

General Terms and Conditions of Contract

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CTS EAST (PTY) LTD.

Vat. No. 4170108791

Reg. No. 1999/010481/07

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CAR TOWING SERVICES (EAST) (PTY) LTD. hereinafter called "THE CARRIER" contracts for the carriage of consignments by road on the following terms and conditions.

1. DEFINITIONS

For the purpose of these terms and conditions and unless inconsistent with the contract:

- a) "CARRIAGE" and "CARRY" includes loading, unloading, storage, conveyance and all other work done or services rendered by the carrier under or by virtue of the contract whether the carrier is obliged to perform such work or render such service or not.
- b) "CARRIER" includes any other carrier referred to in 4(a).
- c) "CONSIGNOR" means the customer who contracts the services of the carrier.
- d) "CONSIGNMENT" means any goods or property which is carried or stored (temporarily or otherwise) for the consignor.
- e) "DANGEROUS GOODS" shall be those classified as such by the S.A. Railways and Harbour Administration or which are considered to be dangerous by the carrier.
- f) "LAW" includes the Common Law and any statute, ordinance, by-law or regulation.

2. CONSIGNOR'S WARRANTY OF AUTHORITY

If the consignor is not the owner of some or all of the goods in any consignment, it warrants that it is authorised to enter into this contract on behalf of the owner(s).

3. PERMITS

- a) If any permit or other consent or approval is required by the carrier under any law for the performance of the contract none of its obligations under the contract shall take effect and until it obtains all such permits, consent and approvals.
- b) The consignor shall provide all assistance and information required by the carrier for the purpose of applying for and obtaining any permit or other consent or approval referred to in (a).
- c) Please refer to standard permit conditions attached

4. SUB-CONTRACTORS

- a) The carrier may employ the services of any other carrier on such terms and conditions as the carrier deems fit for the purpose of fulfilling the whole or part of the contract.
- b) None of the carrier's servants, agents and sub-contractors shall be under any liability whatsoever to the consignor or anyone claiming through him in respect of the carriage, in addition to or separately from that of the carrier under the contract and provisions of this clause are stipulated for the benefit of those persons.

Without limiting the generality of the foregoing, the carrier's servants and agents and the sub-contractor's servants, agents and sub-contractors shall be entitled to all the benefits to which the carrier is entitled in terms of clause 9 hereof.

5. VARIATIONS

No agent or employee of the Carrier has any authority to alter, vary or qualify in any way these terms and conditions, nor enter into any contract, sign any receipts or documents on behalf of the carrier unless previously submitted to and approved in writing by the carrier. No variation of these conditions including this condition shall be binding upon the Carrier unless recorded in writing and signed by the carrier or its agent expressly authorised in writing to do so.

6. LIABILITY

Notwithstanding anything to the contrary contained herein and notwithstanding any common law liability the carrier decides that he contracts out of liability and that:

- i) All transport work carried out in terms of this Contract, including the consignment loading, off-loading, packing, storing and/or safe-keeping of any or all goods, is done at the exclusive risk of the owner/consignor/agent of such goods.
- ii) "The carrier is not responsible for any loss and/or damage, including consequential damages, which the Owner/Consignor/Agent or any third party may suffer from any cause whatsoever, including without limiting the generality of the foregoing, the negligence of the carrier, and the Owner/Consignor/Agent indemnifies the carrier against liability for any damages which the Owner/Consignor/Agent or any third party may suffer thereby."

7. CARRIER DOES NOT INSURE CARGO:

As the Carrier is not a registered Financial Services Provider, we do not provide Goods in Transit Insurance Cover for the load. It is the Consignor/Consignee's responsibility to ensure that the load is adequately insured. The Carrier does, however, have Goods in Transit and Liability Insurance for their own protection and in the event of an accident or loss which is deemed to be caused by the Carrier or due to the Carrier's negligence, the Carrier strictly limits their liability to the extent that such claim may be met by the Carrier's insurer, unless otherwise agreed in writing, subject to the Consignor/Consignee paying the Policy excess as if they were their own insurers.

8. INFORMATION TO BE SUPPLIED TO THE CONSIGNOR

The consignor shall at the time of entering into this contract provide:

- i) exact relevant details and dimensions and weights of the goods (the consignor acknowledges that his limitation will be used by the carrier in obtaining all necessary permits, consents and approvals and furthermore accepts full liability for the correctness thereof);
- ii) the correct and adequate addresses of the point of collection and the point of delivery.

9. CARRIER'S CHARGES

- a) The carrier's charges for the carriage shall be payable by the consignor within 30 (thirty) days of commencement of transit but without prejudice to the carrier's rights against the consignee or any other person; provided that if the goods are consigned "carried forward" the consignor shall not be required to pay those charges unless the consignee fails to pay them within 3 (three) days after being called upon to do so by the carrier.
- b) Except where the quotation stated otherwise, all quotations based on tonnage rate shall apply to the gross weight, unless the goods exceed 1 cubic metre in measurement per ton weight, in which case the tonnage rate shall be computed upon, and apply to, such measurement of 1 cubic metre or any part thereof.
- c) All payments to be made to the carrier shall be made without deduction and no amount may be deferred or withheld by reason of any claim or counter-claim.
- d) In the event that payment is not made by the consignor to the carrier within the period specified in 9(a) above the consignor accepts that the carrier may at its sole discretion raise interest on the overdue amount at 2 percent per month or portion thereof.

10. ACCESS TO PRIVATE PROPERTY

The carrier may at its sole discretion decide what route to follow. Should there not be suitable roads over which the carrier's vehicles (and where applicable, its cranes and plant) can pass or should there not be a convenient place affording hard solid standing without overhead wires or other obstructions for collection and delivery and for lifting and handling in connection therewith the carrier shall notify the consignor thereof without delay whereupon the carrier may at its sole discretion refuse to load or offload the goods or may deliver them to another point chosen by the carrier. The carrier shall in either event be deemed to have performed in terms of the contract and shall be entitled to payment thereof.

11. LOADING OR UNLOADING

- a) The consignor shall be obliged to provide any plant, power or labour that is required in addition to the carrier's car-man for loading or unloading.
- b) The consignor warrants that if any goods require special appliances for loading upon or unloading the carrier's vehicle those appliances will be available at point of collection or place of delivery of the consignment.

12. DANGEROUS GOODS

- a) Unless otherwise agreed to in writing, the consignor warrants that the goods are fit for carriage in the ordinary way and are not dangerous or fragile and do not require special purpose vehicles for their conveyance.
- b) Should the carrier accept any dangerous goods or goods unfit to be carried in the ordinary way:
 - i) the consignor shall furnish with the goods a written declaration of their nature on contents;
 - ii) the goods shall be properly and safely packed by the consignor, ready for carriage and in accordance with any law applicable

- c) If in the opinion of the carrier any consignment or portion thereof (whether declared unfit for ordinary carriage or dangerous or not) becomes a danger to any person or property or otherwise unfit for carriage the carrier shall be entitled immediately and without notice to the consignor to dispose of the goods in question or to take such other steps as at its sole discretion it deems prudent to avert the danger, or to avoid the consequences of such unfitness and
- i) any such steps shall be deemed to be work done under this contract; and
 - ii) the carrier shall be deemed to have performed in terms of the contract and shall be entitled to payment of its full charges and costs including cost incurred by it in disposing of such goods or taking other steps.
- 13. SAFETY FOR TRANSPORT**
The Carrier reserves the right without prior reference to the Consignor/Consignee to undertake any process for which they have the qualifications, experience and expertise to render the cargo safe or safer for transport including removing Buckets from Excavators, removing Dipper Pins or Dipper Arms from Excavators, to reduce the height, removing Buckets from Wheel Loaders, removing Blades from Bull Dozers, removing appendages from the sides of Cargo to reduce the width and the like.
- 14. ROUTE**
a) It is a condition precedent to the carrier's obligation to perform the contract that the competent authorities approve, the passage of the loaded vehicle, the route on which the carrier's charges have been based and that passage over each route is possible.
Any extra costs incurred by the carrier as a result of any compliance with other instructions:
- b) i) issued by any authority referred to in (a), after the date of contract and which varies the recommended route referred to in (a), or
 - ii) of the police or any other competent authority, shall be added to the carrier's charges and such compliance shall be work done under the contract.
- 15. LIEN**
a) i) The carrier shall have a lien over all goods as security for all monies owing for the carriage of the goods.
ii) In addition, the carrier shall be entitled to hold all goods as security for any other monies which may be due and payable to it by the consignor from any cause whatsoever
- b) If any monies owing are not paid within 30 (thirty) days after they become due to the carrier shall be entitled without further notice to the consignor:
- i) to open and examine any part of the consignment;
 - ii) to sell the whole or any part of the consignment in such manner and on such terms and conditions it deems fit; and
 - iii) to apply the proceeds of any sale, after deducting all expenses thereof, in payment or reduction of any amount due by the consignor to the carrier, provided that any surplus shall be paid over to the consignor without interest as soon as possible after the sale if the consignor's address is known, or if not, upon demand by the consignor.
- c) Upon payment or tender of the proceeds of any such sale the carrier shall be released from all liability to the consignor in respect of the goods.
- d) The carrier's rights under this clause are not exhaustive and are in addition to any other rights which the carrier may have against the consignor.
- 16. ONUS**
a) The onus of proving the condition or the declared nature, quantity or weight of any goods in the consignment at the time the consignment is received or delivered by the carrier shall at all times rest on the consignor and no document given or signed by the carrier shall be evidence thereof.
- b) It shall be the responsibility of the consignor to ensure that the entire consignment is carried and that no goods are left behind or carried in error and the carrier shall be deemed to have performed in terms of the contract and shall be entitled to full payment notwithstanding a failure to carry any portion of the consignment and shall be paid for any additional goods carried.
- c) The onus of declaring the existence of delicate or fragile computerised equipment or delicate instrumentation rests exclusively with the Consignor and the carrier accepts no liability for any damage caused to such equipment through any cause whatsoever.
- 17. TRANSIT**
a) Transit shall commence:
- i) If the consignment is handed to the carrier at its own premises and accepted by the carrier, or
 - ii) If the consignment is collected by the carrier at any other point, when the consignment has been loaded onto and finally secured to the carrier's vehicle at that other point.
- b) Transit shall (unless otherwise previously terminated) end when the consignment is tendered at the usual place of delivery at the consignee's address within the customary cartage hours of the district provided that:
- i) If no safe and adequate access or no adequate unloading facilities exist there, transit shall be deemed to end at the expiry of one clear day after notice (which may be verbal) of the arrival of the consignment at the carrier's premises, has been given to the consignee; and
 - ii) If for any other reason whatsoever a consignment cannot be delivered or if a consignment is held by a carrier "to await order" or "is kept until called for" or upon similar instructions and those instructions are not given, or the consignment is not called for and removed within reasonable time, transit shall be deemed to end.
- 18. JURISDICTION**
The parties hereby consent to the jurisdiction of any Magistrate's Court having jurisdiction over the Consignor or the Magistrates Court for the district in which the cause of action arose should the Carrier at its sole unfettered discretion elect to institute any action arising out of a Contract against the Consignor in such Court, notwithstanding the Carrier's claim may exceed the ordinary jurisdiction of such Court.
- 19. DOMICILIUM**
The Consignor selects as its domicilium citandi et executandi for all purposes hereunder its Principle place of business as reflected on its Invoices Delivery Notes and Letterheads.
- 20. DETENTION AND DEMURRAGE**
a) The consignor shall be liable for any detention or delay for any reason whatsoever of the carrier's vehicles, containers, sheets, etc., before commencement of during or after termination of transit without prejudice to the carrier's rights against any other person.
- b) The consignor shall pay demurrage at a reasonable rate in respect of any vehicle, container, sheets, etc., so detained or delayed. In the event of there being any dispute as to what a reasonable rate the amount fixed by the Chairman for the time being of the Professional Haulier's Association or its successor shall be deemed to be reasonable.
- 21. QUOTATIONS**
Quotations are firm for 31 (Thirty-one) days from the date thereon, and are subject to:
- a) Work being carried out by the methods and route to be decided by the Carrier without interruption, hindrance, or postponement.
 - b) The carrier having vehicles and/or staff available on the dates required.
 - c) All part loads being conveyed and delivered at the carrier's convenience.
 - d) Any increases in the carrier's costs coming into force after the date of the quotation over which the Carrier has no control, will be for the consignors account.
 - e) Any delay due to interruption, hindrance, local traffic or Municipal Regulations or non-production of necessary licences, permits or custom's forms will be charged to the consignor.
 - f) Where the volumes, quantities or scope of the work have increased over what had been quoted for, the consignors will be charged for any additions on a pro-rata basis.
 - g) A charge increase should there be a change of route due to reasons beyond the carrier's control.
 - h) Any postponement or cancellation by the consignor entitles the carrier to make a change to cover expenses incurred and/or losses to the carrier arising therefrom.
 - i) The carrier shall have the right to increase the charge specified in the event of stoppage or delays in carrying out the work to which the contract relates provided that such stoppages or delays are caused by circumstances beyond the control of the carrier or are such that the carrier could not reasonably foresee the cause such stoppages or delays arising.
- 22.** Except where the carrier is instructed in writing to pack the goods, the consignor warrants that all goods have been properly and sufficiently packed and/or prepared.
- 23.** Pending forwarding and delivery, goods may be warehoused or otherwise held at any place at the sole discretion of the carrier at the consignor's risk and expense.