



Bower Hogan Group Pty Ltd t/as  
Hogans Heavy Haulage  
ABN 19 658 064 512  
PO Box 396, Singleton NSW 2330  
admin@hogansheavyhaulage.com.au

## CONDITIONS OF CONTRACT

1. In these terms and conditions:

"Carrier" shall mean BOWER HOGAN GROUP PTY LIMITED.

"Carriage" shall mean and include the whole of the operations and services undertaken by the Carrier, its servants, agents and/or Subcontractors, whether as forwarder, storer, carrier or bailee.

"Consignor" shall mean the person with whom the Carrier contracts to provide the Carriage.

"Goods" shall mean the cargo accepted from the Consignor or on his behalf together with any container, packaging or pallet supplied by or on behalf of the Consignor.

"Subcontractor" shall include any person who pursuant to a contract or arrangement with any other person (whether or not the Carrier) performs or agrees to perform the Carriage or any part thereof.

2. The Carrier is not a common carrier and will accept no liability as such. The Goods are carried or transported and all storage and other services are performed by the Carrier subject to these conditions AND THE CARRIER RESERVES THE RIGHT TO REFUSE THE CARRIAGE OR TRANSPORT OF GOODS FOR ANY PERSON, CORPORATION AND THE CARRIAGE OR TRANSPORT OF GOODS CLASS OF ARTICLE AT ITS DISCRETION.

3. (a) The Consignor warrants that the person delivering the Goods to the Carrier for carriage or forwarding it is authorised to sign the consignment note for the Consignor.

(b) The Consignor warrants that in agreeing to the terms hereof he is or has the authority of, the person or persons owning or having any interest in the Goods or any part thereof.

(c) Without prejudice to the generality of the foregoing, the Consignor undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any person (other than the Consignor) who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof.

4. Subject to Clause 19 hereof the Carrier shall not be under any liability whether in tort, bailment or in contract for any loss of or damage to or misdelivery, delay in delivery, concealed damage, deterioration, contamination, evaporation, non delivery of Goods held in its care, custody or control or any consequential loss arising there from howsoever caused including but not limited to any negligence or breach of contract, or breach of duty as bailee or wilful act or default of the Carrier or others and this clause shall apply to all such loss of or damage to or deterioration of Goods or misdelivery or failure to deliver or delay in delivery of Goods as aforesaid whether or not the same occurs in the course of performance by or on behalf of the Carrier of the contract, carriage or events which are in the contemplation of the Carrier and/or the Consignor or in events which are foreseeable by them or either of them or in events which could constitute a fundamental breach of the contract or a breach of the fundamental term thereof.

5. (a) The Carrier and any Subcontractor may subcontract part or all of their obligations on any terms.

(b) The Consignor undertakes that no claim or allegation shall be made whether by the Consignor or any other person who is or may hereafter be interested in the Goods, against any person (other than the Carrier) by whom (whether as a Subcontractor, principal, employer, servant, agent or otherwise) the Carriage of any part thereof is performed or undertaken which imposes or attempts to impose upon such person any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such person, and if such claim or allegation should nevertheless be made, to indemnify the Carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purposes of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to the Contract.

6. Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier is entitled hereunder shall also be available and shall extend to protect:

(a) All Subcontractors;

(b) Every servant or agent of the Carrier or of a Subcontractor;

(c) Every other person (other than the Carrier) by whom the Carriage or any part thereof is performed or undertaken;

(d) All persons who are or might be vicariously liable for the acts or omissions of any person falling within (individually (a), (b) or (c) hereof) and for the purposes of this clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be or be deemed to be parties to the Contract.

7. Freight shall be considered earned as soon as the Goods are collected from the premises of the Consignor or from the address nominated by the Consignor whether the Goods are delivered to the nominated consignee or not and whether damaged or otherwise. In addition to freight the Carrier will charge the Consignor for any additional expenses the Carrier incurs as a result of any incorrect declaration by the Consignor of the weight, volume, description or packaging of the Goods, and any storage charges or other charges or expenses the Carrier incurs in relation to the Goods.

8. All rights, immunities and limitation of liability granted to the Carrier by the provision set forth in the above conditions of carriage shall continue to have full force and effect in all circumstances and notwithstanding any breach of this Contract or of any condition thereof by the Carrier.

9. (a) The Goods are "dangerous" if they are classified by either the IATA Dangerous Goods Regulations or the Australian Dangerous Goods Code or if they might injure or damage people, property or the environment. They include goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.



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- (b) The Consignor is legally bound to declare the Goods are dangerous and agree to give the Carrier a full and accurate description of them.
- (c) Whether or not the Consignor has told the Carrier that any Goods are dangerous the Consignor agrees that if the Carrier, its servants, agents and Subcontractors, consider on reasonable grounds that the Goods may cause injury or damage the Carrier or any of them can, at the Consignor's cost and without liability to the Consignor, do anything appropriate, including disposing of or destroying them. The Consignor will always bear all risk or loss or damage to, or arising in connection with, dangerous Goods.
- (d) The Consignor will indemnify the Carrier for any loss or damage caused to any person, including property damage, as a result of any breach of these promises.
10. The Consignor warrants to the Carrier the accuracy of the particulars which are inserted herein and he shall indemnify the Carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars.
11. Should the Consignor not be in attendance during normal trading hours or at the times specified or if the Carrier arrives to effect delivery at the Consignee's premises and is delayed in effecting prompt delivery at the said premises for any reason whatsoever outside the Carrier's control, then the Carrier will charge the Consignor for the costs of the re-delivery including any storage costs the Carrier may incur.
12. If the Consignor considers that the Carrier is liable to the Consignor, the Consignor must notify the Carrier immediately and send written notice of claim to the Carrier within 14 days. If the Carrier does not receive a written notice from the Consignor within that time, the Carrier will have no liability to the Consignor. Notwithstanding the Consignor's claim, the Consignor will remain liable to pay the Carrier's charges under this Contract.
13. These conditions shall be governed and construed in accordance with the laws of the State of New South Wales and any proceedings against the Carrier shall be brought in that State and not elsewhere within six (6) months of the date of delivery of the Goods or the date on which the Goods ought to be delivered.
14. (a) The Carrier shall have a general or particular lien on the Goods and any documents relating thereto or on any other goods of the Consignor in the possession of the Carrier or any documents relating thereto for all sums payable by the Consignor to the Carrier and for that purpose shall have the right to sell any such Goods by public auction or private treaty without notice to the Consignor.  
(b) No claims levied against the Carrier will be considered unless all freight charges have been paid in full.
15. It is hereby agreed that any provisions or part of any provision of the Contract is unenforceable such unenforceability shall not effect any other part of such provision or any other provision hereof.
16. In regard to Goods which the Carrier has been requested by the Consignor to pack and which are described on the face hereof, the Carrier shall not be liable for any damage or loss whatsoever whether in the course of packing or in transit or otherwise and howsoever occasioned to the said Goods or any of them. In regard to Goods which have been packed by or on behalf of the Consignor (other than by the Carrier) the Consignor warrants that the Goods are packed to withstand handling, transport and storage and that the Consignor has complied with all laws in connection with the Goods to ensure that they can be lawfully handled transported and stored.
17. Insurance will not be arranged by the Carrier. It is the responsibility of the Consignor to ensure that adequate insurance cover is arranged in view of the application of all clauses hereof upon which the Carrier accepts Goods for carriage.
18. The Consignor hereby authorises any deviation from the usual route or manner or Carriage which may in the absolute discretion of the Carrier to deemed desirable or necessary in the circumstances.
19. If the Consignor is a "consumer" as defined in the Trade Practices Act, this Contract does not affect any rights the Consignor might have as a result of that Act.
20. The terms of this contract cannot be waived or varied.