

**Please read the following conditions carefully and in their entirety. You will be bound by the conditions in this schedule if we carry or store Products for you.**

**This means:**

- **You must take out your own insurance cover over the Products.**
- **If both you and the consignee are both operating a business:**
  - **the Products will be at your sole risk and our services are priced on this basis; and**
  - **we will not be liable for any loss of or damage to the Products, or any other losses you suffer, regardless of the cause of such loss or damage.**

## CONDITIONS OF CARRIAGE AND STORAGE

### 1. Definitions

The meanings of the terms used in this Schedule (other than those defined in the Trading Terms and Conditions) are set out below.

- 1.1 **Carriage** means the whole of the operations and services undertaken by XFM or any person on behalf of XFM in respect of the Products (whether gratuitously or not) including but without limiting the generality of this definition, loading, unloading, packing, handling, transporting and storing the Products and the provision of any advice.
- 1.2 **Chain of Responsibility Law** means the Heavy Vehicle National Law as enacted in any Australian state, the Road Traffic (Administration) Act 2008 (WA) and the Road Traffic (Vehicles) Act 2012 (WA) and any other state, territory or Commonwealth legislation dealing with the obligations of parties involved in road transport activities, such as consignors, transport operators, loaders, drivers and schedulers.
- 1.3 **Consequential Loss** means any indirect or consequential loss, loss of use, loss of product or production, delayed, postponed, interrupted or deferred production, inability to produce, deliver or process, loss of profit, revenue or anticipated revenue, loss of bargain, contract, expectation or opportunity, punitive or exemplary damages, in each case arising from or in connection with the performance of this agreement or at any time of provision of the Services.
- 1.4 **Container** includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Products.
- 1.5 **Crane** includes any machine used for lifting Products, including a sideloader.
- 1.6 **Dangerous Goods** means Products that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever.
- 1.7 **Force Majeure Event** means an act, event or cause that is beyond the reasonable control of XFM including acts of God, lightning, earthquakes, floods, storms, other

natural disasters, explosions, fire, acts of war, acts of public enemies, terrorism, public disorders, riots, civil commotion, revolution, sabotage, malicious damage, any order or temporary or permanent injunction of any court or acts of a government or government instrumentality, strikes, lockouts, labour disputes (to the extent they exceed 7 days), road closures, traffic congestion, quarantine or customs restriction, embargo, interruption of power supplier, scarcity of fuel, accident, collision or breakdown a vehicle, machinery or equipment.

- 1.8 **Fuel Levy** means any sum payable to XFM based on movements in the price of diesel fuel, calculated on a weekly or monthly basis.
- 1.9 **Person** means any individual, firm, corporation, trust or government authority.
- 1.10 **Products** (for the purposes of these Conditions) means the property accepted by XFM from the Customer for Carriage including any container or packaging supplied by or on behalf of the Customer.
- 1.11 **Receiver** means any Person to whom XFM shall deliver or is intending to deliver the Products.
- 1.12 **Regulated Waste** means 'regulated waste' under the Environmental Protection Regulation 2008 (Qld) and any other commercial or industrial waste (whether or not it has been immobilised or treated) where dealings with that waste are regulated by any state or federal legislation.
- 1.13 **Services** (for the purposes of these Conditions) means all of the services undertaken by XFM in connection with the Products including but not limited to carriage, transport, storage, loading and unloading and associated tasks to be provided by XFM or its employees or Subcontractors for the Customer.
- 1.14 **Subcontractor** means any Person with whom XFM may arrange to provide the Services, or any part of the Services and any Person that Person may arrange to provide the Services.
- 1.15 **Wilful Misconduct** means a deliberate act or omission which is contrary to or goes beyond the conduct to be expected of a party, where such party knows that or is reckless to the fact that such act or omission is contrary to or goes beyond the conduct to be expected of them.

### 2. Negation of liability as a common carrier

- 2.1 XFM is not a common carrier and will accept no liability as such. All Products are carried, and all storage and other services are performed by XFM, subject only to these Conditions. XFM reserves the right to refuse the Carriage of Products for any person and the Carriage of any class of Products at its discretion.

### 3. Customer's warranties and obligations

- 3.1 The Customer warrants that:
  - (a) the Products are fit for Carriage and have been suitably packaged for such purposes, without any special care in handling or movement;

- (b) the Products will be packaged in containers, packaging and pallets that conform to the requirement of the Receivers;
- (c) the Customer has the authority of all persons owning or having any interest in the Products to accept these Conditions on their behalf;
- (d) the Person delivering the Products to XFM is authorized to do so and is authorized to sign documents in relation to the carriage and storage of the Products;
- (e) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer are full, accurate, true and correct;
- (f) there is a suitable practicable road and approach for XFM and XFM's vehicles to the place from which the Products are to be removed and the place to which the Products are to be delivered;
- (g) any place from which any Products are to be collected or to which any Products are to be delivered will have safe and adequate loading facilities and equipment available;
- (h) where the Products contain Regulated Waste, the Customer will provide to XFM all necessary documentation required by law to allow the transport of the Products by XFM;
- (i) a person with authority to accept delivery of the Products will be available to accept delivery at the delivery premises during trading hours;
- (j) the Customer will be responsible for the loading and unloading of any Products that consist of items of machinery for which a licence to operate is required;
- (k) Carriage is supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by the Customer;
- (l) the Customer has complied with all laws and regulations in relation to Carriage of the Products including in relation to :
  - (i) the nature, condition, packaging, storage or carriage of the Products (including Chain of Responsibility Law obligations); and
  - (ii) workplace health and safety.
- (m) unless specifically declared in writing (and being compliant with all applicable laws) prior to Carriage, the Products are not Dangerous Goods or Regulated Waste;
- (n) If the Products are deemed to be Dangerous Goods or Regulated Waste, the Customer has complied with all applicable laws and regulations governing the carriage and storage of such Dangerous Goods or Regulated Waste. This includes ensuring compliance with the notification, classification, description, labelling, transport, packaging and storage of all Products with a dangerous goods classification; and
- (o) the Customer has effected a policy of insurance to cover any loss of or damage to the Products during Carriage.

- 3.2 The Customer must:
  - (a) at the Customer's cost, provide any information or documents required by XFM to perform the Carriage;
  - (b) provide sufficient instructions to allow XFM to adequately perform the Carriage in a timely manner;
  - (c) provide any information concerning the nature of the Products and their packaging that XFM requests;
  - (d) where the Products require special treatment (such as a particular orientation during Carriage), provide written notice to XFM of the special treatment required; and
  - (e) where required by law, provide an accurate container weight declaration.
- 3.3 XFM relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer, but does not admit their accuracy.

**4. Subcontracting**

- 4.1 XFM, at its discretion, may subcontract on any terms the whole or any part of the Carriage.
- 4.2 If XFM subcontracts any Carriage, XFM:
  - (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these conditions; and
  - (b) will be liable to the Customer for any act or omission of the Subcontractor as if such act or omission were the act or omission of XFM.
- 4.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity applicable to XFM or to which XFM is entitled under these conditions will also be available to and will extend to:
  - (a) all Subcontractors;
  - (b) every employee or agent of XFM or of a Subcontractor; and
  - (c) all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within 4.3(a) or (b).
- 4.4 For the purposes of clause 4.3, XFM is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and all such persons will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

**5. Limitation of Liability of XFM**

- 5.1 In the event that the Customer is not a participant of the FreightSafe Warranty:
  - (a) To the extent permitted by law, the Customer acknowledges and agrees that XFM and its employee, agent, subcontractor or personnel of XFM nor any other person who undertakes the Carriage of the Products at any time pursuant to these conditions shall not, under

any circumstances (except where any statute otherwise requires) be liable for:

- (i) any loss of or damage to, deterioration, evaporation or contamination of the Products;
- (ii) any Consequential Loss suffered by the Customer; or
- (iii) misdelivery, delay in delivery or non-delivery of the Products or any of them,

whether in the course of Carriage or otherwise save for in the event where loss, damage, deterioration, evaporation, contamination, misdelivery, delay in delivery or non-delivery is caused by the proven negligence or Wilful Misconduct of XFM or its employee, agent, subcontractor or personnel.

(b) To the extent that liability cannot be excluded under law, XFM's liability will be limited, at its sole discretion, to either:

- (i) the resupply of the Goods and/or Services; or
- (ii) the cost of resupply of the Goods and/or services.

(c) Without limiting the generality of the foregoing, XFM will not be liable for any loss of or damage to Products:

- (i) caused by a Force Majeure Event;
- (ii) caused by XFM or its employees, agents, subcontractors or personnel following instructions given to it by the Customer;
- (iii) caused by vermin, infestation, infection or mould;
- (iv) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including but not limited to rain, hail or storm damage;
- (v) comprising glass, internal or external fittings, plasterwork, cornices or any other fragile material or substances;
- (vi) that are brittle, inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
- (vii) caused by inherent vice or the nature of the Products;
- (viii) where the loss or damage is to Dangerous Goods or Hazardous Materials;
- (ix) where such loss or damage comprises of mechanical, electrical or electronic breakdown, derangement, or malfunction of the Products; or
- (x) caused by insufficiency or unsuitability of packing or preparation of the Products to withstand the ordinary incidents of Carriage. For the purpose of this subclause, 'packing' will be deemed to include stowage of any Products inside a building or other structure.

(d) Any Liability of XFM under this clause 5 will be reduced proportionately to represent the extent to which the Customer or any other person's negligent or wrongful acts or omissions have contributed to or caused, the loss, damage, costs, misdelivery, delay in delivery or non-delivery of the Products.

(e) Nothing whatsoever done or omitted to be done or other conduct by XFM in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling XFM from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of XFM contained in these Conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

**6. Pallets and Containers**

6.1 Without limiting the generality of clause 5, the Customer:

- (a) acknowledges that XFM has no responsibility or liability in relation to:
  - (i) any Container or pallet used for Carriage; or
  - (ii) any hire charge or demurrage charge associated with any Container used for Carriage;
- (b) must ensure that any pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
- (c) releases and indemnifies XFM from and against:
  - (i) any liability in relation to the loss of Containers or pallets where such loss has not occurred due to the proven negligence or Wilful Misconduct of XFM, its employees, agents, subcontractors or personnel; and
  - (ii) the failure of any party to transfer pallets on or off any hire account or to return a Container.

**7. Crane/lifting services**

7.1 Where XFM provides Crane services at the request of the Customer, the Customer warrants that:

- (a) the ground at the site where the Crane will be used is adequate to support the Crane;
- (b) the ground giving access to the site is stable and firm and of a gradient to allow the Crane to be operated safely;
- (c) sufficient clearance is afforded in respect of all overhead wires;
- (d) the specifications and size of the Crane are suitable for the site where the Crane will be used and for the purpose required by the Customer; and
- (e) the road surfaces, access and egress to the site are clear of obstacles at all times and will allow safe movement of the Crane.

7.2 XFM agrees to provide a selection of slings, lugs and chains and will specifically provide any Customer requested slings, lugs and chains (if XFM has same available). However XFM will not be responsible for loss or delay if any slings, lugs or chains are found to be unsuitable for the purpose required by the Customer.

7.3 The Customer warrants that the weight and dimensions of the Product/s provided is/are correct and understands and confirms that XFM will book a Crane based on the weight and dimensions of the Product/s provided by the Customer, which will be lifted in one lift and the radius of the proposed lift, measured from the radial point of the Crane, will therefore not exceed the limits of the Crane.

## 8. **Indemnities**

8.1 Except where any statute otherwise requires, the Customer will indemnify XFM:

- (a) in respect of any liability whatsoever in respect of the Products to any person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Products or any part of the Products; and
- (b) against all Losses, or any other liability suffered or incurred by, or made or instituted against, XFM as a result, directly or indirectly, of:
  - (i) a breach of the Customer's obligations under these Conditions;
  - (ii) the nature or condition of the Products; or
  - (iii) any negligence, Wilful Misconduct or recklessness of the Customer, the consignor or the consignee.

8.2 Except where any statute otherwise requires, XFM will indemnify the Customer for any direct loss suffered by the Customer due to proven negligence or Wilful Misconduct of XFM.

## 9. **Inspection**

9.1 The Customer authorises XFM, but XFM will not be obliged, to open any document, wrapping, package or other Container in which the Products are placed or carried or that are otherwise associated with the Products, for the purpose of determining the nature, condition, ownership, destination of the Products or for any other purpose that is reasonably necessary.

9.2 If XFM is required by law to open any document, wrapping, package or other Container in which the Products are placed or carried, XFM will not be liable for any loss, damage or delay incurred as a result of any opening, unpacking, inspection or repacking of the Products and will be entitled to recover the reasonable costs of such opening, unpacking, inspection or repacking.

## 10. **Route and deviation**

10.1 The Customer authorises any deviation from the usual route or manner of Carriage of Products that may in the absolute discretion of XFM be considered desirable or necessary in the circumstances.

10.2 If the Customer expressly or impliedly instructs XFM to use, or it is expressly or impliedly agreed that XFM will use a particular method of handling or storing the Products or a particular method of Carriage, XFM will give priority to that method but if it cannot conveniently be adopted by XFM the Customer authorises XFM to handle or store or to carry or to have the Products handled, stored or carried by another method or methods.

## 11. **Delivery**

11.1 XFM is authorised to deliver the Products at the address nominated to XFM by the Customer for that purpose. XFM will be conclusively presumed to have delivered the Products in accordance with these Conditions if at that address it obtains from any person a receipt or signed delivery docket for the Products.

11.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by XFM or the consignee otherwise fails to take delivery of the Products XFM may at its option deposit the Products at that place (which will be conclusively presumed to be due delivery under these Conditions) or store the Products and if the Products are stored by XFM the Customer will pay or indemnify XFM for all costs and expenses incurred in or about such storage. In the event that the Products are stored by XFM, XFM will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.

## 12. **Storage**

12.1 Where Products are stored by XFM at the request of the Customer, the Customer will provide:

- (a) an address to which notices will be sent;
- (b) samples of the signatures of persons entitled to collect the Products; and
- (c) an inventory of the Products to be stored.

12.2 XFM will be entitled to remove the Products from a place of storage to another place of storage at its discretion and will provide notice to the Customer of the new place of storage on the same day as the Products have been moved.

12.3 The Customer must give 48 hours' notice to XFM of its intention to remove Products from storage.

12.4 XFM will not be obliged to deliver any Products except to the Customer or to a person authorised in writing by the Customer to receive the Products without:

- (a) a direction in writing from the Customer; and
- (b) payment of all amounts due by the Customer to XFM on any account whatsoever.

12.5 The Customer will remove its Products from storage within seven days of receipt of written notice from XFM.

12.6 If any identifying document or mark is lost, damaged, destroyed or defaced, XFM may open any document, wrapping, package or other Container in which the Products are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.

**13. Delay in loading or unloading**

13.1 The Customer will be liable for and remain responsible to XFM for all its proper charges incurred by XFM for any reason, including, but not limited to the reason of delay in loading or unloading the Product. A charge may be made by XFM in accordance with XFM's schedule of rates (a copy of which shall accompany this Commercial Credit Application) in respect of any delay in loading or unloading of Product that has been caused by the Customer provided that it has not occurred as a result of a default of XFM. A delay period will commence upon XFM reporting for loading or unloading and will terminate once the Product has been fully loaded or unloaded.

**14. Supplier's charges**

14.1 XFM's charges will be deemed fully earned on receipt of the Products by XFM and are non-refundable in any event. The Customer agrees to pay all sums due to XFM without any deduction, counterclaim or set-off.

14.2 Any special instruction given by the Customer to the effect that charges will be paid by the consignee or any other third party will be deemed to include a stipulation that if the consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Products the Customer will pay such charges.

14.3 Where XFM stores Products for the Customer, the Customer must:

- (a) pay XFM's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other person;
- (b) if any Products are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that XFM becomes liable to pay or pays;
- (c) supply or pay for labour or machinery or both to load or unload the Products; and
- (d) compensate XFM for any cost, expense or loss to XFM's property or any person caused by the Products.

14.4 In addition to any other charges due under these Conditions, the Customer must pay:

- (a) if the Products are at any time re-quantified, re-weighed or re-measured, any proportional additional charges; and
- (b) all other charges incurred in relation to the Carriage of the Products, including the Fuel Levy.

**15. Products requiring temperature control**

15.1 If XFM agrees to the Carriage of any Products that require temperature control, the Customer must give written notice to XFM:

- (a) of the nature of those Products;
- (b) of the temperature range to be maintained;
- (c) confirming that the Products have been properly packed; and
- (d) confirming that the Products have been properly maintained at the required temperature prior to Carriage.

15.2 The Customer acknowledges that:

- (a) temperature variations can occur; and
- (b) any temperature record maintained by XFM will, in the absence of a manifest error, be conclusive evidence of the temperature during Carriage.

**16. Dangerous Goods**

16.1 Unless XFM agrees in writing with the Customer, XFM will not accept Dangerous Goods for Carriage. If Dangerous Goods are tendered without prior written agreement, the Dangerous Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to XFM's right to charge for the Carriage of the Products.

16.2 If XFM accepts Dangerous Goods for Carriage:

- (a) such Products must be accompanied by a full written declaration disclosing their nature;
- (b) the Customer must comply with all laws, regulations, ordinances and codes that deal with the Carriage of Dangerous Goods, including but not limited to the *Australian Code for the Transport of Dangerous Goods by Road & Rail*; and
- (c) the Customer warrants that the Products are packed in a manner adequate to withstand the ordinary risks of Carriage and Storage having regard to their nature.

16.3 The Customer will indemnify XFM against all loss, damage or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Customer was aware of the nature of the Products.

16.4 The indemnity in clause 16.3 extends to Consequential Loss.

16.5 If, in the opinion of XFM, any Dangerous Goods accepted under clause 16.2 become, or are likely to become, dangerous to other goods or property, or any person, XFM may nevertheless destroy, dispose of or abandon the Dangerous Goods without compensation to the Customer and without prejudice to XFM's right to charge for the Carriage of the Products.

**17. Notification of claim**

17.1 Notwithstanding any other provision of these Conditions (other than clause 3.2 of the Trading Terms and Conditions), XFM will in any event be discharged from all liability

whatsoever in respect of the Products unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to XFM:

- (a) in the case of Products allegedly lost or damaged in the course of loading, unloading or transit, within 24 hours of delivery of the Products (if the Products are perishable) or 14 days of delivery of the Products (if the Products are not perishable) or, in the case of non-delivery, within 14 days of the time at which, in the ordinary course of business, delivery would have been effected; or
- (b) in the case of Products allegedly lost or damaged during storage, within 14 days of the date of removal or attempted removal of the Products from storage.

17.2 XFM will be discharged from all liability whatsoever in respect of the Products unless suit is brought:

- (a) in the case of Products allegedly lost or damaged in the course of loading, unloading or transit within 12 months of their delivery or of the date on which they should have been delivered; or
- (b) in the case of Products allegedly lost or damaged during storage, within 12 months of the date of removal or attempted removal of the Products from storage.

18. **Chain of Responsibility Law**

- 18.1 XFM and the Customer must comply with all applicable laws and regulations, including Chain of Responsibility Law.
- 18.2 The Customer must not impose any requirement on XFM that would directly or indirectly encourage or require XFM or any person on behalf of XFM to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner.

19. **Competition and Consumer Act 2010 (Cth)**

- 19.1 Notwithstanding anything contained in these Conditions, XFM will continue to be subject to any terms, conditions, guarantees or warranties imposed or implied by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.