the Goods).

**Consignee** means the Person to whom the Goods are to be delivered.

**Consignor** means the Person set out on the Consignment Note.

**Container** means any container, trailer, transportable tank, pallet, flat rack, bolsterer or any device used to consolidate and carry all or any part of the Goods.

**Corporations Act** means *Corporations Act 2001* (Cth).

**Currie Cargoes** means Currie Cargoes Pty. Ltd. (ABN 65 009 506 638) and its related bodies corporate within the meaning of that expression in section 9 of the Corporations Act, carrying on business in their own names and under any business names, and includes (where the context permits) Currie Cargoes' employees, officers, agents and Subcontractors.

**Dangerous Goods** means dangerous goods as defined in the ADG Code, and any Goods which are dangerous, volatile, explosive, inflammable or offensive, or which may in any way become dangerous, volatile, explosive, inflammable or offensive, or which may become harmful to any person, property or the environment.

**Dangerous Goods Legislation** means any Legislative Requirements relating to Dangerous Goods, including but not limited to the ADG Code and the IMDG Code.

**Force Majeure Event** has the meaning given in clause 17.1.

**Freight Rates** means the rates charged by Currie Cargoes from time to time for the carriage of any Goods to a particular destination (including Currie Cargoes' rates applicable to the provision of the Services) as specified in the Consignment Note.

**Goods** means all cargo (including substances, products, articles and things), baggage (other than personal luggage accompanying a passenger), or any other items in relation to which any part of any Services have been or are to be performed by Currie Cargoes (whether or not specified on the Consignment Note) and any receptacle, Container, package or packaging in relation to such Goods.

**GST** has the meaning given in the GST Act.

**GST Act** means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth. Expressions defined in the GST Act have the same meaning when used in the Agreement.

**IMDG Code** means the International Maritime Dangerous Goods Code implemented pursuant to *Marine Orders Part 41 – Carriage of Dangerous Goods (MO41)* and the *Navigation Act 1912* (Cth.).

**Insolvency Event** means the happening of any of the following events in relation to a party:

- (a) the party is unable to pay all the party's debts as and when they become due and payable or the party has failed to comply with a statutory demand as provided in section 459F of the Corporations Act or the party is deemed to be unable to pay the Client's debts under section 585 of the Corporations Act;
- (b) a meeting is convened to place the party in voluntary liquidation or to appoint an administrator;
- (c) an application is made to a court for the party to be wound up;
- (d) the appointment of a controller (as defined in the Corporations Act) of any of the party's assets;
- (e) the party proposes to enter into or enters into any form of arrangement (formal or informal) with the Party's creditors or any of them, including a Agreement of company arrangement; or
- (f) the party becomes an insolvent under administration, as defined in the Corporations Act.

**Invoice** means a tax invoice issued in accordance with the GST Act.

**Legislative Requirements** means Acts, Ordinances, regulations, by-laws, orders, awards and proclamations whether Commonwealth, State or local, including any Acts, Ordinances, regulations, by-laws, orders, awards, proclamations and directions of a Relevant Authority or which relate to the transport of goods by road, rail or sea.

**Loss** includes any damage, loss, cost, Claim, liability or expense.

**Person** means any natural person, firm, corporation, partnership, trust statutory authority (including a Relevant Authority) or local, state or federal government.

**PPS Act** means the *Personal Property Securities Act 2009* (Cth).

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**Relevant Authority** means any local or statutory authority charged with the administration of any Legislative Requirements and includes any authority which has jurisdiction in relation to the Goods, the Services or the Agreement.

**Security Interest** has the meaning given to that term in the PPS Act.

**Services** means the whole of the operations and services undertaken and provided to the Client by Currie Cargoes under the Agreement, including those operations and services undertaken and provided in relation to the Goods and the transportation of the Goods to the Consignee in accordance with the Consignment Note, subject to the Agreement.

**Services Fee** means the total fee charged by Currie Cargoes and payable by the Client in consideration for Currie Cargoes carrying out the Services and comprising:

- (a) the Freight Rates;
- (b) any increase to the Service Fee determined in accordance with clauses 9.3 and 9.4 of the Agreement;
- (c) any other charges, fees or costs specified in the Consignment Note or quoted by Currie Cargoes to the Client in writing; and
- (d) any taxes levied by any Relevant Authority or imposed pursuant to any Legislative Requirement (including GST) directly on a transaction or supply made under the Agreement.

**Statement** means a statement for payment issued to the Client by Currie Cargoes.

**Subcontractor** means any Person, and its employees or agents, who pursuant to a contract or arrangement with any other Person (whether or not Currie Cargoes) provides or agrees to provide the Services or any part of the Services.

**Temperature Controlled Goods** means Goods which require temperature control.

### 2. APPLICATION

- 2.1 The Agreement applies to all Services provided by Currie Cargoes to the extent that they are not inconsistent with the provisions of any relevant Legislative Requirements.

### 3. GENERAL PROVISIONS

- 3.1 Currie Cargoes is not a common carrier and accepts no liability as a common carrier.
- 3.2 Currie Cargoes reserves the right to agree or to refuse to carry any Goods or carry out any Services or contract with the Client in its absolute discretion prior to the commencement of any Services.

### 4. ACCEPTANCE OF GOODS

- 4.1 Subject to clause 3.2, any Legislative Requirements and the Client complying with its obligations under the Agreement, Currie Cargoes agrees to provide the Services to the Client, for the Services Fee.

### 5. CLIENT'S WARRANTIES

- 5.1 The Client warrants to Currie Cargoes that:
  - (a) it is:
    - A. the owner of the Goods and by signing a credit application made by the Client to Currie Cargoes and enters into the Agreement in its own capacity;

- B. the authorised agent of the owner of the Goods or any other Person having an interest in the Goods and by signing the Consignment Note enters into the Agreement as authorised agent of that Person or Persons only; and/or
  - C. the Consignor, but only where the Consignor is not the authorised agent of the Client and by signing the Consignment Note enters into the Agreement in its own capacity.
- (b) the Goods are packed to withstand the ordinary risks of the Services being carried out having regard to the nature of the Goods and methods of transportation (which may include, but is not limited to sea and road transport) which are or may be used by Currie Cargoes in carrying out the Services, and further warrants that the packaging of the Goods and the Container (if applicable) has been secured;
  - (c) the Goods are accurately and fully described on the Consignment Note (including their nature, weight, measurements and any other details required on the Consignment Note) and that all necessary instructions and information regarding the handling, care and control of the Goods having regard to the nature and packaging of the Goods have been provided to Currie Cargoes;
  - (d) all applicable Dangerous Goods Legislation and applicable Legislative Requirements relating to the nature, condition, packaging, handling, labelling, notification, classification, description, documentation, transport, storage and carriage of the Goods have been complied with and that it will provide all necessary assistance, information and documentation to Currie Cargoes to enable Currie Cargoes to comply with any of its obligations under such Dangerous Goods Legislation and Legislative Requirements, prior to the Services being carried out;
  - (e) it will not provide any Dangerous Goods or Temperature Controlled Goods to Currie Cargoes without presenting a full description of the Goods and disclosing their nature, and where relevant, information relating to the manner in which the Services must be provided;
  - (f) in relation to any Goods which are Dangerous Goods, it has supplied all paper work and documentation required in relation to such Goods (including all paperwork and documentation required pursuant to any applicable Dangerous Goods Legislation) at the time the Goods are delivered to Currie Cargoes and prior to the Services being carried out; and
  - (g) it has satisfied itself prior to entering into the Agreement of the risks associated with the provision of the Services.

- 5.2 The Client releases and indemnifies Currie Cargoes from and against any Loss, fee, penalty or charge arising from a breach of any of the Client's warranties contained in clause 5.1.

- 5.3 This clause 5 survives the expiration or earlier termination of the Agreement.

### 6. PROVISION OF SERVICES AND RIGHTS

- 6.1 The Client authorises Currie Cargoes to do all things reasonably necessary to carry out and complete the Services in accordance with:
  - (a) the Agreement;

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- (b) all applicable Legislative Requirements; and
  - (c) any internal policies and procedures of Currie Cargoes which relate to the Services and carriage of the Goods.
- 6.2 Currie Cargoes may at any time during the carrying out of the Services, deviate from the usual route or manner of carriage or transport of the Goods where Currie Cargoes considers the deviation necessary, expedient in the circumstances or is otherwise required, provided always that any deviation will not result in an increase in the relevant Freight Rate or the Service Fee payable by the Client.
- 6.3 The Client acknowledges that:
- (a) the times of departure and arrival of any vehicles carrying or transporting Goods are subject to external factors beyond the control of Currie Cargoes and/or variations and changes due to the operational requirements of Currie Cargoes;
  - (b) although Currie Cargoes will take all reasonable measures to avoid any delay for the delivery of Goods it does not guarantee the times of departure and arrival of any vehicle by which the Goods are carried or transported; and
  - (c) subject to clause 13, it is the Client's responsibility to obtain adequate and appropriate policies of insurance for any Loss that the Client may, is likely to or will suffer as a result of the late delivery of any Goods.
- 6.4 Subject to the terms and conditions of the Agreement, Currie Cargoes will comply with Legislative Requirements issued by a Relevant Authority in relation to the Goods or the provision of the Services.
- 6.5 If, in the reasonable opinion of Currie Cargoes, any of the Goods:
- (a) do not meet (or appear not to meet) the requirements of any applicable Legislative Requirements relating to the Goods or the Services;
  - (b) are Dangerous Goods and either do not comply (or appear not to comply) with any applicable Dangerous Goods Legislation, or the Client has failed to comply with clauses 5.1(d), 5.1(e) or 5.1(f) in relation to such Dangerous Goods;
  - (c) are unsuitable to be handled by Currie Cargoes using the equipment and operating procedures normally employed by Currie Cargoes to provide the Services; or
  - (d) are (in the opinion of Currie Cargoes) hazardous or unsafe for Currie Cargoes to carry or transport,
- then Currie Cargoes may, where it deems reasonably necessary to do so:
- (e) take any and all reasonable measures necessary to cause the Goods (including but not limited to the carriage of such Goods) to comply with the applicable Legislative Requirements or to make such Goods suitable to be handled by Currie Cargoes, provided that the cost of undertaking such measures does not exceed 10 per cent of the Services Fee; or
  - (f) refuse to provide or refuse to continue providing the Services, in which case:
    - A. a reasonable and fair proportion of the Services Fee will be refunded to the Client (if the Services Fee has been prepaid); or
    - B. the Services Fee will be reduced by a reasonable and fair proportion, as determined by Currie Cargoes (in its sole and absolute discretion).
- 6.6 Where Currie Cargoes is required by any Legislative Requirement or Relevant Authority, or where Currie Cargoes forms the reasonable opinion that the provision of the Services or the transport of the Goods:
- (a) poses a threat to the safety or health of any Person or Persons (including any officers, employees, agents or Subcontractors of Currie Cargoes); or
  - (b) is likely to damage, pose a danger to or cause environmental contamination to any property or other goods,
- then Currie Cargoes may destroy, dispose of, or abandon such Goods.
- 6.7 Subject to clause 6.5(f), if Currie Cargoes takes any action pursuant to clause 6 and wishes to recover its Loss, then:
- (a) Currie Cargoes must first notify the Client prior to any action being taken, or if not reasonably practicable to do so, then as soon as reasonably practicable after such action is taken; and
  - (b) the Client indemnifies and keeps indemnified Currie Cargoes for any such Loss (which will be payable by the Client to Currie Cargoes on demand).
- 6.8 To the extent permitted by law (including by any Legislative Requirement), Currie Cargoes reserves the right to open any Container, package, wrapping or document in relation to any Goods, if, in the reasonable opinion of Currie Cargoes, it is necessary and reasonable to do so to make the Goods, or the Services in relation to the Goods, safe or otherwise compliant with the Agreement.
- ### **7. DELIVERY METHODS AND SUB-CONTRACTING**
- 7.1 Currie Cargoes may:
- (a) carry or transport the Goods, or have all or any of the Goods carried or transported, by any method which Currie Cargoes, in its absolute discretion, sees fit; and
  - (b) subcontract all or any part of the Services to any Subcontractor or agent appointed by Currie Cargoes, from time to time, without the consent of the Client.
- 7.2 The Client acknowledges and agrees that any Subcontractor or agent engaged by Currie Cargoes to carry the Goods is entitled to the benefit the Agreement, as if the Client had directly entered into an agreement containing the Agreement with the Subcontractor or agent in the place of Currie Cargoes.
- ### **8. CURRIE CARGOES LIABILITIES**
- 8.1 Currie Cargoes accepts no responsibility for the accuracy of any part of any description of, or any declaration in relation to, the Goods, on any document to which the Services relate, made by the Client.
- 8.2 Subject to clause 15, the Client acknowledges and agrees that the Goods shall at all times be at the risk of the Client and Currie Cargoes will not be liable for any Claim in respect of, or the consequences of any:
- (a) breach by the Client of the Agreement;
  - (b) Loss in respect of the Goods, concealed damage, deterioration, contamination or evaporation of the Goods, misdelivery of the Goods, or delay in delivering or failure to deliver the Goods; or

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(c) delay in providing, or failure to provide or perform, the Services.

### **9. PAYMENT**

9.1 Subject to clause 9.2, the Services Fee must be paid by the Client to Currie Cargoes in full in one of the following manners:

- (a) within 14 days of the end of the relevant Statement period for the Statement issued to the Client by Currie Cargoes; or
- (b) if the Client does not have an account with Currie Cargoes, by freight collect upon receipt of the Goods, or if the Goods are not delivered or received pursuant to the Agreement, upon demand by Currie Cargoes; or
- (c) if the Client does not have an account with Currie Cargoes and Currie Cargoes (in its discretion) requires the Services Fee to be prepaid, prior to the Services being carried out by Currie Cargoes and upon demand by Currie Cargoes,

without discount, deduction, counterclaim or set-off and regardless of any dispute between Currie Cargoes and the Client. In the event of a breach by the Client of this clause 9.1, Currie Cargoes reserves the right to suspend or to refuse to provide the Services to the Client in its absolute discretion until such time as the Service Fee is paid in full in accordance with this clause.

9.2 All Statements issued by Currie Cargoes must be in the form of or include an Invoice.

9.3 Currie Cargoes may charge or vary the Services Fee having regard to the weight, measurement or value of the Goods and may at any time re-weigh or re-value, or re-measure or require the Goods to be re-weighed, re-valued or re-measured and charge the Client proportional additional charges as part of the Services Fee in accordance with the Freight Charges.

9.4 The Client acknowledges that any Services Fee quoted, advised or represented to the Client may be increased if:

- (a) required pursuant to clause 9.3; or
- (b) if the Client has failed to comply with any of its obligations under clause 5.1; or
- (c) if there is any increase to any tax (including GST), fee or charge levied directly on a transaction or supply made under the Agreement, by any Relevant Authority or pursuant to any Legislative Requirement.

9.5 Subject to clause 14 and clause 15, Currie Cargoes is entitled to the Services Fee as soon as the Goods are delivered by Currie Cargoes or its receiving agent or Subcontractor, or such other time as agreed to between Currie Cargoes and the Client in writing.

9.6 The Client acknowledges and agrees that, notwithstanding that all or any part of the Services Fee may be payable by a Person other than the Client, if that Person does not pay those charges:

- (a) within 7 days of the date the payment is due; or
- (b) if no date is set for payment, within 7 days of delivery or attempted delivery of the Goods,

then the Client must pay those charges to Currie Cargoes within 7 days of being notified by Currie Cargoes of that Person's failure to pay.

9.7 If the Client fails to make the payment that is due and payable in accordance with clause 9, interest will automatically accrue on overdue payments at the rate

of two percent (2%) per annum above the prime bank rate from time to time charged by an Australian bank nominated by Currie Cargoes on overdraft facilities in excess of \$100,000.00, from the date the payment is due to and including the date the payment is paid.

9.8 In addition to clause 9.7, if the Client fails to make any payment when due and payable, Currie Cargoes may employ the services of a mercantile agent and/or solicitors to seek recovery of such payment and the Client agrees to indemnify and keep indemnified Currie Cargoes for any and all reasonable costs, disbursements and expenses incurred as a result (including legal costs on a solicitor/client basis).

9.9 This clause 9 survives the expiry or earlier termination of the Agreement.

### **10. LIEN**

10.1 The Client acknowledges and agrees that Currie Cargoes will have a lien over the Goods and any other cargo or items of the Client which are in the possession or control of Currie Cargoes and any documents relating to those Goods, cargo or items, for all amounts payable by the Client to Currie Cargoes under the Agreement.

### **11. SECURITY INTEREST**

11.1 In addition to the lien granted under clause 10, the Client grants to Currie Cargoes a Security Interest in the Goods in order to secure performance of the Client's obligations under the Agreement.

11.2 The Client agrees to do anything (such as obtaining consents, signing and producing documents, getting documents completed and signed and supplying information) which Currie Cargoes asks and considers necessary for the purpose of:

- (a) ensuring that the Security Interest is enforceable, perfected (including, where possible, by control in addition to registration) and otherwise effective;
- (b) enabling Currie Cargoes to apply for any registration, or give any notification, in connection with the Security Interest so that the Security Interest has the priority required by Currie Cargoes; or
- (c) enabling Currie Cargoes to exercise rights in connection with the Security Interest.

11.3 Everything the Client is required to do under this clause 11 is at the Client's expense. The Client agrees to pay or reimburse the reasonable costs of Currie Cargoes in connection with anything the Client is required to do under this clause 11 on demand by Currie Cargoes.

### **12. UNCOLLECTED GOODS**

12.1 Subject to clause 12.2, if the Consignee fails to accept delivery of the Goods, or if Currie Cargoes is unable to deliver the Goods and the Consignee or the Client fails to accept re-delivery of the Goods, the Client acknowledges and agrees that Currie Cargoes will be entitled to store the Goods at the risk and expense of the Client.

12.2 The Client acknowledges and agrees that Currie Cargoes may dispose of any Abandoned Goods at the expense of the Client, in accordance with any Legislative Requirements, or otherwise at the discretion of Currie Cargoes.

### **13. INSURANCE AND RISK**

13.1 The Client acknowledges and agrees that it is responsible for obtaining its own insurance in respect of

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the Goods and the Services (including any marine insurance required by the Client). The Client acknowledges and agrees that Currie Cargoes is not responsible for and will under no circumstances arrange or provide any insurance cover for the Client.

### 14. INDEMNITIES AND WAIVERS

14.1 Subject to clause 15, the Client indemnifies and keeps indemnified Currie Cargoes for any Loss, including indirect or consequential Loss (for example, loss of profits, loss of revenue, interruption of business or loss of use) incurred by any Claim or allegation made against, or any Claim for death of or bodily injury to a person made against, Currie Cargoes or others (other than by the Client) arising out of or in connection with:

- (a) the provision of the Services or in respect of the Goods;
- (b) the breach of any provision of the Agreement by the Client or its employees, servants, contractors, Subcontractors or agents;
- (c) the breach of any Legislative Requirement by the Client or its employees, servants, contractors, Subcontractors or agents; or
- (d) any act, omission or negligence of the Client or its employees, servants, contractors, Subcontractors or agents.

14.2 The indemnities in this clause 14 are continuing obligations and survive the termination or expiry of the Agreement.

14.3 Subject to clause 15, but despite any other provision in the Agreement, the liability of Currie Cargoes (if any) arising out of or in connection with the Agreement or at law or under any Legislative Requirement, is limited, in each case and in aggregate, to the amount of the Services Fee payable by the Client under the Agreement.

### 15. LIMITATION OF LIABILITY

15.1 The liability of Currie Cargoes, if any, for a breach of a guarantee or warranty implied by any Legislative Requirement in relation to the supply of any service (including the Services) under the Agreement, not of a kind ordinarily required for personal, domestic or household use or consumption is limited, at Currie Cargoes' option, to:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again.

15.2 Subject to clause 15.1, any Claim for Loss or damage to the Goods, or relating to the performance of the Services, must be notified in writing to Currie Cargoes within 7 days of:

- (a) delivery of the Goods or Container to the Consignee; or
- (b) (in the case that the Goods or Container have been lost, destroyed or cannot, for any reason, be delivered, or the Services cannot, for any reason, be performed) the date that the Client is notified by Currie Cargoes that the Goods or Container cannot be delivered, or the Services performed.

15.3 Where Currie Cargoes has sought to limit its liability, or the timeframe for notification of Claims, for a breach of a guarantee or warranty implied by any Legislative Requirement, in relation to the supply of any service (including the Services) under the Agreement and the Services:

- (a) are of a kind ordinarily acquired for personal, domestic or household use or consumption; or
- (b) are not for or in relation to the transportation or storage of goods for the purpose of a business, trade, profession or occupation carried on or engaged in by the Client,

then such limitations do not apply.

### 16. TERMINATION

16.1 A party (the **Non-Defaulting Party**) may terminate the Agreement by giving the other party (the **Defaulting Party**) notice if:

- (a) the Defaulting Party repudiates its obligations under the Agreement;
- (b) the Defaulting Party does not comply with an obligation under the Agreement and, in the Non-Defaulting Party's reasonable opinion, either the non-compliance can be remedied, but the Defaulting Party does not remedy it within 14 days after the Non-Defaulting Party gives the Defaulting Party written notice to remedy it, or the non-compliance cannot be remedied; or
- (c) an Insolvency Event occurs in respect of the Defaulting Party.

16.2 Where the Agreement is terminated:

- (a) the Defaulting Party indemnifies and keeps indemnified the Non-Defaulting Party against any Loss arising and any cost incurred (whether before or after termination of the Agreement) in connection with the Defaulting Party's breach of the Agreement and the termination of the Agreement;
- (b) the Non-Defaulting party must take reasonable steps to mitigate its Loss;
- (c) the parties are relieved from future performance of the Agreement without prejudice to any right of action that has accrued prior to the date of termination; and
- (d) rights to recover damages are not affected by the termination.

### 17. FORCE MAJEURE

17.1 Neither party (**Affected Party**) is liable to the other for any failure to perform any obligation under the Agreement, (provided that the Affected Party has made all reasonable efforts to avoid or minimise the effects such events may have on the performance of its obligations under the Agreement) to the extent that such failure is caused by or due to:

- (a) an act of God;
- (b) any Government requisition, control, intervention, requirement or interference;
- (c) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorists or the consequences thereof;
- (d) riots, civil commotions, blockades or embargoes;
- (e) epidemics;
- (f) earthquakes, landslides, floods or other extraordinary weather conditions;
- (g) strikes, lockouts or other industrial action, but only if of a general nature and not limited to the Affected Party and/or the contractors of the Affected Party;
- (h) fire, accident, explosion (whether on or within the Site or any other site where the Services are to be carried out or elsewhere) except where caused by

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the proven negligence of the Affected Party or its employees, agents or contractors; or

- (i) any other act or circumstance which is beyond the reasonable control of the Affected Party, which makes performance of an obligation under the Agreement impossible, and not merely more onerous or uneconomical,

(each a **Force Majeure Event**).

17.2 Where a Force Majeure Event takes place, the Affected Party must:

- (a) immediately notify the other party of this and provide complete details of the Force Majeure Event; and
- (b) notify the other party within a reasonable time after the giving of notification referred to above of any methods or procedures known to it to circumvent the Force Majeure Event.

17.3 Where a Force Majeure Event ceases, the parties must re-commence performing the duties that were previously affected by the Force Majeure Event as soon as practicable.

17.4 Where a Force Majeure Event continues for a period of twenty-eight (28) days or more, either party may terminate the Agreement by written notice to the other party.

### 18. DISPUTES

18.1 If a party has a dispute or complaint against the other party (**Dispute**), that party (**Notifying Party**) must notify the other party in one of the ways described in clause 21. The Notifying Party must ensure that the notice contains specific detail identifying the nature of the dispute or complaint.

18.2 Both parties within 21 days of the delivery of a Dispute notice must meet and use their best endeavours to resolve the dispute or complaint to the mutual satisfaction of both parties as soon as practicable.

18.3 If the parties are not able to reach a resolution of the Dispute within a reasonable period of time (in any event being no more than 21 days after the date of receipt of the notice of the Dispute) (**First Dispute Period**), the Dispute is by this clause 18 submitted to mediation.

18.4 The mediation must be conducted at King Island in Tasmania.

18.5 The Institute of Arbitrators and Mediators Australia Mediation and Conciliation Rules (as at the date of the Dispute notice) as amended by this clause 18 apply to the mediation, except where they conflict with this clause 18.

18.6 If the parties have not agreed upon the mediator within 5 Business Days after the First Dispute Period the mediator is the person appointed by the President of the Institute of Arbitrators and Mediators Australia, Tasmania Chapter (**President**) or the President's nominee, acting on the request of any party to the Dispute.

18.7 The parties must pay the mediator's remuneration in equal shares. Each party must pay its own costs of the mediation.

18.8 If the mediation does not resolve the Dispute within 20 Business Days after the First Dispute Period then either party may commence a court action or proceedings.

18.9 Nothing in this clause 18 prevents:

- (a) either party from seeking urgent interlocutory relief; or

(b) Currie Cargoes from seeking recovery for any claim that it reasonably considers to be a monetary claim,

from a Court of competent jurisdiction; or

(c) either party from taking action pursuant to clause 16.

18.10 The parties agree to perform their obligations under the Agreement, notwithstanding the existence of a Dispute.

### 19. ENTIRE AGREEMENT

19.1 The covenants, warranties, agreements and provisions contained in the Agreement comprise the entire agreement between the parties about its subject matter.

19.2 The Client's standard or usual terms and conditions regarding the Services or the carriage of Goods are expressly excluded with the effect that the Agreement exclusively applies and constitutes the entire agreement between the parties.

### 20. GST

20.1 Unless otherwise stated in the Agreement, all amounts payable by one party to another party under the Agreement are GST exclusive.

20.2 If GST is imposed or payable on any supply made by a party under the Agreement, the recipient of the supply must pay to the supplier, in addition to the GST exclusive consideration for that supply, an additional amount equal to the GST exclusive consideration multiplied by the prevailing GST rate. The additional amount is payable at the same time and in the same manner as the consideration for the supply.

### 21. NOTICES

21.1 A notice or other communication to be given or made under the Agreement must be in writing and addressed to each of the parties at the address, or to the fax number (as the case may require) outlined in the Consignment Note, and are taken to be served:

- (a) in the case of hand delivery - when delivered;
- (b) if sent by prepaid post - on the third Business Day after the date of posting; or
- (c) if sent by facsimile transmission (if the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) - upon completion of sending if completion is within ordinary business hours in the place where the recipient's facsimile machine is located, but if not, then at 9.00 am on the next Business Day in that place.

21.2 However, if the intended recipient has notified a changed postal address or fax number, then the communication must be to that postal address or fax number.

### 22. CARRIAGE AND RETURN OF CONTAINERS

22.1 If the Goods are to be provided to the Consignee in a Container and Currie Cargoes is not required to unload the Goods from such Container as part of the Services, the Client is responsible for:

- (a) all costs in relation to the unloading of such Goods;
- (b) any and all Loss incurred by the Client and any Loss or Claim of any Person (including Currie Cargoes) in relation to the unloading of such Goods;
- (c) any Loss or Claim with respect to the Container; and
- (d) all costs incurred in relation to returning the Container in accordance with clause 22.2,

# **CURRIE CARGOES**

## **GENERAL TERMS AND CONDITIONS OF CARRIAGE**

and indemnifies and keeps indemnified Currie Cargoes against any Loss or Claim which may arise or is incurred as a result of a failure by the Client to comply with this clause 22.1.

- 22.2 If the Client is required to unload any Goods from a Container, the Client must return the Container to the person who owns or has the right of possession of that Container or its agent, at its cost and as soon as practicable after the Goods are unloaded.
- 22.3 Currie Cargoes is not liable for the safe and proper packing and stowage of the Goods in any Container.

### **23. GENERAL**

- 23.1 An amendment or variation to the Agreement is not effective unless it is in writing and signed by the parties.
- 23.2 Each party must at its own cost do all things reasonably necessary to give effect to the Agreement.
- 23.3 The failure of a party at any time to require full or partial performance of any provision of the Agreement does

not affect in any way the full right of that party to require that performance subsequently.

- 23.4 If any provision or part of any provision of the Agreement is void, invalid or unenforceable for any reason, that provision or part of that provision may be severed from the Agreement and does not affect the validity, operation or enforceability of any other provision of the Agreement, unless the severance would change the underlying principal commercial purpose or effect of the Agreement.
- 23.5 The Agreement is governed by the law of Tasmania, and the parties submit to the jurisdiction of the courts of Tasmania.
- 23.6 All rights, immunities, indemnities and limitations of liability in the Agreement survive the expiry or earlier termination of the Agreement.
- 23.7 A copy of these Conditions is available at [www.mckenzieagencies.com](http://www.mckenzieagencies.com), at the premises or available by calling (03) 6462 1415.