

Sykes Transport W.A.

Terms & Conditions of Trade (7/2002)

To the fullest extent legally possible, all dealings between Matchbury Enterprises Pty. Ltd. ABN 74 058 749 036 (Sykes Transport W.A.) and any Customer shall be governed by the following terms & conditions of trade ("these terms") unless otherwise agreed in writing.

DEFINITIONS: The following meanings shall apply throughout these Terms: "Code" means the Australian Code for the Transport of Dangerous Goods by Road & Rail as from time to time amended. "Customer" includes anyone so identified in any Consignment Note ("Con-Note"). Dealing or document relating to any Goods or Services & includes every consignor, consignee, sender or receiver (including any identified or described therein) & anyone enjoying the benefit (whether directly or indirectly) of any part of the Services, whether the servant, agent or principal of any of the foregoing or otherwise shall be raised as a defence to any action by Sykes Transport W.A. pursuant to any Con-Note, document or Dealing incorporating any part of these Terms. "Dangerous Goods" shall include any goods in relation to which any part of any Services have been or are to be performed & any receptacle, container, package, packaging, pallet or thing in or on which they are contained or with which they are stored or handled. "Laws" means any international, Federal, State or territory enactment convention. Standard or code and any rules, regulations or by-laws etc. made thereunder as from time to time applicable to any Goods or Services and any amendment, addition or substitute therefore & the interpretation & application thereof from time to time & includes (inter alias) the International Maritime Dangerous Goods Code, the Trade Practices Act 1974 (C'W), the Carriage of Goods by Land (Carrier's Liability) Act 1967 (Q'land); the Motor Vehicles Act 1959 (SA), the Drugs, Poisons & Controlled Substances Act 1981 (Vic), the Dangerous Goods (Prescribed List) Regulation (Vic.), the Road Transport reform (Dangerous Goods) Regulations, the Air Navigation Orders Part 33 and the Code "Sykes Transport W.A." &/or its delegates and anyone involved or concerned in any way in the performance of any part of the Services & their servants and agents, whether pursuant to Clause 8 or otherwise. "Prescribed Poisons" includes any substance referred to in the Drugs, Poisons & Controlled Substances Act 1981 (Vic) & its statutory equivalent in each State & Territory of Australia, in any relevant Laws & any Standard Uniform Schedule for Drugs & Poisons applicable or adopted in any part of Australia as from time to time applicable. "Services" means any operation or service including (inter alias) any carriage, cartage, transport, loading, unloading, holding, handling, storage, decanting, picking, packing, distribution, forwarding, installation, assembly, erection, removal, discharge, cleaning, preparation, maintenance of conduct in respect of any Goods or thing &/or referred to or required in any Dealing which includes or incorporates any part of these terms. General: Words importing the singular shall include the plural & vice versa. Gender shall be interchangeable & a reference to anyone shall include individuals, partnerships, corporations, trustees, trusts, principals, agents any other legal persons or entities & any combination thereof.

THE CUSTOMER ACKNOWLEDGES, WARRANTS & AGREES:

- That Sykes Transport W.A. is not a common carrier & may refuse to provide any part of any Services and may refuse to deal with any Goods at its discretion.
- To pay Sykes Transport W.A. or at its discretion all charges of accounts in relation to any part of any Services within 30 days of date of invoice.
 - To pay interest on overdue accounts at the rate under the Penalty Interest Rates Act 1983 (Vic) plus 3% without effecting any rights of Sykes Transport W.A. under these Terms or under any dealing which includes or incorporates any part of these Terms.
 - All goods the subject of any part of the Services are either owned by the Customer or the Customer is authorised to deal with them.
 - Anyone purporting to sign any Con-Note or enter any Dealing with Sykes Transport W.A. for or on behalf of the Customer shall be and be conclusively deemed to be authorised to do so on behalf of the Customer and will bind the Customer under these Terms.
- That prior to Sykes Transport W.A. taking possession of or Dealing in any way with any Goods
 - To identify & fully describe Goods on or with every applicable Con-Note or Dealing, in compliance with all Laws to include complete details of the name, nature & value & specifying any which are liquid, gaseous, noxious, dangerous, hazardous, flammable. Dangerous Goods or Prescribed Poisons & specifying any which are capable in any way of causing (whether alone or in conjunction with anything else (stating which) damage, injury or loss to any goods, person or thing.
 - That it authorises Sykes Transport W.A. to destroy, dispose of, abandon or render harmless any Goods which in the opinion of Sykes Transport W.A. are or are likely to become dangerous or hazardous, at the Customer's cost.
- All particulars in any Con-Note or dealing in respect of Service &/or Goods will be complete & correct in every respect and that Sykes Transport W.A. may rely thereon.
- Prior to loading or acceptance by Sykes Transport W.A. of any Dangerous Goods or Prescribed Poisons, the customer will supply Sykes Transport W.A. with a written declaration in compliance with all relevant Laws detailing the nature of the Goods & all procedures necessary for safe dealing with them at all times, including in the case of accident, fire, spillage, contamination or any other incident.
- It will ensure all goods have been packed & marked in compliance with all relevant laws.
- All goods the subject of any part of the Services will comply at all times with all requirements of the consignor, the consignee and all applicable Laws & with the requirements of all relevant authorities including any armed forces, police, security, port, harbour, dock, railway, shipping, air way, customs, warehouse &/or any other authority, governmental or non-governmental, whether having the force of law or otherwise and whether relating to the nature, packaging, carriage, storage notification, labelling, volumes, scheduling, identification or condition of the Goods, any part of the services or otherwise.
 - To pay any duty, impost, GST, CGT tax, excise, penalty ("imposts") in respect of any part of any goods, Services or relating to any loss, damage, expense, liability or costs or otherwise.
 - To reimburse Sykes Transport W.A. for any outlays incurred in making Goods so comply or in meeting any imposts whilst recognising that Sykes Transport W.A. has no obligation to incur same.
 - All Goods the subject of any part of the Services are or will be packed in a manner adequate to withstand the ordinary processes and risks involved in any Services applicable thereto.
 - That Sykes Transport W.A. is authorised to deal with any Goods in any way it deems fit, if any part of the Goods, any documentation, labelling, packaging or warnings etc fail to comply with any Laws or are damaged, defaced or illegible.
- That Sykes Transport W.A. is & shall be the Customer's agent to enter into any Dealing with anyone in order to provide any part of the Services & the Customer will be responsible for all costs & charges payable as a result of any such Dealing.
 - Anyone with whom the Customer (through the agency of Sykes Transport W.A.) has any Dealings, is in turn the Customer's agent for the same purposes & on the same terms as in clause 8(a).
 - These Terms will operate for the benefit of anyone providing any part of the Services whether as agent or sub-agent of the Customer, Sykes Transport W.A. or otherwise & any such person shall be & be deemed a party to every Dealing incorporating any part of these Terms.
 - That Sykes Transport W.A. holds benefits of these Terms in trust for all parties who perform any part of the Services.
 - These Terms are available to & extend to protect anyone who is or might be vicariously liable for any act or omission of any one referred to in Clause 8 (a) (b) (c) or (d) & such person shall be deemed party to every Dealing incorporating any of these Terms.
 - Any Dealings incorporating any of these Terms shall be deemed & an offer by the Customer (which will remain irrevocable until completion of the Services) made to each person involved in the performance of the Services & be deemed to be communicated to each person & accepted by them upon the performance by them of any part of the Services, so that in consideration of any such person entering into any Dealing for or perform in any part of these Terms.
- That Sykes Transport W.A. will not be liable and no claim shall be made by or through the Customer or by any other person who has or maybe hereafter have any interest in any part of any Services or Goods or otherwise, against Sykes Transport W.A. which imposes or attempts to impose any liability whatsoever in connection with any part of the Services or otherwise, including any claim in tort, bailment or contract whether for trespass, negligence, misfeasance, wilful act or omission, default or otherwise and whether claiming for contingent, consequential, direct, indirect, special or punitive damages or otherwise, other than as set out in Clause 9(d) &/or (e).
 - Without limiting the generality of Clause 9(a) the provisions of that Clause will extend to any loss, damage, expense, liability (including any liability under any laws) or costs whatsoever associated in any way with (i) any accident of incident involving the Goods or any part of the Services (ii) any salvage, recovery or clean-up relating to any accident or incident involving any goods or any part of the Services (iii) any misdelivery, non-delivery, delay in delivery, concealed damage, deterioration, contamination or evaporation or other diminution in value of any Goods (iv) any conduct by any part involved in the provision of any part of the Services, whether or not the conduct was within the contemplation of or foreseeable by the Customer or Sykes Transport W.A. or would constitute a breach (whether fundamental or otherwise) of any of these Terms or of any Dealings incorporating any part of these terms.
 - To indemnify Sykes Transport W.A. against any loss, damage, expense or liability (including any liability under any Laws) & including anything contemplated by Clause 9(a) & (b) &/or from any consequence arising therefrom or otherwise resulting in any way from any failure by the Customer or Sykes Transport W.A. to comply with or observe any part of these Terms or of any dealing which incorporates any part of these terms, whether arising as a result of negligence by the Customer or Sykes Transport W.A. or otherwise.
 - Any claim upon Sykes Transport W.A. relating to services will not exceed the cost of having the Service supplied again.
 - Any claim upon Sykes Transport W.A. will not exceed payment of the cost of replacing the Goods with equivalent Goods.

- The rights & remedies of Sykes Transport W.A. arising by reason of these Terms cumulative with & not exclusive to any other rights or remedies provided by Law or by any other agreement with the Customer but these Terms will prevail in the event of any conflict or contradiction unless otherwise agreed in writing.
 - That Sykes Transport W.A. is authorised to name the Customer as consignor in any document & that Sykes Transport W.A. is not and will not be deemed a consignor within the meaning of the Regulation 2.19 of the Road reform (Dangerous Goods) Regulations.
 - Save as above, no other term, condition, agreement, warranty, representation or understanding ("term") whether express or implied or in any way extended to otherwise relating to or binding on Sykes Transport W.A. with respect to any Goods or any part of the Services (other than these Terms and any other by which Sykes Transport W.A. has agreed to be bound in writing) is made or given & any term which might otherwise be implied is expressly excluded.
- Any method of performing any part of the Services adopted by Sykes Transport W.A. shall remain at the discretion of Sykes Transport W.A. & the Customer authorises Sykes Transport W.A. to adopt any method considered appropriate despite any particular method selected or nominated by Sykes Transport W.A. or the Customer.
 - No money paid by or on behalf of the Customer to Sykes Transport W.A. will be refundable.
 - Without limiting these Terms to pay Sykes Transport W.A. all charges &/or expenses in respect of or consequent upon any delay or frustration in performance or attempted performance of any part of the Services whatsoever, including any delay or frustration in pick up or delivery.
 - Sykes Transport W.A. does not have an obligation to load or unload or to package, re-package, repair or maintain any packaging or container associated in any way with any part of the Services or any Goods but may elect to do so at the Customer's cost in all things.
 - Whenever any dealing with Sykes Transport W.A. includes an arrangement for payment by any third party, the Customer will forthwith pay Sykes Transport W.A. if the third party fails to pay as & when due.
 - Sykes Transport W.A. is authorised to store, warehouse &/or hold any Goods in respect of &/or during the performance or attempted performance of any part of the Services as Sykes Transport W.A. in its absolute discretion deems necessary & at the Customer's cost in all things.
 - Anyone at any delivery address (whether specified or as elected by Sykes Transport W.A.) may accept delivery on behalf of the Customer.
 - Any signature of initial purporting to acknowledge delivery for or on behalf of the Customer shall be & be deemed conclusive evidence of delivery.
 - In addition to any existing general or specific lien,
 - The Customer hereby grants to Sykes Transport W.A. a general lien over all Goods & any documents relating thereto which are in Sykes Transport W.A. possession, custody or control from time to time until payment of all monies owed to Sykes Transport W.A.
 - The Customer authorises Sykes Transport W.A. in absolute discretion to sell or otherwise dispose of any perishable Goods, Dangerous Goods or Prescribed Poisons which are in the possession, custody or power of Sykes Transport W.A., without notice to the Customer or any other interested party & at the Customers cost in all things, but without Sykes Transport W.A. having any obligation or responsibility to do so,
 - The Customer authorises Sykes Transport W.A. to sell or otherwise dispose of any Goods in its possession, custody or power, upon expiration of 21 days after written notice to the Customer.
 - Sykes Transport W.A. may apply the net proceeds of any such sale or disposition towards any monies owed by the Customer,
 - The Customer indemnifies Sykes Transport W.A. in respect of any loss, damage or liability as a result of exercise of any of the rights arising under Clause 17, in addition for any other indemnity in these Terms.
 - Sykes Transport W.A. has no obligation to ensure any part of any Goods or Services.
 - Any insurance is the responsibility of the Customer & at the Customer's cost in all things,
 - Sykes Transport W.A. charges reflect the absence of insurance & would have to increase to incorporate insurance costs.
 - In any Dealings with Sykes Transport W.A. which includes a specific written obligation upon Sykes Transport W.A. to ensure,
 - The cost of such insurance will be an extra charge to the Customer,
 - The Customer will not do or omit to do anything which renders any contract of insurance or any part thereof void or voidable or diminished in any way the liability of the insurer.
 - If any part of any store is made available for use by the Customer & the Customer assumes control or responsibility for any Goods stored therein, these Terms will continue to apply.
 - To pay Sykes Transport W.A. all costs & expenses incurred by Sykes Transport W.A. or their solicitors, legal advisers, mercantile agents & any other party acting on behalf of any of them relating in any way to the Goods &/or Services or anything arising under these Terms.
 - Any part of these Terms being a whole clause or part of a clause is capable of severance without affecting any other part of these Terms.
 - If Sykes Transport W.A. does not exercise any rights under these Terms this is not a waiver of any rights.
 - All dealings with Sykes Transport W.A. shall be deemed made in State nominated by Sykes Transport W.A. & the Customer submits to the jurisdiction of the appropriate Court(s) nominated by Sykes Transport W.A.
 - These Terms will apply to all Dealings with Sykes Transport W.A. notwithstanding that any such Dealing maybe endorsed with or purport to incorporate any other Terms (& including any Conditions of Cartage endorsed on or associated with any Con-Note or found on any older Sykes Transport W.A. document).
 - If Sykes Transport W.A. publishes material concerning its Services or prices which is incompatible with these Terms, that material is expressly excluded.
 - Any advice or assistance given for or on behalf of Sykes Transport W.A. shall be accepted at the Customer's risk & shall not be deemed given as expert or adviser nor to have been relied upon by or through the Customer.
 - If any dispute arise concerning any Dealing (including any question of identity or authority or any telephone, facsimile, e-mail, e-commerce or computer generated order) the internal records of Sykes Transport W.A. will be conclusive evidence in all respects.
 - Each order it places shall be & be deemed to be a representation by it, made at the time that it is and will remain in the future solvent & able to pay all of its debts as & when they fall due,
 - Failure to pay Sykes Transport W.A. in accordance with these Terms shall be & be deemed to be conclusive evidence that the Customer had no reasonable grounds for making the representation referred to in 27 (b) & that they were unconscionable, misleading and deceptive.
 - When any part of any Service is requested, the Customer shall inform Sykes Transport W.A. of any material facts which would or might reasonably affect the commercial decision by Sykes Transport W.A. to accept &/or grant credit in relation thereto. Any failure to do so by or on behalf of the Customer shall create & be deemed to create an inequality of bargaining position & be deemed to constitute the taking of an unfair advantage of Sykes Transport W.A. & to be unconscionable, misleading and deceptive.
 - No terms & conditions sought to be imposed by the Customer shall apply.
 - To give effect to its obligations arising hereunder, the Customer irrevocably appoints any solicitors acting for Sykes Transport W.A. from time to time, as its attorney in all things.
 - That variation or cancellation of these Terms or any Dealings must be agreed in writing.
 - If Sykes Transport W.A. grants any credit facility or nominates any credit limit, this is an indication of its intention at the time. Sykes Transport W.A. can vary or withdraw any credit facility at any time at its discretion..
 - The Customer will on request charge in favour of Sykes Transport W.A.
 - By way of fixed charge its books of account, financial records, goodwill, documents of title & current & later acquired real & intellectual property,
 - By way of floating charge, the whole of its other undertaking, property & assets, with payment of all monies owed to Sykes Transport W.A.
 - Sykes Transport W.A. will not be in breach of any Dealings with the Customer as a result of Force Majeur. Force Majeur means beyond the reasonable control of Sykes Transport W.A. and includes any strike or lock-out.
 - If the Customer commits or is involved in any act of insolvency, it agrees that it will be deemed in default under these Terms,
 - An act of insolvency is deemed to include bankruptcy, liquidation, receivership, administration or the like.
 - Sykes Transport W.A. will not be liable for any delay in providing any Services and may allocate its resources and facilities between Customers at its absolute discretion, if demand exceeds supply.
 - If has not relied on any representation, condition or warranty express or implied to Sykes Transport W.A.'s skill, competence or efficiency in dealing with any Goods or providing any Services.
 - Sykes Transport W.A. has no obligation or responsibility to collect any payment on behalf of the Customer or any party, even if this purports to be part of any Dealing between Sykes Transport W.A. and any Customer.