

**1. Definitions**

- 1.1 “Crookston” shall mean Crookston Heavy Haulage Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Crookston Heavy Haulage Pty Ltd.
- 1.2 “Client” shall mean the Client (or any person acting on behalf of and with the authority of the Client) as described on any quotation, work authorisation or other form as provided by Crookston to the Client.
- 1.3 “Guarantor” means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 “Sub-Contractor” shall mean and include any person or firm with whom Crookston may arrange for the carriage or storage of any Goods that are the subject of the contract.
- 1.5 “Services” shall mean all Services supplied by Crookston to the Client and includes any advice or recommendations.
- 1.6 “Goods” shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Services provided by Crookston.
- 1.7 “Futile Fee” shall mean all costs (including, but not limited to hourly rates) incurred by Crookston.
- 1.8 “Delay Fee” shall mean all costs (including, but not limited to hourly rates) incurred by Crookston due to delays (including, but not limited to delays in accessing the work site) encountered by Crookston that are caused by the Client.
- 1.9 “Price” shall mean the price payable for the Services as agreed between Crookston and the Client in accordance with clause 4 of this contract.

**2. Crookston Not Common Carrier**

- 2.1 Crookston is not a Common Carrier and will accept no liability as such however so caused in both negligence or in tort. All articles are carried or transported and all storage and other services are performed by Crookston subject only to these conditions and Crookston reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

**3. Acceptance**

- 3.1 Any instructions received by Crookston from the Client for the supply of Services and/or the Client’s acceptance of Services supplied by Crookston shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 3.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of Crookston.
- 3.4 The Client shall give Crookston not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client’s name and/or any other change in the Client’s details (including but not limited to, changes in the Client’s address, facsimile number, or business practice). The Client shall be liable for any loss

incurred by Crookston as a result of the Client’s failure to comply with this clause.

3.5 At the time of quotation, the Client shall provide Crookston with an accurate description of the Goods to be transported. The Client acknowledges that if, at the time of pick-up, the Goods to be transported by Crookston are not as described by the Client at the time of quotation, then Crookston reserves the right to refuse to transport the Goods and charge the Client a Futile Fee. At Crookston’s sole discretion the Goods may be transported subject to a change in the quoted Price as per Clause 4.2.

**4. Price And Payment**

4.1 At Crookston’s sole discretion the Price shall be either:

- (a) as indicated on invoices provided by Crookston to the Client in respect of Services supplied; or
- (b) Crookston’s quoted Price (subject to Clause 4.2, Clause 4.3, and Clause 4.4) which shall be binding upon Crookston provided that the Client shall accept Crookston’s quotation in writing within thirty (30) days.

4.2 Crookston reserves the right to change the Price in the event of a variation (including, but not limited to the Goods, at the time of pick-up, not being as described by the Client at the time of quotation) to Crookston’s quotation.

4.3 Crookston may by giving notice to the Client increase the Price of the Services to reflect any increase (including, but not limited to an increase in fuel levies) in the cost to Crookston beyond the reasonable control of Crookston.

4.4 Crookston may charge Goods by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional costs accordingly.

4.5 At Crookston’s sole discretion:

- (a) payment shall be due on delivery of the Services; or
- (b) payment for approved Client’s shall be made by instalments in accordance with Crookston’s payment schedule.

4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

4.7 Payment will be made by cash, or by cheque, or by direct credit, or by any other method as agreed to between the Client and Crookston.

4.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**5. Nomination Of Sub-Contractor**

5.1 The Client hereby authorises Crookston (if Crookston should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Crookston. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Crookston shall

- be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor. 11.3 The Client shall indemnify Crookston from and against all costs incurred and damages caused (including, but not limited to damage to roads and footpaths) as a result of Crookston following the Client's instructions.
- 6. Route Deviation**
- 6.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Crookston be deemed reasonable or necessary in the circumstances. 11.4 The Client shall indemnify Crookston from and against all parking fines incurred by Crookston during the loading or unloading of the Goods at the worksite, or parking with the Goods on roadways.
- 7. Dangerous Goods**
- 7.1 Unless otherwise agreed in advance in writing with Crookston the Client or its authorised agent shall not tender for carriage of any explosive, flammable or otherwise dangerous Goods. The Client shall be liable for and hereby indemnifies Crookston for all loss or damage whatsoever caused by any Dangerous Goods.
- 8. Client Packed Containers**
- 8.1 If a container has not been stowed by or on behalf of Crookston, then Crookston shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
  - (b) the unsuitability of the Goods for carriage or storage in containers; or
  - (c) the unsuitability or defective condition of the container.
- 9. Demurrage**
- 9.1 The Client will be and shall remain responsible to Crookston for all its proper charges incurred for any reason. A Delay Fee may be charged by Crookston in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of Crookston. Such permissible delay period shall commence upon Crookston reporting for loading or unloading.
- 10. Client's Responsibility**
- 10.1 The Client expressly warrants to Crookston that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and by entering into this contract the Client accepts these conditions of contract as well as for all other persons on whose behalf the Client is acting. The Client shall indemnify Crookston from and against all liability if the Client is in breach of this Clause.
- 11. Vehicle Access**
- 11.1 The Client is solely responsible for providing immediate, free, clear, and safe access to the work site. This includes, but is not limited to, ensuring that there are no height restrictions likely to be imposed by overhead power lines or any other obstruction. If the Client cannot provide immediate, free, clear, and safe access to the work site, Crookston shall be entitled to charge the Client a Delay Fee.
- 11.2 Crookston shall not be liable for any loss or damage caused in accessing the work site beyond the reasonable control of Crookston (including, without limitation, damage to pathways, driveways, and concreted or paved or grassed areas).
- 12. Pick-up of Goods**
- 12.1 The Client acknowledges that Crookston may pick-up the Goods (specified by the Client for delivery) without the Client being on site.
- 13. Delivery Of Goods**
- 13.1 The Client shall provide Crookston with accurate delivery instructions to enable effective delivery by Crookston.
- 13.2 Crookston is authorised to deliver the Goods to the Client's nominated delivery address and it is expressly agreed that Crookston shall be taken to have delivered the Goods in accordance with this contract if at that address Crookston obtains from any person a receipt, consignment note, or a signed delivery docket for the Goods.
- 13.3 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable (including due to not being on site) to take delivery of the Goods at the nominated delivery site as arranged then Crookston shall be entitled (at Crookston's sole discretion) to either:
- (a) charge the Client a reasonable fee for redelivery; or
  - (b) unload the Goods without receiving a receipt or signed delivery docket. All risk for the Goods passes to the Client on delivery and the Client shall be liable for and hereby indemnifies Crookston against all loss of or damage to the Goods due to the Client failing to be at the nominated delivery site at the time of delivery.
- 13.4 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 13.5 At Crookston's sole discretion the costs of delivery are included in the Price.
- 13.6 The Client shall inspect the Goods on delivery and shall within twenty-four (24) hours of delivery (time being of the essence) notify Crookston of any alleged defect, shortage in quantity, damage or failure to comply with the description or quote. The Client shall afford Crookston an opportunity to inspect the Goods within a reasonable time following delivery if the Client believes the Goods are defective in any way. If the Client shall fail to comply with these provisions the Goods shall be presumed to be free from any defect or damage.
- 13.7 The failure of Crookston to deliver shall not entitle either party to treat this contract as repudiated.
- 13.8 Crookston shall not be liable for any loss or damage whatever due to failure by Crookston to deliver the Services (or any of them) promptly or at all.
- 14. Insurance**
- 14.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of Crookston; and
- (b) Crookston is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will Crookston be under any liability with respect to the arranging of any such insurance and no claim will be made against Crookston for failure to arrange or ensure that the Goods are insured adequately or at all.
- 15. Loss Or Damage**
- 15.1 Subject to any statutory provisions imposing liability, Crookston shall:
- (a) not be under any liability for any loss of or damage to the Goods unless such loss or damage occurs whilst the Goods are in the actual custody of Crookston and under its actual control and unless such loss or damage is due to the wilful neglect or default of Crookston or its agents;
- (b) not be under any liability for any delay in delivery, mis-delivery, non-delivery, or deterioration of the Goods, nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay.
- 16. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**
- 16.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- 16.2 Liability of Crookston arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by Crookston:
- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again; or
- (c) where the Client is a consumer as defined in the Trade Practices Act 1974 then the client shall also be entitled to a refund.
- 17. Cancellation**
- 17.1 Crookston may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice Crookston shall repay to the Client any sums paid in respect of the Price. Crookston shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by Crookston (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18. Default & Consequences of Default**
- 18.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month and such interest shall compound monthly at such a rate after as well as before any judgment.
- 18.2 If the Client defaults in payment of any invoice when due, the Client shall indemnify Crookston from and against all costs and disbursements incurred by Crookston in pursuing the debt including legal costs on a solicitor and own client basis and Crookston's collection agency costs.
- 18.3 Without prejudice to any other remedies Crookston may have, if at any time the Client is in breach of any obligation (including those relating to payment), Crookston may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. Crookston will not be liable to the Client for any loss or damage the Client suffers because Crookston has exercised its rights under this clause.
- 18.4 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 18.5 Without prejudice to Crookston's other remedies at law Crookston shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to Crookston shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Crookston becomes overdue, or in Crookston's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 19. Crookston's Right to Dispose of Goods**
- 19.1 Crookston shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of Crookston for all sums payable by the Client to Crookston, and Crookston shall have the right to sell the Goods by public auction or private treaty after giving notice to the Client. Crookston shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 20. Security And Charge**
- 20.1 Despite anything to the contrary contained herein or any other rights which Crookston may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset

- capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Crookston or Crookston's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that Crookston (or Crookston's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
- (b) should Crookston elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Crookston from and against all Crookston's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Crookston or Crookston's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 20.1.
- 21. Privacy Act 1988**
- 21.1 The Client and/or the Guarantor/s agree for Crookston to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Crookston.
- 21.2 The Client and/or the Guarantor/s agree that Crookston may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the credit worthiness of Client and/or Guarantor/s.
- 21.3 The Client consents to Crookston being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 21.4 The Client agrees that personal credit information provided may be used and retained by Crookston for the following purposes and for other purposes as shall be agreed between the Client and Crookston or required by law from time to time:
- (a) provision of Services; and/or
- (b) marketing of Services by Crookston, its agents or distributors in relation to the Services; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 21.5 Crookston may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 22. General**
- 22.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 22.3 Crookston shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Crookston of these terms and conditions.
- 22.4 In the event of any breach of this contract by Crookston the remedies of the Client shall be limited to damages which under no circumstances shall exceed the Price of the Services.
- 22.5 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Crookston.
- 22.6 Crookston may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 22.7 Crookston reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Crookston notifies the Client of such change.
- 22.8 Crookston shall not be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, drought, storm or other event beyond the reasonable control of Crookston.
- 22.9 The failure by Crookston to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Crookston's right to subsequently enforce that provision.