

Terms and Conditions for Carriage

These Conditions of Carriage set out the terms on which Services will be provided by us to you and form part of the Services Agreement.

1. DEFINITIONS

- 1.1 **“Carriage”** means the operations and Services undertaken by the Carrier as specified on the face of this document including but not limited to Storage, packaging or handling or other where this is applicable.
- “Chain of Responsibility Laws”** mean the National Heavy Vehicle Law and regulations or any laws of Australia that relate to road transport, including but not limited to a law or regulation relating to transport of Dangerous Goods, Fatigue management, speeding, speed limiting, maintenance, load restraint, mass or dimension.
- “Charges”** means our quotes Charges for Services calculated under our rates schedule or other agreed rates, any taxes, duties and the government Charges levied on the Services and any other amounts under condition 11.5
- “Conditions of Carriage”** means these terms and conditions.
- “Customer”, “You”, “Your”** means the person contracting with Us on these conditions this includes the sender, shipper, Consignor, Consignee, receiver of the Vehicle, any person owning or entitled to the possession of the Vehicle, and anyone acting on behalf of such persons.
- “Fit for Carriage”** means the Vehicle for Carriage is in a safe condition for transport, in that all and any components are properly affixed to the Vehicle in such a way that no component and or part of will come away from the Vehicle whilst in Carriage.
- “Force majeure event”** means anything outside the carrier’s reasonable control, including without limitation, fire, storm, flood, earthquake, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of any third-party person or public authority.
- “Freight”** includes all Charges payable to the Carrier.
- “Hidden Defect”** means a defect or fault in a Vehicle that is not visible at the time of inspection for the purpose of issuing Our Vehicle Condition Report, and which is the cause of or contributes to any damage, deterioration or wastage to a Vehicle.
- “Modifications”** has the meaning set out in clause 11.5 d) I).
- “Vehicle(s)”, “Goods”** means the car(s), motorcycle(s), trailer(s), machinery, equipment, container(s) or item(s) picked up or accepted from you or on your behalf.
- “Vehicle Condition Report”** has the meaning set out in clause 4.1 b).
- “Place of Receipt”** means the place designated as such on the face of this Agreement.
- “Place of Delivery”** means the place designated as such on the face of this Agreement.
- “Storage”** means the whole of the operations and Services undertaken by the Carrier in respect of the Goods in receiving, storing and subsequently making the Goods available for collection.
- “Storage Period”** means the period of Storage (if any) indicated on the face of this agreement.
- “Service (s)”** means the agreed operations and Services to be performed by us.
- “Service Period”** means the period commencing when you sign or are otherwise deemed to have accepted the Vehicle Condition Report/Service Agreement and ending on the delivery or handover of the Vehicle.
- “Services Agreement”** means the agreement (inclusive of any booking confirmation, pricing schedule or schedule of particulars) between us and you in relation to the provision of the Services.
- “Sub-Contractor”** means any person who the Carrier arranges to provide Services for the Vehicle and any person who is an agent, employee or subcontractor of that person.
- “Us”, “We”, “Our”, “Carrier”** QUICK SHIFT VEHICLE RELOCATIONS on whose behalf this agreement has been signed and includes its respective servants and agents.

2. INTERPRETATION

- 2.1 Headings are inserted for ease of reference only and shall be disregarded in the interpretation of this Agreement.
- 2.2 The parties acknowledge and agree that:
- a) All the provisions of this agreement are reasonable in all the circumstances and that each provision is and shall be deemed to be severable and independent.
 - b) This agreement is subject to all compulsory rules and requirements of laws to which the Carriage is subject to the intent and effect than if any provision hereof is to any extent repugnant to or inconsistent with any such rules or requirements or if all or any part of any provision is judged invalid or unenforceable, such provision shall to that extent, but no further, be deemed not to form part of these Conditions of Carriage and Storage and shall not affect the validity or enforceability of the remaining provisions.
 - c) Notwithstanding anything herein contained, the Carrier shall continue to be subject to any condition or warranty implied by the Competition and consumer Act 2010 (Cth), if and to the extent that the said Acts are applicable to this agreement and prevent the exclusion, restriction or modification of any such condition or warranty.
- 2.3 This agreement contains the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether expressed 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.
- 2.4 This agreement is governed by and is to be construed in accordance with the laws of the State of Queensland.
- a) Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.
 - b) No action arising out of this agreement may be brought by a party more than one (1) month after the cause of action has arisen except in the case of non-payment where the appropriate statutory limitation to an action for recovery of a simple contractual debt will apply.
- 2.5 Where discretion is given the Carrier by any provision hereof, the exercise of that discretion by the Carrier shall be absolute and unfettered. Such an exercise of discretion may be unreasonable or arbitrary.

3. NOT A COMMON CARRIER

- 3.1 The carrier is not a common carrier, do not accept any liability as a common carrier and may refuse to provide Services to You or a Vehicle for any reason.
- 3.2 We rely on the details supplied by you to us, but we do not admit their accuracy or completeness and our signature on the contract or Vehicle Condition Report is only an acknowledgement that we have picked up or received the Vehicle.
- 3.3 Our Services commence when we, or our agent, pick up or accept the Vehicle, and we earn our Charges then.
- 3.4 The Carrier at its discretion may subcontract on any terms all or any part of its undertaking herein.

4. CUSTOMER WARRANTIES ACKNOWLEDGMENTS AND INDEMNITIES

- 4.1 The Customer warrants that -
- a) The Vehicle is fit for Carriage and Storage.
 - b) When We collect or accept the Vehicle from You, We will examine the Vehicle and may take photographs to prepare a Vehicle Condition Report (“**Vehicle Condition Report**”)
 - c) You have fully, accurately and truthfully described the Vehicle and its value when required, including appropriate handling instructions.
 - d) all information you have provided to us is accurate and true and that you will provide us with any further information we reasonably require for the purpose of providing the Services to You.
 - e) the Customer has the authority of all persons owning or interested in the Goods to enter into the contract on their behalf.

- f) the person delivering any Goods to the Carrier for Carriage and/or Storage is authorised to sign this document for the Customer and by such signature or by the signature of any other person acting for the Customer, the Customer accepts these Conditions of Carriage.
- g) any accessories (other than permanently factory fitted accessories), including but not limited to aerials, personal items and effects, have been removed from the Vehicle (excluding the included personal item and effects approved by us to remain within the Vehicle during Carriage). Any accessories are always at your risk and we exclude all liability for any loss or damage caused to them.
- h) You will comply with all applicable Chain of Responsibility Laws.
- i) You will comply with any directions, procedures or policies advised or notified by Us to You with respect to packing, loading or unloading of the Vehicle or entry into, use or egress from a site.
- j) if the Vehicles are travelling into or from Western Australia, the Vehicles have been thoroughly cleaned prior to Carriage as per WA AQIS requirement, the Customer acknowledges that they have met all requirements of WA AQIS as required by law, any Vehicle that fails the WA AQIS inspection may incur a fine from WA AQIS, which will be payable by You the Customer.

4.2 The Customer acknowledges that: -

- a) no agent or employee of the Carrier is permitted to alter or vary these conditions.
- b) no representations have been made by any employee or agent of the Carrier to the Customer.
- c) the Carrier enters into this agreement for and on behalf of itself and its servants, agents and sub-contractors, all of whom shall be entitled to the benefit of the agreement and shall be under no liability whatsoever to the Customer or anyone claiming through him in respect of the Goods, in addition to or separately from that of the Carrier under these terms and conditions.

4.3 The Customer shall indemnify the Carrier against-

- a) any loss or damage which may be suffered by the Carrier as a result of any breach by you of the warranties and acknowledgments herein.
- b) any loss or damage to the Carrier's container or other equipment which occurs while in the possession or control of the Customer or which occurs due to the nature or condition of the Goods in such containers.
- c) for the purpose of this clause, "loss" expressly includes: -
 - i any indirect, special or consequential loss or damage including loss of profits, business or anticipated savings or other economic loss, even if we know they are possible or otherwise foreseeable.
 - ii any fine, levy, charge or other monetary imposition to which the Carrier may become liable as an incident to the Carriage, and resultant from any breach by the Customer of this agreement.

5. HIMALAYA CLAUSE/SUB CONTRACTING

- 5.1 We and any subcontractor may subcontract part or all of our obligations on any terms.
- 5.2 Where the Customer is not the owner of some, or all of the Goods the Customer shall be deemed for all purposes to be the agent of the owner.
- 5.3 The Customer undertakes that no claim or allegation shall be made against any servant, agent or subcontractor of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods, whether or not arising out of negligence or a wilful act or omission on the part of any of them, and if any such claim or allegation should nevertheless be made to indemnify the Carrier against all consequences thereof.
- 5.4 Every such servant, agent and subcontractor, shall have the benefit of all provisions herein benefiting the Carrier as if such provisions were expressly for their benefit.
- 5.5 The Customer shall save harmless and keep the Carrier indemnified against all claims or demands whatsoever by whomsoever made in excess of the liability of the Carrier under these conditions in respect of any loss,

damage or injury however caused, whether or not by the negligence or a wilful act or omission of the Carrier, it's servants, agents or sub-contractors.

6. ROUTE AND DEVIATION

6.1 The Customer authorises that we may:

- a) deliver the Vehicle at the delivery address supplied by You or Your agent and we will be taken to have delivered the Vehicle if at the delivery address we obtain an acknowledgement of delivery or delivery occurs under 6.2;
- b) if delivery is not possible at the provided address due to truck access limitations and the requirement to safely negotiate and unload the vehicle, we reserve the right to deliver the vehicle to a nearby location that is safe and suitable for unloading of the vehicle with no access or safety limitations. Once delivered, the customer is responsible for the safe storage and transport of the delivered vehicle to their final destination.
- c) deviate from any usual route or mode of Carriage to provide the Services; and
- d) contract our Services.

6.2 If the delivery address is unattended during normal business hours or, if the delivery address is a private address, during the prearrangement delivery period, we can, at your expense, return the Vehicle to our nearest depot which will constitute delivery.

7. LIABILITY

7.1 At all times and in all circumstances and for all purposes the Vehicle shall be and remain at the sole risk of the Customer, and the Carrier shall be under no liability whatsoever for any loss, or miss-delivery of or damage to the Vehicle occasioned during Carriage and/or Storage arising from any reason whatsoever, including without limiting the foregoing, any negligence or breach of contract or wilful act or default on the part of the Carrier, its servants and agents, or otherwise.

7.2 The defences and exclusions or liability provided for in this Clause and throughout this Agreement generally shall apply in any action against the Carrier for loss or damage to the Goods whether the action be founded in contract or in tort or otherwise.

7.3 The Carrier shall be entitled to the benefit of the exclusion of liability provided for herein even if it is proved that the loss or damage resulted from an act of omission of the Carrier done with intent to cause damage or recklessly and with knowledge that damage would probably result.

7.4 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of the contract or otherwise howsoever lawfully or unlawfully, shall under any circumstances constitute a breach going to the root of this agreement, or a deviation or departure therefrom or repudiation thereof such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitation of liability and other like protections on the Carrier contained in those conditions and all such rights, defences, exceptions, immunities, limitations of liability and like protections shall continue to have full force and effect in any event whatsoever.

7.5 We have no liability for:

- a) Second hand Vehicles in poor condition, collision damaged Vehicles and or, but not limited to non-drivable Vehicles
- b) Loss or damage that occurs or can be referred to a period outside the Service Period;
- c) damage to the Vehicle unless the damage is noted and signed for on the delivery receipt copy of the Vehicle Condition Report;
- d) inherit vice, wear and tear, mechanical or electrical damage, loss or damage to personal property or effects from or within the Vehicle, damage due to movement of objects within the Vehicle, damage or loss to any non-standard motor Vehicle accessory which is not permanently affixed to the Vehicle, insect/bug marks, pre-existing damage, bird/animal droppings, rail dust, stone chip(s), Carriage, environmental damage, industrial fallout, rust spots, airborne objects, hail damage, damage to or loss to any Modifications that have not been correctly installed, sabotage or vandalism;
- e) loss or damage arising from a breach by You of the Chain of Responsibility Laws;

- f) any indirect, special or consequential loss or damage including the request or requirement for a hire Vehicle, loss of profits, business or anticipated savings or other economic loss, even if We know they are possible or otherwise foreseeable; or loss or damage arising from or connected to a Force Majeure Event.

8. DANGEROUS GOODS

- 8.1 The Customer shall indemnify the Carrier against all loss (including consequential loss), damage or injury however caused arising out of the Carriage of any Dangerous Goods, whether declared as such or not and whether or not the Customer was aware of the nature of the Goods.
- 8.2 Where Dangerous Goods are delivered to the Carrier without written consent or where they are not distinctly marked to indicate the nature and character of the Goods or if in the opinion of the Carrier the articles are liable to become of a dangerous and flammable or damaging nature, the same may at any time be destroyed, disposed of, abandoned, or rendered harmless without compensation to the Customer and without prejudice to the Carrier's right to freight.
- 8.3 The Customer undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and in compliance with all laws and regulations which may be applicable during Carriage.

9. GENERAL LIEN

- 9.1 Goods are received and held by the Carrier subject to:
- A lien for moneys due to the Carrier for the Carriage and/or Storage of and other proper Charges or expenses upon or in connection with the Goods; and
 - A general lien for all moneys or Charges due to the Carrier from the Customer and the Owner of such Goods for any Services rendered or accommodation provided by the Carrier to the Customer or Owner.
- 9.2 Where any lien remain unsatisfied within seven (7) days from the date on which the Carrier gave notice of the exercise of his lien to the Customer (or Owners as the case may be), the Goods may at the Carrier's discretion be sold by public auction or private treaty and the proceeds of sale applied in or towards the satisfaction of every such lien and all proper Charges and expenses in relation thereto (including the expenses of the sale) and the Carrier shall account to the Customer or the Owner of the Goods for any surplus.

10. STORAGE

- 10.1 Any Storage of Goods shall be as agent of the Customer and solely as the Customer's risk and expense, but the provisions of clause 7 hereof shall nevertheless apply.
- 10.2 At the Carrier's discretion the Goods may be stored at any place and at any time and be removed from any place at which they may be stored or otherwise held to any other place to be stored.

11. CARRIER'S CHARGES

- 11.1 Freight is payable by the Customer without prejudice to the Carrier's rights against any other person.
- 11.2 Freight shall be deemed fully earned on receipt of the Goods by the Carrier and is non-refundable in any event.
- 11.3 You or the person You nominate must pay our Charges:
- prior to transport of the Vehicle or
 - within 7 days of invoice if you have an account with us.
- 11.4 You must pay the Charges if the person nominated to pay the Charges doesn't do so.
- 11.5 You must also pay.
- any cleaning charge or cost if cleaning of the Vehicle is required by a quarantine authority.
 - our cost if we are unable to pick up a Vehicle during normal business hours or, in the case of a private address for pick up, during the pre-arranged pick up period;
 - our cost of returning the Vehicle to our nearest depot under condition 6.2.
- d) any additional Charges incurred:

- i) due to undeclared modifications that have been made to the Vehicle (including but not limited to the fitting of bull bars, roof racks, or special fittings whether or not included on the Vehicle at the time of purchase by You) ("**Modifications**")
- ii) because the Vehicle is an oversized Vehicle; or
- iii) because the Vehicle has not been accurately described at the time of the booking.

12. FORCE MAJEURE

12.1 If we cannot carry out an obligation under the contract either in whole or in part because of a Force Majeure Event, then our obligations under the contract will be suspended for the duration of the event or waived to the extent applicable.

12.2 Any obligation to pay money under this agreement shall not be excused by force majeure.

13. CLAIMS FOR LOSS OR DAMAGE

13.1 If You believe we are liable to you for damage caused to a Vehicle in the course of Carriage, You must:

- a) note, or ensure that the driver of the delivery Vehicle notes the damage on Your delivery documentation at the time of delivery;
- b) notify us immediately;
- c) not repair your Vehicle unless otherwise authorised by us; and
- d) send Your written claim request to Us within the timeframes set out in paragraph 14.2 if we do not receive a written claim request from you within that time, we will have no liability to you.

13.2 You must submit Your claim for loss or damage to the Vehicle to Us in writing, in the case of:

- a) visible damage to the Vehicle which was not identified at the time we accepted your Vehicle for delivery, prior to taking delivery of the Vehicle;
- b) visible damage to the Vehicle which was notified in accordance with paragraph 14.1, no later than 2 days after taking delivery of the Vehicle;
- c) non-delivery of the Vehicle; no later than thirty (30) days from the date the Vehicle is placed with the carrier; and
- d) any other claim, no later than two days after delivery of the Vehicle or the date by which the Vehicle should have been delivered, and failing receipt of such notice we shall be forever discharged from any and all liability to any person (including You) in respect of the Vehicle and\or the Services.

13.3 In the event that You make a claim for damage to Your Vehicle in accordance with this paragraph 14, we will conduct an investigation and at our discretion we will either:

- a) Undertake required repairs ourselves through our repairers, with all cost borne by Us; or
- b) Request you provide 2 independent repair quotes; the carrier reserves all rights for repair authorisation.

13.4 Notwithstanding Your claim request, you remain liable to pay our Charges under this contract.

13.5 We will have no liability to you, even if you give us a written notice within the time set out in paragraph 14.2, if you do not commence legal proceedings against us within 6 months after the date of delivery.

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14.1 In the event the Customer wishes to cancel the booking in any case the following refund rates apply.

- a) When cancelled within 7 days but greater than 4 days of scheduled transport, 10% of the booking price will be charged.
- b) When cancelled within 4 days but greater than 48 hours of scheduled transport, 25% of the booking price will be charged.
- c) When cancelled within 48 hours of scheduled transport, 50% of the booking price will be charged.