

CONSIGNMENT NOTE/CRANE HIRE –

CONDITIONS OF CARRIAGE

1. DEFINITIONS

In these conditions:

- (a) 'Carrier' shall mean A&G Engineering Pty Limited ACN 002 850 017, its servants, agents and subcontractors.
 - (b) 'Consignor' shall mean the party entering into the contract of carriage or crane hire contract with the Carrier, being either the shipper, the owner of the goods carried or lifted or their authorised agent.
- 1.2 The Carrier is not a common Carrier and accepts no liability as such. The Carrier may refuse the carriage or transport or lifting of goods for any person or corporation and the carriage or transport or lifting of any class of goods is at the Carrier's absolute discretion.
- 1.3 These conditions of carriage cover the whole of, or any part of, the operations and services provided from time to time by the Carrier to the Consignor, including but not limited to the carriage, storage, loading, unloading, packing, un-packing, freight forwarding, customs clearance or de-consolidation of any goods and/or the supply of crane (with or without operator) for the lifting and moving of goods on behalf of the Consignor.
- 1.4 The Consignor warrants that:
- (a) the Consignor has complied with all applicable laws and regulations relating to the nature, condition, packaging or carriage of the goods and that the goods are packed in a manner, having regard to their nature, adequate to withstand the ordinary risks of carriage;
 - (b) the goods are accurately described in writing in the space provided on the consignment note and in circumstances where the consignment note/crane hire docket is written by the Carrier, that the Consignor has provided the Carrier with an accurate description of the goods and has checked the accuracy of the description of the goods upon receipt of the consignment note/crane hire docket.
 - (c) the Consignor is either the owner of the goods and/or the authorised agent of the person or persons owning or having any interest in the goods or any part thereof and enters into this contract on its own behalf and/or as authorised agent of that person or persons.
 - (d) The Consignor has declared the weight of the goods and acknowledges that the Carrier shall rely upon the declared weight of the goods when handling them.
 - (e) Where the crane is hired to the Consignor without an operator, that the crane will be operated by a suitably trained, licensed, experienced and (if necessary) certified operator and in accordance with the operator's manual and Carrier's instructions, will be used for the purpose for which it is designed in suitable terrain and in a manner which has regard to its capacity, capabilities and limitations and will be returned to the Carrier in the same condition as received, ordinary wear and tear excepted, with a full tank of fuel.
- 1.5 The Consignor indemnifies the Carrier against any expenses, costs of delay, charges or losses sustained or incurred by the Carrier in complying with the requirements of any law or otherwise incurred as a result of a breach of the warranties in Clause 1.4.
- 1.6 The Consignor undertakes that no claim will be made against any servant, sub-contractor or agent of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the goods or the services or crane hire under this contract. If any such claim should nevertheless be made, the Consignor shall indemnify the Carrier against the consequences thereof.
- 1.7 The method or methods of undertaking the services shall be at the sole discretion of the Carrier and the Consignor hereby authorises the Carrier to adopt any method or methods other than any method which may have been instructed or agreed.
- 1.8 The Consignor authorises any deviation from the usual route of carriage and/or lifting of the goods.
- 1.9 The Carrier shall not be bound to deliver the goods except to the consignee shown on the consignment note or to such other persons as may be authorised in writing by the Consignor to receive the goods.
- 1.10 If the Carrier is unable to deliver the goods for any reason (including failure on the part of the consignee to take delivery within a reasonable time) the Carrier shall be entitled to handle and store the goods in such manner as it may in its discretion determine and shall be entitled to make a reasonable charge in respect of such handling and/or storage and subsequent delivery of the goods.
- 1.11 The Consignor or his authorised agent shall not tender for carriage or lifting any explosive, inflammable or otherwise dangerous or damaging goods without presenting a full description of those goods and in default of so doing shall be liable for all loss and damage caused thereby.
- 1.12 The goods shall at all times be at the risk of the Consignor and the Carrier shall not be liable in tort (including negligence), contract (including a fundamental breach of contract), bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery or misdelivery of the goods whatsoever howsoever caused.
- 1.13 The exclusion of liability in Clause 1.12 extends to include not only loss of or damage to the goods themselves, but loss, damage or injury to any person,

property or thing damaged arising from the Carrier providing the services under this contract and to any indirect or consequential loss arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery.

- 1.14 Notwithstanding any other provision in these conditions of carriage, but subject always to Clause 1.12 and 1.13, if any liability whatsoever, howsoever arising, is found to attach to the Carrier or any sub-contractor, the Carrier's or sub-contractor's liability shall be limited to the lesser of:
- (a) in the case of services supplied under this contract:
 - (i) the supplying of the services again;
 - (ii) the payment of the cost of supplying the services again; or
 - (iii) the amount of AUS\$500.00.
 - (b) in the case of goods:
 - (i) the replacement of the goods or the supply of equivalent goods;
 - (ii) the repair of the goods;
 - (iii) the payment of the cost of replacing the goods or of acquiring equivalent goods;
 - (iv) the payment of the cost of repairing the goods; or
 - (v) the amount of AUS\$500.00.
- 1.15 All the rights, immunities and limitations of liability in these conditions of carriage shall continue to have full force and effect notwithstanding any breach of this contract by the Carrier or any other person entitled to the benefit of such provisions.
- 1.16 The Consignor shall pay to the Carrier in cash, or as agreed, all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- 1.17 When the Carrier is instructed to collect freight, duties, charges or other expenses from any person other than the Consignor, the Consignor shall remain responsible for the amounts; and shall pay these amounts to the Carrier on demand where these amounts have become due and have not been paid by such other person.
- 1.18 On all accounts overdue to the Carrier, the Carrier shall be entitled to interest calculated at 4 per cent above base rate of the Carrier's bank applicable during the periods that such amounts are overdue.
- 1.19 If on demand any person fails to pay charges due to the Carrier in respect of any service rendered by the Carrier, the Carrier will have a general lien over the goods and/or any other cargo or items the property of the Consignor, and after 7 days notice to the Consignor, may sell all or any part of the goods and/or any other cargo or items the property of the Consignor which are in its possession and out of the moneys arising from the sale retain the charges so payable together with all charges and expenses of the detention and sale, and shall render the surplus if any of the moneys arising from the sale and such of the goods as remain unsold to the person entitled thereto.
- 1.20 The Carrier is authorised (if it should think fit to do so) to subcontract the whole or any part of the carriage, services or handling and such authorisation extends to any subcontractor.
- 1.21 Any clause herein excluding or limiting the liability of the Carrier or providing any right or exemption from liability to the Carrier shall also be available and shall extend to protect all subcontractors and every servant or agent of the Carrier and of any subcontractor.
- 1.22 Notwithstanding any condition herein limiting or excluding liability, if and to the extent to which the carriage involves the transportation of goods otherwise than for the purposes of or in the course of a business, trade, profession or occupation carried on or engaged in by the Consignor, the contract shall be subject to any implied warranty provided by the Trade Practices Act 1974 if and to the extent that the said Act is applicable to this contract and prevents the exclusion, restriction or modification of such warranty.
- 1.23 These Conditions shall be governed and construed in accordance with the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of New South Wales.
- 1.24 Any claim for loss of or damage to the goods or relating to the provision of the services under this contract must be notified in writing to the Carrier within three (3) days of delivery of the goods or the date by which the goods should have been delivered, failing receipt of which notice the Carrier shall be forever discharged from any and all liability to any person (including the Consignor) in respect of the goods and/or the services under this contract. In any event whatsoever, the Carrier shall be discharged from any and all liability whatsoever unless suit is brought within six (6) months of the provision of the services under this contract, delivery of the goods or when the services should have been provided, or when the goods should have been delivered.