

TSS Sensitive Freight Pty Ltd

ACN 145 694 257

Terms and Conditions

Section 47A Fair Trading Act (NSW) (the Act) Disclosure

If you are a consumer, before you purchase or enter into an agreement for services supplied by TSS we draw your attention to some of the agreement terms as summarised below. Nothing in these terms will affect or limit your rights under the Australian Consumer Law, including your rights under consumer guarantees.

1) Limitations on liability

TSS excludes liability for indirect loss and lost profits and caps its liability for direct loss. It also excludes liability for loss of or damage to your Goods. These limitations do not apply to TSS' liability for breach of consumer guarantees. If you want to make any claims against TSS, your claim must be made within a particular timeframe.

2) Certain Goods are not acceptable

You are responsible for ensuring that any Goods you deliver to TSS or allow TSS to pick up for Services are not Prohibited Goods. TSS may destroy, abandon or dispose of certain Prohibited Goods if they have not agreed in advance to perform the Services for the Prohibited Goods.

3) Loss to TSS caused by you

You must compensate TSS for any claim that is made against it for damage to the Goods or other circumstances such as mis-delivery, non-delivery, personal injury, illness, or death. You must also compensate TSS for taxes, duties, and other fees or expenses it pays in providing the Services or that are required because of your actions or the nature of the Goods.

4) Insurance

You are required to take out insurance for the Goods. TSS will not arrange insurance.

5) Lien over the Goods

TSS will have a lien over the Goods and documents provided that relate to the Goods. If you owe money to TSS whether

for a current or previous shipment, delivery or for warehousing or storage; they may give you 30 days' notice before selling the Goods to settle the amount owed.

6) Failure to pay

If you fail to pay TSS on time, they may stop or delay any other Services for you until you pay all outstanding amount. TSS may also charge you interest if you do not pay an invoice within 7 days of the invoice date.

7) Promises by you

By entering this agreement, you make a number of promises to TSS which include a promise to comply with relevant Laws, properly pack the Goods, properly describe the Goods and disclose the nature of the Goods. If you break any of these promises, you may be liable to TSS for any loss or damage that occurs as a result.

8) Personal information to third parties

In order to provide goods and services to you, and in some cases to provide you with credit terms for payment, TSS may transfer your personal information to a third party (e.g credit agency or third party provider). See TSS' privacy policy at <https://www.sensitivefreight.com.au/privacy-policy-document/>

By purchasing services from TSS, you acknowledge that TSS has disclosed these terms to you and that you understand their substance and effect and wish to proceed with this agreement. A full copy of the terms and conditions of the agreement is set out following.

1. Terms and Conditions

- 1.1 These terms and conditions and the Quote constitute our Agreement with you.
- 1.2 You enter into this Agreement on the earlier of:
- (a) accepting the Quote online or sending an email accepting the Quote;
 - (b) instructing us in writing to proceed with the Services; or
 - (c) making part or full payment of the Fees (including any deposit).

2. Services

- 2.1 TSS is not a common carrier and may refuse to provide transportation or other services to any Person in its absolute discretion.
- 2.2 TSS will not provide Services where the goods are Prohibited Goods except where it has specifically agreed to do so in writing and subject to such additional conditions as it may require.
- 2.3 In consideration of your payment of the Fees, TSS agrees to perform the Services in accordance with the Agreement using reasonable care, skill and diligence.
- 2.4 TSS is not an insurer of Goods (either warehoused or in transit) and you acknowledge and agree that TSS does not effect insurance on your behalf.
- 2.5 If at any time, TSS determines acting reasonably that the Goods while in transit or in storage are, or will become, dangerous, inflammable, explosive, volatile, offensive, damaging in nature or a source of contamination TSS may at your expense and without notice to you, destroy, dispose of, abandon, or render the Goods harmless. TSS will not be required to compensate you for taking action under this clause and TSS' right to payment for the Services will not be affected.
- 2.6 You agree that TSS may arrange for a Sub Contractor to perform the Services.

3. Delivery

- 3.1 TSS will try to use the particular method of transport such as road, rail, sea or air you have requested but may use an alternative suitable transport method if the method requested by you cannot be

conveniently adopted by TSS as determined by TSS.

- 3.2 You authorise TSS to lease, hire, or use any Conveying Vehicle which TSS reasonably believes is necessary or required to provide the Services.
- 3.3 Goods will be taken to be in transit despite any interruption to transport. TSS may re-route from any usual transport route at its discretion.
- 3.4 TSS will use its best efforts to meet a delivery date. Despite this, You acknowledge and agree that any dates for delivery notified by TSS are estimates only and TSS will have no liability to you for failing to meet any delivery date, unless expressly agreed to in writing by TSS.
- 3.5 You authorise TSS to deliver the Goods to the address nominated by you or any other address directed by the nominated receiver of the Goods. The Goods are taken to be delivered by TSS when TSS obtains Proof of Delivery from a Person at either address.
- 3.6 If the nominated address of delivery should be unattended, TSS may at its option deposit the Goods at that place or store the Goods. If the latter:
- (a) you must pay or indemnify TSS for all costs associated with such storage; and
 - (b) TSS may charge for re-delivery.
- 3.7 You agree that:
- (a) if the identifying documents for the Goods are lost, damaged, or defaced, TSS may open any document related to the Goods or any packaging, covering, wrapping or container the Goods are placed on or carried in; in order to inspect the Goods to determine their nature, condition, ownership or destination;
 - (b) TSS may consolidate your Goods with other goods when arranging for delivery if this is convenient unless you expressly ask and we agree in writing not to do so.

4. Your Obligations

- 4.1 You must:
- (a) fully and accurately disclose to TSS the type, nature, weight and

- measurements of the Goods when requesting the Services;
- (b) tell TSS if any of the Goods are Prohibited Goods before you use the Services;
- (c) comply with all the applicable Laws (including, where necessary, *the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and International Maritime Dangerous Goods Code*) relating to the notification or description of the Goods on the consignment note or in other written form;
- (d) ensure that the packaging and labelling of the Goods complies with all relevant Laws including those which relate to the transport and storage of dangerous goods;
- (e) ensure that the Goods and all packaging, pallets, devices and containers are clearly marked having regard to the nature of the Goods; and .
- (f) ensure that the Goods are properly packaged in order to withstand the ordinary risks of handling, storage, carriage having regard to their nature.
- 4.2 You must not deliver any Prohibited Goods or cause TSS, its agents or Sub Contractor to handle or deal with Prohibited Goods without the prior written consent from TSS.
- 4.3 You agree to insure the Goods at your own cost at all times while they are subject to the Services including while they are in transit or located at TSS' or its agents or Sub Contractor's premises. Such insurance must insure against any loss; theft; damage; destruction and or any other usual risks.

5. Your Warranties

- 5.1 You represent and warrant that:
- (a) you own the Goods or have the authority to deal with them (including where relevant to store the Goods) and are authorised to enter into the Agreement; and
- (b) you have complied with your obligations in clause 4.1 .
- (c) except where the receipt for the Goods are endorsed with the word

- "hazardous", the Goods are non-hazardous; and
- (d) the Goods are free from, and are not likely to encourage infestation by vermin or pest.

6. Payments

- 6.1 You agree to pay TSS the Fee in accordance with the Payment Terms. All amounts are stated in Australian dollars and are exclusive of GST (unless otherwise stated).
- 6.2 The recipient of a supply must pay the supplier an amount equal to the supplier's GST on the amount paid for the supply at the same time as the amount is paid. The supplier must issue a tax invoice before the recipient is obliged to pay the GST.
- 6.3 You must pay TSS on demand for all Expenses incurred by TSS in providing the Services.
- 6.4 You must pay the Fees as required by under the Payment Terms of an invoice. If an amount which is due and payable under this Agreement is unpaid after 7 days, TSS may charge interest on that amount at a rate of 8 per cent per annum until the amount is paid.
- 6.5 Fees are considered earned by TSS when the Goods are loaded by TSS at your premises or are delivered to TSS.
- 6.6 Cancellation fees will apply and TSS may charge for frustrated delivery to cover TSS or its Sub Contractor's costs and expenses.
- 6.7 If you pay by credit card and the Services are later cancelled in accordance with our cancellation policy you will be refunded the charges except for any bank fees paid by TSS because of your choice to pay by credit card.
- 6.8 If you do not pay TSS in accordance with the Agreement, TSS may delay the performance of any other Services for you until you pay all outstanding amounts.
- 6.9 You must pay all costs and expenses which TSS incurs in exercising any of its rights under the Agreement to remedy a breach of your obligations under an Agreement, including any debt collection costs that we may incur.

7. Storage

- 7.1 You agree that the Goods are stored at your sole risk. TSS accepts no Liability for any Loss to the Goods while they are in storage or warehoused.
- 7.2 All charges for storage and other services will be set out in the Quote or if not set out in the Quote, will be calculated in accordance with TSS' standard fees and charges at the time TSS takes the Goods into storage.
- 7.3 All charges for storage will accrue from day to day and will be payable from time to time on demand.
- 7.4 Charges for storage and other services do not include insurance which, if required, must be taken out by you.
- 7.5 TSS may store or warehouse the Goods in any place, store or warehouse whatsoever and every such dealing with the Goods will be taken to be authorised by you.
- 7.6 TSS may at any time and in its absolute discretion give 28 days' notice to you to remove the Goods from the warehouse within such further time as is specified in the notice. If you do not remove the Goods, TSS may sell the Goods in accordance with applicable Laws relating to warehousemen's liens.
- 7.7 TSS is entitled to move the Goods between warehouses under its control from time to time. Any requests by you for the Goods to be transported or moved will if accepted by TSS, be transported on TSS' standard terms and conditions prevailing at the time of the request.

8. Limitation of Liability

- 8.1 All implied terms, conditions and warranties not expressly set out in this Agreement are to the fullest extent permissible by law excluded.
- 8.2 To the fullest extent permitted by Law, the obligations of a bailor are excluded.
- 8.3 If any Services supplied under the Agreement are supplied to you as a "consumer" of goods or services within the meaning of that term in Australian Consumer Law (ACL) or relevant state legislation, you will have the benefit of certain non-excludable rights and remedies in respect of the goods or services. Nothing in these terms and

conditions excludes or restricts or modifies any condition, warranty, right or remedy which pursuant to the ACL or similar legislation is so conferred.

- 8.4 Subject to clause 8.3, TSS limits its Liability for the provision of the Services to, at TSS' option:
- (a) the supply of the Services again; or
 - (b) the payment of the cost of having the Services supplied again.
- 8.5 You acknowledge that TSS has not made any representations to you with respect to the Services or their supply unless they are expressly stated in the Agreement. Nothing in this clause is intended to exclude liability for fraud or other representations that cannot be excluded at law.
- 8.6 Except as expressly provided otherwise in the Agreement, to the fullest extent permitted by Law neither party shall be liable to the other party for any Consequential Loss incurred in connection with the Services.
- 8.7 To the extent permitted by Law, the Liability of TSS under or on connection with this Agreement in aggregate, will not exceed the fees received by TSS from you during the period of 12 months immediately before the occurrence of the relevant event.
- 8.8 To the extent permitted by Law, notice in writing of any claim intended to be made under the Agreement must be given to TSS Services within:
- (a) 3 days of delivery of the Goods or completion of the Services, whichever is earlier; or
 - (b) in the case of non-delivery of any Goods, 14 days from the date the Goods were to be delivered or the Services were to be completed, whichever is earlier,

and unless so given and made the claim however so made will be extinguished and will not be enforceable against TSS.

9. Indemnity

- 9.1 You must indemnify and keep TSS and its agents and Sub Contractors (Indemnified Parties) indemnified against any Liability or Loss (including legal costs on an indemnity basis)

incurred or suffered by them arising from, or in connection with, any:

- (a) negligent or wrongful act or omission of you or any of your Personnel;
- (b) breach of the Agreement by you or any of your Personnel;
- (c) property loss or damage or personal injury (including death) caused by act or omission of you or any of your Personnel or from any inherent defect, quality or vice of the Goods; and
- (d) TSS being required to handle, install, remove, assemble, erect, load or unload the Goods, whether into or onto any Conveying Vehicle and whether requiring use of any crane, gantry or machinery during that process.

- 9.2 The indemnity is reduced to the extent the Indemnified Parties have caused or contributed to such Loss
- 9.3 If TSS or its agent or Sub Contractor is provided with any Prohibited Goods (which were not otherwise specifically agreed to), you must indemnify the Indemnified Parties on demand against all Liability and Loss they suffer or incur (including Consequential Loss).

10. Lien and security interest

- 10.1 TSS is entitled to retain possession of the Goods until it has been paid the Amount Owing.
- 10.2 You agree that TSS has both a possessory lien and a contractual lien over the Goods for the Amount Owing.
- 10.3 TSS may after giving you 30 days' written notice of its intention to sell the Goods if the Amount Owing is not paid, sell the Goods at either public auction or in a private sale.
- 10.4 TSS' interest in the Goods and all proceeds is a Security Interest and the Agreement is a Security Agreement for the purposes of the PPSA. You agree that TSS may if it chooses perfect this Security Interest by registration and agree if asked to assist TSS with this.
- 10.5 You agree that nothing in sections 125, 130(1)(a), 142 and 143 of the PPSA apply to the Security Interest under the Agreement and you waive your rights to receive any notice (including notice of a

verification statement) or statement of account under the PPSA unless it is required by the PPSA and cannot be excluded.

- 10.6 Any costs incurred by TSS associated with the registration, perfection, and or enforcement of the Security Interest (including legal fees on a full indemnity basis) will be payable by you.
- 10.7 In clauses 10.4 to 10.6 capitalised terms have the same meaning as those defined in the PPSA.

11. Uncollected Goods

- 11.1 If Goods are undeliverable for whatever reason TSS will store them at your cost for 120 days.
- 11.2 If after that time, the Goods are not collected despite a notice having been sent to you to collect the Goods, you authorise TSS to dispose of those Goods by way of public auction at your cost and to apply the proceeds to the Amount Owing. The balance will be paid to the Treasury under the applicable legislation of the State where the Goods are stored.
- 11.3 If, in TSS' opinion acting reasonably, the costs associated with the sale will exceed the proceeds to be obtained, TSS may dispose of the Goods by any means after the period of 120 days, be that by donation to charity or otherwise.

12. Termination

- 12.1 Either party may terminate this Agreement at any given time by giving the other party 30 days' written notice.
- 12.2 Either party may terminate this Agreement by giving the other party ("Defaulting Party") written notice of termination:
 - (a) if any amount owed by the Defaulting Party is not paid within 30 days of the due date;
 - (b) if the Defaulting Party breaches any these Terms and Conditions:
 - a. which can be remedied but is not remedied within 30 days after receiving a request from the other party that the breach be remedied; or
 - b. which cannot be remedied;

- (c) if the Defaulting Party:
 - a. suffers any act of insolvency;
 - b. enters into any composition or scheme of arrangement with any of its creditors; or
 - c. has a receiver, liquidator, trustee in bankruptcy or official manager or administrator appointed in respect of any part of their business or property.

12.3 On termination or expiry of the Agreement you agree that any amounts you have paid for Services are non-refundable and you must pay for all Services provided prior to termination including Services which have been provided and have not yet been invoiced to you, and all other amounts due and payable under the Agreement which have been incurred at the time of termination.

13. Confidentiality

- 13.1 Unless the other party provides written consent, each party must always keep the confidential information of the other party confidential and maintain adequate security measures to safeguard the other party's confidential information.
- 13.2 This clause does not apply to use or disclosure of confidential information:
 - (a) for the purpose of performing the Services or exercising rights under the Agreement;
 - (b) required by Law;
 - (c) which is publicly available through no fault of the party that received the confidential information or its personnel; or
 - (d) which was received by a party to this Agreement from a Person not party to this Agreement and that Person was not restricted from sharing the information with the party.

14. Jurisdiction and disputes

- 14.1 The Agreement is governed by the laws of New South Wales and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and Courts of appeal therefrom.

- 14.2 When there is a dispute relating to Payment, You must pay all monies claimed by TSS into an interest bearing trust account of TSS or its solicitors before You can dispute the debt. You acknowledge that this clause means that any disputes against TSS relating to Payment are barred until Payment required by this clause is made.

15. Notices

- 15.1 Any notice given under this Agreement must be in writing addressed to the relevant address in the Quote or as last notified by the recipient to the Party in accordance with this clause. Any notice may be sent by standard domestic post or by email, and will be taken to have been served on the expiry of seven Business Days in the case of post, or at the time of transmission in the case of email.

16. General

- 16.1 Rights arising out of or under this Agreement may only be assigned by a party with the prior written consent of the other party. Consent must not be withheld unreasonably.
- 16.2 A party may give or withhold its approval or consent under this Agreement in its absolute discretion, unless otherwise stated.
- 16.3 If a clause is void, illegal or unenforceable, it may be severed without affecting the other provisions in this Agreement.
- 16.4 A variation of this Agreement must be in writing and signed by the parties.
- 16.5 No right under this Agreement is waived or considered to be waived unless the party waiving the right, or its authorised officer, has done so in writing. If a party grants an extension or tolerates an action from another party this will not be considered a waiver of a right.
- 16.6 If a payment is made or something is done after 5:00 pm on any Business Day, it is considered to have been made or done on the next Business Day. If this Agreement requires something to be done on a day that is not a Business Day, it must be done on the next Business Day, unless otherwise agreed by the parties in writing.

- 16.7 These Terms and Conditions survive after termination of the Agreement to the extent permitted by law.
- 16.8 Force Majeure: If any party is delayed or prevented from the performance of any act required under the Agreement by reason of a Force Majeure Event, the affected party must promptly notify the other party in writing, giving details of the Force Majeure Event, the acts affected by the Force Majeure Event and the extent to which they are affected, and the performance of such acts will be excused for the period of such event provided that if such interference lasts for any period in excess of 30 days you may, by written notice to TSS, terminate this Agreement.

17. Privacy Statement

- 17.1 From time to time, in connection with the Agreement (including when receiving a Credit Account Application), TSS may, collect, used and disclose personal information of your officers, employees and any guarantor, for the purposes of entering into and the performance of the Agreement, as well as conducting any relevant credit or background checks that TSS may require.
- 17.2 TSS' collection, use and disclosure of this information will be in accordance with its Privacy Policy located online at: <https://www.sensitivefreight.com.au/privacy-policy-document/>

18. Definitions and Interpretation

- 18.1 In the Agreement, unless the context otherwise requires or the term is expressly defined otherwise in a Quote, capitalised terms have the following meanings:

"Agreement" means the agreement between you and TSS for TSS to provide Services comprising these Terms and Conditions and the Quote.

"Amount Owning" means all monies you owe and are due to TSS from time to time under the Agreement and includes:

- (a) the Fees and Expenses;
- (b) amounts owing for previous shipments, deliveries or for warehousing or storage;

- (c) the enforcement costs and expenses incurred by TSS, its employees or agents or solicitors in enforcing the provision of this Agreement including arranging the sale or disposal of the Goods.

"Business Day" means a day on which banks are open for general banking business in New South Wales, but does not include Saturdays, Sundays or public holidays.

"Conveying Vehicle" means any mode of transport used by TSS to transport the Goods whether owned by TSS or a Sub Contractor, including a container, pallet, trailer, rail wagon, prime mover, truck or other mode of transportation in, on, or by which the Goods may be placed, packed or transported.

"Consequential Loss" means loss or damage which flows other than naturally from the breach or occurrence, or which is related to the breach or the occurrence only because of some intervening cause or special circumstance (whether under statute contract, equity, tort (including negligence), indemnity or otherwise, and howsoever arising).

"Expenses" means any disbursements, costs and third-party costs, reasonably incurred by TSS for the purpose of the provision of the Services and includes:

- (a) any additional charge for waiting time and or rubbish removal associated with the Goods at the rate charged by a third party to TSS or its Sub Contractor;
- (b) any additional expenses TSS incurs in order to comply with any Laws in relation to the Services or Goods;
- (c) expenses incurred by TSS to hire third party equipment to ensure safe handling;
- (d) labour costs for loading and unloading the Goods, including costs incurred due to delay in loading or unloading the Goods.

"Fees" means the agreed charges payable by you for the performance of the Services as set out in a Quote.

"Force Majeure Event" means anything beyond the reasonable control of you or TSS, including but not limited to acts of

God, perils of the sea or air, lightning strike, storm, fire, flood, drought, earthquakes, any natural disaster, explosion, sabotage, accident, embargo, malicious damage, riot, civil commotion, acts of war, terrorism, strikes and industrial disputes of a third party's workforce, epidemic, pandemic (including in relation to the coronavirus, severe acute respiratory syndrome coronavirus 2, or any mutation thereof), government sanctioned shutdown, global economic downturn, acts of government and parliamentary authority, and equipment or communication failures or delay but does not include the payment of money.

"Goods" means the goods, cargo, chattels, articles or things provided by you or your agents or contractors to TSS or its Sub Contractor in connection with the Services. They include any container, packaging, covering, wrapping, pallets, or other devices that the Goods are carried in or on, or delivered with as well as all associated documents.

"GST" means goods and services tax under A New Tax System (Goods & Services Tax) Act 1999 (Cth).

"Laws" means all applicable laws, regulations, codes, guidelines, policies, protocols, consents, approvals, permits and licences, and any requirements or directions given by any person with the authority to bind the relevant Party in connection with this Agreement or the performance of the Services.

"Liability" means any liability or obligation (whether actual, contingent or prospective), including for any Loss irrespective of when the acts, events or things giving rise to the liability occurred and whether under statute, contract, equity, tort (including negligence), indemnity or otherwise), howsoever arising, whether direct or indirect and whether involving a third party, a party to the Agreement or otherwise.

"Loss" means any cost, damages, debt, expense, liability or loss and includes taxes, fines, penalties and legal costs.

"Payment Terms" means the Fee, method and timing of payment as set out in a Quote.

"Personal Information" has the same meaning as in the Privacy Act 1988 (Cth).

"Personnel" means, in respect of a party, any of its officers, employees, contractors, subcontractors or agents or authorised representatives.

"PPSA" means Personal Property Securities Act 2009 (Cth).

"Proof of Delivery" means proof of delivery, (paper or electronic) which may be evidenced by:

- (a) a statement signed by the delivery driver that delivery was made;
- (i) a signed acknowledgement of the recipient;
- (j) signed label; or
- (k) driver's run sheet or run book of that delivery.

"Prohibited Goods" includes:

- (a) bloodstock or stud or prize animals;
- (b) artwork of any type
- (c) livestock not covered in paragraph (a);
- (d) precious metals and stones, jewellery or money (which means any coin or banknote);
- (e) bullion, cheques, credit or other card sales;
- (f) vouchers, securities or shares;
- (g) bonds, deeds, bills of exchanges or any document that represents or is exchangeable for money;
- (h) radioactive, or explosive goods or explosives;
- (i) firearms;
- (j) goods that are defined by any government agency or authority as being dangerous goods;
- (k) live plants and trees; and
- (l) perishable goods.

"Quote" means a response from TSS following your request for TSS to provide transport, warehousing and logistical Services in respect of the Goods and the Payment Terms for the

provision of the Services in respect of those Goods.

“Services” means the services performed under the Agreement by TSS which may include but are not limited to receiving, warehousing or storing, packing, unpacking, handling and transportation of the Goods and associated services as agreed in writing from time to time.

“Sub Contractor” means any subcontractor TSS arranges to perform the Services and includes any employee or agent of the sub contractor.

“TSS” means TSS Sensitive Freight Pty Ltd (ACN 145 694 257) or its duly authorised employees, officers, agents or servants and includes the Sub Contractor.

"you" means the person who has requested the Services from TSS and is referred to in a Quote as the customer.

18.2 In the Agreement:

- (a) the singular number includes the plural and vice versa, unless the context requires otherwise;
- (b) If a party is made up of 2 or more persons, the liability of those persons is joint and several;
- (c) a reference to "includes" or "including" means "includes, without limitation" and "including, without limitation" respectively;
- (d) a reference to this Agreement or any other document includes the document, all schedules and all annexures as novated, amended, supplemented, varied or replaced from time to time;
- (e) reference to a party includes that party's executors, administrators, trustees, successors and permitted assigns;
- (f) a reference to a person includes an individual, corporation, unincorporated association, partnership, joint venture or government body;
- (g) a reference to any statute, ordinance or other law includes all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it.