

## TRANSPORT / CARTAGE AGREEMENT

### PARTIES

ABN            of            (“Principal”)  
and  
ABN            of            (“Cartage Contractor”)

### BACKGROUND

- A. The Principal wishes to obtain the Cartage Services.
- B. The Principal agrees to engage the Cartage Contractor to provide the Cartage Services to the Principal, and the Cartage Contractor agrees to provide the Cartage Services to the Principal, in accordance with the terms of this Agreement.

### AGREEMENT

#### 1. Definitions and Interpretation

##### 1.1 In this Agreement:

“**Approvals**” means all approvals, authorisations, permits, consents, determinations and licences which are issued, or required to be issued, by any Authority to permit the full and proper performance of the Cartage Contractor’s obligations under this Agreement;

“**Authority**” means any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or entity;

“**Business Day**” means a day which is not a Saturday, Sunday or public holiday in the location of the Principal’s address set out in this Agreement;

“**Cartage Services**” means supply and do all things necessary or incidental for the cartage of Goods from the Collection Sites to the Delivery Sites in accordance with the Principal’s Orders and the terms of this Agreement;

“**Chain of Responsibility**” means any and all matters relating to:

- (a) driver fatigue including but not limited to driver hours;
- (b) vehicle mass and dimension;
- (c) load securing;
- (d) speed;
- (e) dangerous goods;
- (f) chain of responsibility; and/or
- (g) any other matters relating to the safe operation of vehicles;

“**Change of Control**” means a change in:

- (a) control of the composition of the board of directors of a corporation;
- (b) control of more than half the voting rights attaching to shares in a corporation;
- (c) control of more than half the issued shares of a corporation (excluding any share which carries no right to participate beyond a specified amount in the distribution of either profit or capital); or
- (d) control as defined in the Corporations Act 2001 (Cth);

**“Claim”** means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (including but not limited to negligence) or otherwise;

**“Collection Sites”** means the collection sites set out in Schedule 2;

**“Commencement Date”** means the date set out in item **Error! Reference source not found.** of Schedule 1;

**“Confidential Information”** means any:

- (a) information, whether in visual, oral, documentary, electronic, machine-readable, tangible, intangible or any other form, relating to the Principal or any Related Entity of the Principal including but not limited to any specifications, formulae, know how, concepts, inventions, ideas, software, designs, copyright, trade secrets or any information relating to any business, products, markets, operations, processes, techniques, technology, forecasts, strategies or any other matter;
- (b) any information created, produced or developed by the Cartage Contractor or any member of the Cartage Contractor’s Personnel in the course of or as a result of the Cartage Contractor providing the Cartage Services;
- (c) negotiations in relation to, and the terms of, this Agreement;
- (d) information designated as confidential by the Principal; and
- (e) information that is by its nature confidential;

**“Consequential Loss”** means any loss of actual or anticipated profits, revenue, savings, production, business, opportunity, goodwill, reputation, publicity, or use;

**“Delivery Deadline”** means the deadline for the Cartage Contractor to provide Cartage Services as set out in any Order;

**“Delivery Docket”** means a delivery docket containing any information reasonably required by the Principal;

**“Delivery Sites”** means the delivery sites set out in Schedule 2;

**“Drivers”** means those members of the Cartage Contractor’s Personnel who drive vehicles for the purposes of the Cartage Services;

**“Equipment”** means the equipment used or supplied by the Cartage Contractor or the Cartage Contractor’s Personnel for the purposes of providing the Cartage Services (including but not limited to vehicles);

**“Good Operating Practices”** means those practices, methods and acts engaged in or approved by an organisation which exercises that degree of safe and efficient practice, diligence, prudence, and foresight reasonably and ordinarily exercised by skilled and experienced operators;

**“Goods”** means the goods set out in Schedule 2 and any other goods nominated by the Principal from time to time;

**“Insolvency Event”** means any of the following events or any analogous event:

- (a) the Cartage Contractor disposes of the whole or any part of the Cartage Contractor’s assets, operations or business other than in the ordinary course of business;
- (b) the Cartage Contractor ceases, or threatens to cease, carrying on business;
- (c) the Cartage Contractor is unable to pay the Cartage Contractor’s debts as the debts fall due;
- (d) any step is taken by a mortgagee to take possession or dispose of the whole or any part of the Cartage Contractor’s assets, operations or business;
- (e) any step is taken for the Cartage Contractor to enter into any arrangement or compromise with, or assignment for the benefit of, the Cartage Contractor’s creditors or any class of the Cartage Contractor’s creditors; or

- (f) any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Cartage Contractor's assets, operations or business;

**"Intellectual Property Rights"** means any present or future rights conferred by statute, common law or equity in any part of the world in relation to any confidential information, copyright, trade marks, service marks, designs, patents, circuit layouts, plant varieties, business names, domain names, inventions, trade secrets or other results of intellectual activity in any industrial, commercial, scientific, literary or artistic fields whether or not registered or registrable and includes any rights to protect or apply for the registration, renewal or extension of such rights;

**"Invoicing Date"** means the date or dates set out in item **Error! Reference source not found.** of Schedule 1;

**"KPIs"** means the key performance indicators set out in Schedule 4;

**"Laws"** means acts, ordinances, regulations, rules, codes and by-laws of the Commonwealth or any state or territory;

**"Liability"** means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees);

**"Notice"** means any notice or other communication by one party to the other party under the terms of this Agreement including but not limited to any request, demand, consent, waiver or approval;

**"Notice Details"** means the contact details for notices to each party under this Agreement as set out in item **Error! Reference source not found.** of Schedule 1;

**"Order"** means an order by the Principal to the Cartage Contractor for Cartage Services;

**"Payment Terms"** means the payment terms set out in item **Error! Reference source not found.** of Schedule 1;

**"Personnel"** means any employee, servant, contractor, subcontractor, agent, partner, director or officer of a party;

**"Quarter"** means a period of three calendar months commencing on 1 January, 1 April, 1 July or 1 October;

**"Rates"** means the rates set out in Schedule 2 (as reviewed in accordance with Schedule 3);

**"Related Entity"** has the meaning set out in the Corporations Act 2001 (Cth);

**"Site"** means each of the Collection Sites and the Delivery Sites and any other sites nominated by the Principal from time to time;

**"Site Procedures"** means the site procedures of the Principal and/or any Supplier in relation to a Site as amended from time to time (including but not limited to any safety, health and environment policies);

**"Supplier"** means a supplier of Goods to the Principal;

**"Taxes"** means any present or future tax, fee, levy, duty, charge, withholding, penalty, fine, impost or interest imposed by any Authority including but not limited to any tax in relation to sales, use, property, value added, goods and services, turnover, stamp duty, interest equalisation, business, occupation, excise, income, profits or receipts; and

**"Term"** means the term set out in item **Error! Reference source not found.** of Schedule 1 (and any further term agreed between the parties in accordance with the terms of this Agreement).

## 1.2 In this Agreement:

- (a) the headings will not affect interpretation of this Agreement;
- (b) the singular includes the plural and vice versa, and a gender includes other genders;
- (c) any other grammatical form of a word or expression defined in this Agreement has a corresponding meaning;

- (d) the Schedules to this Agreement form part of and are incorporated in this Agreement;
- (e) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this Agreement;
- (f) a reference to this Agreement includes any schedule or annexure to this Agreement;
- (g) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
- (h) a reference to “A\$”, “\$A”, “dollar” or “\$” is to Australian currency;
- (i) a reference to time is to time in the location of the Principal’s address set out in this Agreement;
- (j) a reference to a party is to a party to this Agreement;
- (k) a reference to a party to a document includes the party's executors, administrators, heirs, successors in title, permitted assigns and substitutes;
- (l) a reference to a person includes a natural person, body corporate, partnership, trust, association or any government or governmental, semi-governmental, administrative or judicial body, tribunal, department, commission, authority, agency, minister, statutory corporation, instrumentality or any other entity;
- (m) a reference to a statute, ordinance, code or other law includes regulations, rules and other instruments under the statute, ordinance, code or other law and any consolidations, amendments, re-enactments or replacements;
- (n) a word or expression defined in the Corporations Act has the meaning given to the word or expression in the Corporations Act 2001 (Cth);
- (o) the meaning of general words is not limited by specific examples introduced by “including”, “for example” or similar expressions;
- (p) a reference to any thing (including but not limited to any right) includes part of that thing;
- (q) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds those parties jointly and severally;
- (r) any agreement, representation, warranty or indemnity in favour of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of those parties jointly and severally;
- (s) any undertaking by a party not to do any act or thing will be deemed to include an undertaking not to permit or suffer the doing of that act or thing;
- (t) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this Agreement or any part of this Agreement; and
- (u) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day.

## **2. Term**

This Agreement will commence on the Commencement Date and will continue for the Term unless terminated earlier in accordance with the terms of this Agreement.

## **3. Engagement**

The Principal engages the Cartage Contractor to provide the Cartage Services to the Principal, and the Cartage Contractor agrees to provide the Cartage Services to the Principal, in accordance with the terms of this Agreement.

#### **4. Relationship**

- 4.1 The Cartage Contractor acknowledges that the Cartage Contractor will provide the Cartage Services to the Principal as an independent contractor.
- 4.2 This Agreement does not create any partnership, joint venture, agency or relationship of employment between the parties.
- 4.3 The Cartage Contractor does not have, and will not hold out the Cartage Contractor as having, any authority to bind the Principal in any matter including but not limited to any contracts, commitments, expenses, liabilities or obligations of any nature.

#### **5. Exclusivity**

- 5.1 The parties agree that, subject to clauses 5.2 to 5.4, the Cartage Contractor will be the exclusive provider of Cartage Services to the Principal (in respect of cartage of Goods from the Collection Sites to the Delivery Sites).
- 5.2 The Cartage Contractor acknowledges:
  - (a) the Principal will not be obliged to provide any Orders to the Cartage Contractor or engage the Cartage Contractor to provide any Cartage Services;
  - (b) the Principal makes no guarantee as to the quantity of Orders or Cartage Services;
  - (c) any forecast or estimate provided by the Principal to the Cartage Contractor in relation to Orders or Cartage Services will not be binding;
  - (d) any Supplier, or any contractor of any Supplier, may collect Goods from any Collection Site and/or deliver Goods to any Delivery Site at any time;
  - (e) the Principal may at any time engage any third party, or use any member of the Principal's Personnel, to cart any goods other than the Goods from the Collection Sites and/or to the Delivery Sites; and
  - (f) the Principal may own and/or operate vehicles to collect Goods from the Collection Sites (or any other locations) and/or deliver Goods to the Delivery Sites (or any other locations).
- 5.3 If the Principal can demonstrate that the Principal could obtain cartage services for the cartage of Goods from a Collection Site to a Delivery Site from an alternative contractor for rates that are lower than the Cartage Contractor's Rates, then the Cartage Contractor must provide the Cartage Services for the alternative contractor's rates or the Principal may engage the alternative contractor to provide such cartage services.
- 5.4 If the Principal can demonstrate that the Principal could obtain delivery of Goods from a Supplier for a delivery cost (calculated by the difference between the Supplier's delivered rate and the Supplier's ex-bin rate) that is lower than the Cartage Contractor's Rates, then the Cartage Contractor must provide the Cartage Services for the Supplier's delivery cost or the Principal may engage the Supplier to provide delivery of the Goods.

#### **6. Orders**

- 6.1 The Principal may provide Orders to the Cartage Contractor from time to time.
- 6.2 If the Principal provides an Order to the Cartage Contractor, then the Cartage Contractor will provide the Cartage Services no later than the Delivery Deadline in the Order.

#### **7. Delivery Dockets**

- 7.1 The Cartage Contractor will ensure each Delivery Docket:
  - (a) sets out all of the information reasonably required by the Principal; and;

(b) corresponds with the relevant Order.

7.2 The Cartage Contractor will ensure that each Driver obtains signed confirmation on the Delivery Docket by:

- (a) an authorised member of the Supplier's Personnel to confirm that the Supplier has provided the Goods to the Driver at the Collection Site in accordance with the relevant Order; and
- (b) an authorised member of the Principal's Personnel to confirm that the Principal has received the Goods at the Delivery Site in accordance with the relevant Order.

7.3 The Cartage Contractor will ensure that the Driver will immediately contact the Principal for instructions if there is no authorised person available to sign a Delivery Docket in accordance with clause 7.2.

7.4 The Cartage Contractor will ensure that any correspondence relating to an Order or delivery of Goods refers to the serial number of the relevant Delivery Docket.

## **8. Property & Risk**

8.1 The Cartage Contractor acknowledges and agrees that any Goods in the possession or control of the Cartage Contractor or the Cartage Contractor's Personnel will be and will remain the property of the Principal.

8.2 Neither the Cartage Contractor, nor any member of the Cartage Contractor's Personnel, nor any other person will have a lien over any Goods for any sum due to the Cartage Contractor or any member of the Cartage Contractor's Personnel or any other person, and the Cartage Contractor will take all such steps reasonably necessary to ensure that the title of the Principal, and the exclusion of any such lien, are brought to the notice of all members of the Cartage Contractor's Personnel and other persons dealing with the Goods.

## **9. Obligations**

The Cartage Contractor will at the Cartage Contractor's own cost:

- (a) perform the Cartage Contractor's obligations under this Agreement with due care and skill and in a diligent, professional, competent and timely manner in accordance with the highest standards and practices in the industry relating to the Cartage Services;
- (b) obtain, maintain, do and supply all things necessary and incidental for the proper performance of the Cartage Contractor's obligations under this Agreement (including but not limited to all Approvals, Personnel, Equipment and any other plant, labour and tools);
- (c) always give priority to providing the Cartage Services to the Principal over providing services to any third party;
- (d) ensure the Cartage Contractor does not act in a position where the Cartage Contractor's interests are in conflict with the Principal's interests;
- (e) keep the Principal regularly informed in relation to all aspects of the Cartage Services;
- (f) regularly consult with the Principal regarding the provision of the Cartage Services;
- (g) make all necessary enquiries of the Principal to ascertain the Principal's requirements for the Cartage Services;
- (h) provide written notice to the Principal if the Cartage Contractor becomes aware that any document or other information provided by the Principal is ambiguous, inaccurate or insufficient to enable the Cartage Contractor to provide the Cartage Services;
- (i) provide written notice to the Principal if the Cartage Contractor becomes aware of any matter which may adversely affect or has adversely affected the Cartage Services; and
- (j) remain fully responsible for the Cartage Services notwithstanding any review, acceptance or supervision of the Cartage Services by the Principal.

## **10. Compliance & Safety**

- 10.1 The Cartage Contractor will at the Cartage Contractor's own cost ensure that the Cartage Contractor, and each member of the Cartage Contractor's Personnel, complies with any:
- (a) minimum standards in the KPIs;
  - (b) Laws;
  - (c) Approvals;
  - (d) Site Procedures, drug and alcohol policy and other policies and procedures of the Principal;
  - (e) directions of the Principal and any Supplier in relation to health and safety; and
  - (f) lawful direction, instruction, brief, standard, guideline, program, schedule or budget provided by the Principal from time to time, but will provide immediate written notice to the Principal of any potential detriment (including but not limited to increased costs) associated with doing so.
- 10.2 The Cartage Contractor will at the Cartage Contractor's own cost ensure that the Cartage Contractor, and each member of the Cartage Contractor's Personnel, always:
- (a) ensures safe working conditions for all persons engaged in the performance of the Cartage Contractor's obligations under this Agreement;
  - (b) undertakes and successfully completes any safety induction program at each Site;
  - (c) takes all necessary steps to be informed of and comply with all Site Procedures and any other policies and procedures of the Principal;
  - (d) obtains any clearance certificates from the Principal before commencing work at a Site;
  - (e) registers at the Site reception or gatehouse on entry to a Site (other than to the extent that the Principal has agreed alternative arrangements in writing);
  - (f) gains access to, enters and remains on a Site strictly for the purposes of performing the Cartage Contractor's obligations under this Agreement;
  - (g) is aware and acknowledges they enter any Site at their own risk; and
  - (h) when on the premises or using the facilities of any third party, complies with all directions, procedures and policies relating to occupational health, safety and security requirements relating to the third party's premises or facilities.
- 10.3 The Cartage Contractor will at the Cartage Contractor's own cost ensure that the Cartage Contractor, and each member of the Cartage Contractor's Personnel, always:
- (a) obtains prior approval from the Site manager before engaging in work of a hazardous nature or dealing with hazardous materials on a Site;
  - (b) ensures only persons who have received adequate training and instruction conduct hazardous work or deal with hazardous materials;
  - (c) complies with all Laws, Approvals and Good Operating Practices relating to hazardous work or hazardous materials; and
  - (d) provides a materials safety data sheet in relation to any hazardous Goods.
- 10.4 The Cartage Contractor will at the Cartage Contractor's own cost ensure that the Cartage Contractor, and each member of the Cartage Contractor's Personnel, always complies with all Laws, Approvals and Good Operating Practices relating to:
- (a) loading of Goods;
  - (b) unloading of Goods;
  - (c) mass management and weights of vehicles and loads;

- (d) securing loads on vehicles;
  - (e) Chain of Responsibility;
  - (f) driver fatigue; and
  - (g) any other matters relating to the safe driving and operation of vehicles.
- 10.5 The Cartage Contractor will, at the Cartage Contractor's own cost, ensure that each Driver obtains and maintains a current licence, permit and/or any other Approvals required to:
- (a) operate and control the Equipment;
  - (b) load the Goods; and
  - (c) unload the Goods.
- 10.6 The Cartage Contractor will at the Cartage Contractor's own cost ensure that the Cartage Contractor, and