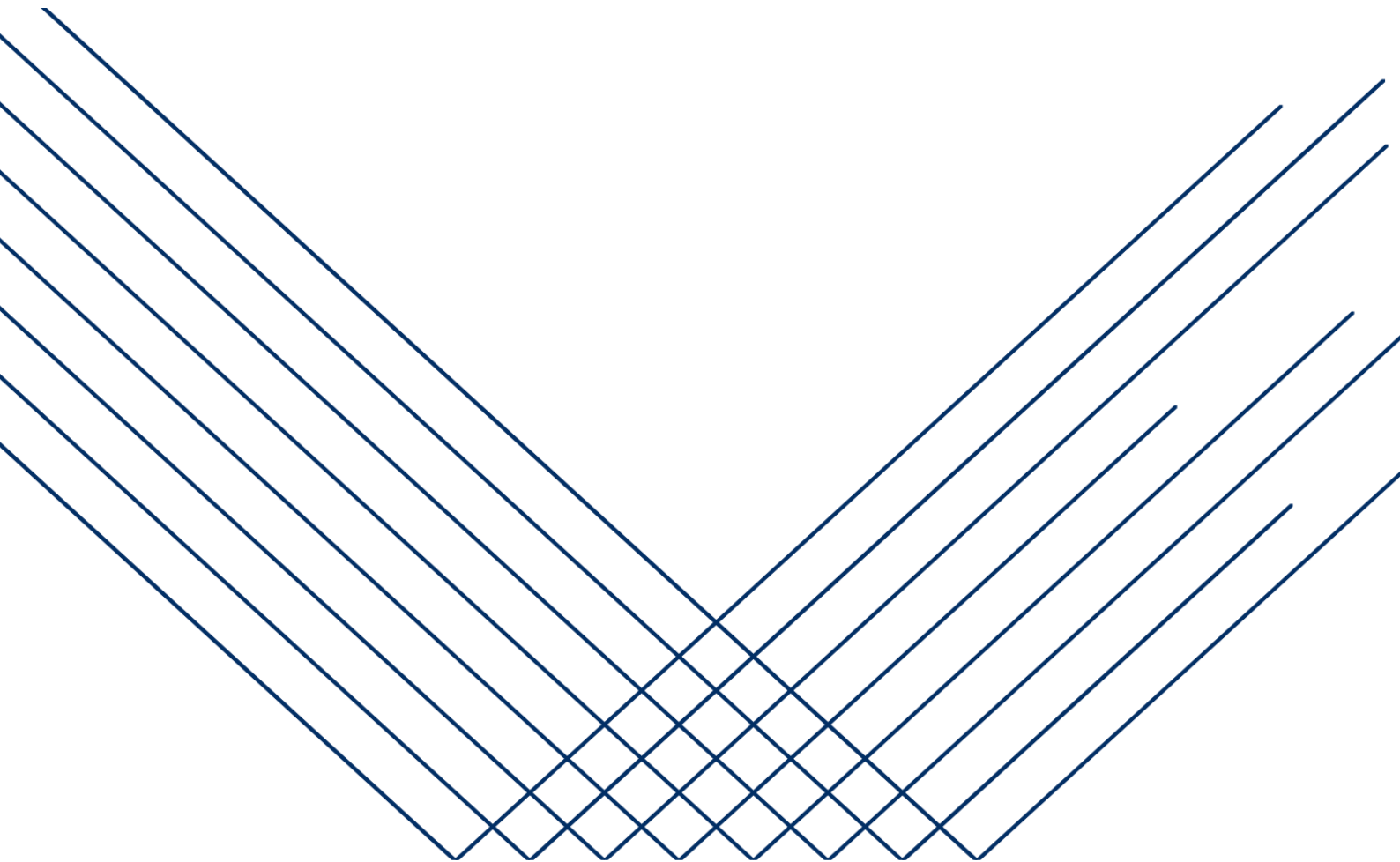




# Terms and Conditions of Carriage



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## **Terms and Conditions of Carriage**

These are the entire Terms and Conditions of Carriage (“Conditions”) governing the supply of Services being the whole of the operations undertaken by the Carrier in relation to the goods, including the carriage, storage, loading, unloading, packing, unpacking, freight forwarding, customs clearance, consolidation and deconsolidation (“Services”) by the local InXpress franchisee identified in the booking confirmation (“Carrier”) to its Customers, whether a person or an entity or being either the shipper, consignor, the owner of the goods, consignee, receiver or their respective authorised agent (“Customer”). Except as agreed in writing by a duly authorised officer of the Carrier, no other conditions (including terms and conditions that may appear on a purchase order form, service level agreement or other document issued by a Customer) will be binding on the Carrier. The Customer acknowledges that notification includes publication by the Carrier of the Conditions on its website [LINKED HERE](#) (“Website”) and undertakes to regularly inspect the Conditions on the Website for amendments from time to time.

### **1. Application of Conditions**

- 1.1.** These Conditions cover the whole, or any part of, the Services performed by the Carrier for the Customer. All rights, immunities and limitations of liability in these Conditions shall continue to have full force and effect notwithstanding any breach of this contract by the Carrier or any other person entitled to the benefit of such provisions.
- 1.2.** The Customer’s own terms and conditions shall in no way derogate from these Conditions and any provision in the Customer’s own terms and conditions which is contrary to any provision of these Conditions shall to the extent of such inconsistency be inapplicable.

### **2. Not a Common Carrier**

- 2.1.** The Carrier is not a common carrier and accepts no liability as such. The Carrier may refuse the carriage or transport of goods for any person or corporation and the carriage or transport of any class of goods is at the Carrier’s absolute discretion.

### **3. Warranties and Undertakings**

- 3.1.** The Customer warrants that:
  - 3.1.1.** it has complied with all applicable laws and regulations relating to the nature, condition, packaging or carriage of the goods (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the goods and that,

given their nature, the goods are packaged in a manner, having regard to their nature, adequate to withstand the ordinary risks of carriage;

**3.1.2.** the goods are accurately described on the consignment note or in the Carrier's electronic gateway;

**3.1.3.** it is either the owner of the goods and/or the authorised agent of the person(s) owning or having any interest in the goods and it enters into this contract on its own behalf and/or as authorised agent of that person or persons;

**3.1.4.** it is authorised by the person(s) owning or having any interest in the goods that those goods will be handled on an "authority to leave" basis, unless otherwise agreed by the Carrier;

**3.1.5.** it shall inform to the Carrier of any shipment with a value exceeding fifty thousand Australian dollars (AUD \$50,000.00) prior to dispatch.

**3.1.6.** it shall conduct all business activities in compliance with all applicable laws, regulations, and policies, including internationally recognized anti-bribery and anti-corruption laws such as the Criminal Code Act 1995 (Cth), Australian States anti-domestic bribery laws, U.S. FCPA and U.K. Bribery Act.

**3.1.7.** it shall not do anything which could reasonably be understood to be against integrity, ethical, and honest business standards, including any activities associated with bribery, corruption, money laundering, etc.

**3.1.8.** it shall not take any action in connection with these terms or using the service of InXpress in a way that will be a breach of any anti-money laundering laws, any anti-corruption laws, and/or any counter-terrorist financing laws.

**3.1.9.** it shall cooperate with InXpress in connection with the background checks it needs to conduct in order to ensure compliance with required trading laws and regulations.

**3.2.** The Customer hereby indemnifies the Carrier against any expenses, charges or losses, fines, penalties and reasonable legal fees sustained by the Carrier in complying with the requirements of any law or otherwise incurred as a result of a breach of the warranties in clause 3.1 including but not limited to any claims by any third party, enforcement actions and internal investigations.

- 3.3.** The Customer acknowledges that in the event of non-compliance with clause 3.1 that an additional fee will apply in respect of dangerous goods, and that the Carrier reserves the right not to carry, store and/or return any non-compliant goods.
- 3.4.** For international carriages, the Customer shall complete the customs declaration fully, accurately and legibly and is responsible for ensuring compliance with the import regulations of the country of destination, including attaching all documents required for importation of the goods, including the certificate of origin, health certificate, commercial invoice, packing list, import licence and any exemption certificate, to the consignment note.

## **4. Performance of Services**

- 4.1.** The method(s) of undertaking the Services shall be at the sole discretion of the Carrier and the Customer hereby authorises the Carrier to adopt any reasonable method(s) other than any method which may have been instructed or agreed.
- 4.2.** The Customer authorises any reasonable deviation from the usual route of carriage.

## **5. Delivery**

- 5.1.** The Carrier shall use reasonable endeavours to deliver the goods as specified by the Customer. The Carrier shall not be bound to deliver the goods except to the consignee shown on the consignment note or in the Carrier's electronic gateway or to such other person(s) as may be authorised in writing by the Customer to receive the goods or to effect delivery in such other manner as specified by the Customer including an "authority to leave" ("ATL").
- 5.2.** If the Carrier is unable to deliver the goods for any reason (including failure on the part of a receiver to take delivery within a reasonable time) the Carrier shall be entitled to handle and store the goods at the Customer's risk and in such manner as it may in its discretion determine and shall be entitled to make a reasonable charge in respect of such handling and/or storage and reasonable additional charges for each call until the delivery is accomplished.
- 5.3.** All goods are handled on an ATL basis, unless otherwise agreed by the Carrier. If a receiver is not available to accept delivery of the goods, then the Carrier is authorised to leave the goods in a safe place or will leave a failed delivery card with details of how to collect or reorganise delivery of the goods.

## **6. Responsibility for Charges**

- 6.1.** The Carrier's freight, fuel surcharge, insurance and other charges are earned as soon as the goods are picked up or accepted for storage and the Customer must pay all freight, fuel surcharge and other reasonable charges, irrespective of whether the goods are delivered or not, and whether damaged or not, based on the tax invoice issued by the Carrier and in accordance with the trading terms agreed with the Carrier. The Customer shall pay to the Carrier all sums for the Services immediately when due without deduction or deferment on account of any claim, counterclaim or set-off.
- 6.2.** All customs and/or excise duties, costs, fines or penalties, which the Carrier becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations shall be paid by the Customer. Further, the Customer agrees to indemnify the Carrier for any container demurrage, container detention and claims for container damage or container cleaning charges in respect of containers that carry the Goods.
- 6.3.** If the goods are at any time re-weighed or re-cubed, the Customer shall pay any additional freight, fuel surcharge, insurance, additional handling and other reasonable charges as determined by the Carrier. The Customer shall pay the higher of dead weight and cubic weight, based on a cubic allowance of 250kg per cubic metre, and rounded up to the nearest whole kilogram.
- 6.4.** The Customer agrees to pay the Carrier administration, handling and merchant fees in respect of any processing involved in the conduct of the Customer's account including but not limited to account administration fees, merchant or bank charges or other reasonable fees incurred as a result of payment by credit or charge card.
- 6.5.** When the Carrier is instructed to collect freight, fuel and other reasonable charges or other expenses from any person other than the Customer, the Customer shall remain responsible for the amounts and shall pay these amounts to the Carrier on demand where these amounts have become due and have not been paid by such other person.
- 6.6.** On all accounts overdue to the Carrier, the Carrier shall be entitled to charge interest calculated at 4% above the base rate of the Carrier's bank calculated daily from the time such accounts became overdue. The Customer agrees that it will pay all costs, expenses and all other reasonable charges incurred by the Carrier due to any breach of the Conditions and all costs, expenses and all other reasonable charges associated with the recovery of any overdue or other amounts including but not limited to any mercantile agent's costs, legal costs and disbursements on an indemnity basis.

## 7. Carrier's Liability

- 7.1.** The Carrier's maximum liability to the Customer in respect of any damage, destruction or loss of the goods directly caused by the Carrier during the provision of the Services shall not exceed the lesser of AUD 250.00 or the price paid for the goods.
- 7.2.** The maximum amount that may be claimed from the Carrier under the Freightsafe Warranty cover is the cost price/wholesale value of the goods (up to a maximum of AUD 1,000), which will include the value of the freight service provided by the Carrier, excluding all GST.
- 7.3.** The claims process and evidentiary requirements for the Freightsafe Warranty can be found at <https://au.inxpress.com/freight-safe/> which form part of these Conditions.
- 7.4.** The Carrier's Freightsafe Warranty cover does not cover certain items. A list of items for which we are not liable for any claims can be found at <https://au.inxpress.com/freight-safe/>. This list is subject to change, so the Customer must review that list regularly to determine whether the goods would be covered under the Carrier's Freightsafe Warranty. As the Carrier's liability is limited, the Customer should obtain their own insurance cover.
- 7.5.** The Customer further acknowledges and agrees that claims under the Carrier's Freightsafe Warranty cover are only available while the Customer does not have any overdue invoices or debts owed to the Carrier, including all fees, disbursements or other reasonable expenses. Any claims issued under the Freightsafe Warranty cover will not be progressed until all outstanding invoices are paid in full.
- 7.6.** Other than the compensation under clauses 7.1-7.5, the goods shall at all times be at the risk of the Customer and the Carrier shall not be liable in tort (including negligence), contract (including a fundamental breach of contract) or for any act or omission of the Carrier that is outside the authorised scope of its activities under this contract, for breach of duty as bailee, for contravention of any statute or breach of statutory duty or otherwise for any loss of, or damage to, failure to deliver, delay in delivery of, or misdelivery of the goods whatsoever, howsoever caused.
- 7.7.** The exclusion of liability in Clause 7.6 extends to include not only loss of or damage to the goods themselves, but loss, damage or injury to any person, property or thing damaged arising from the Carrier providing the Services under this contract and to any indirect or consequential loss or damage whatsoever arising from such loss, damage or injury or from failure to deliver, delay in delivery or misdelivery, howsoever caused including but not limited to losses that are purely financial or economic losses, loss of opportunity, losses in connection with contracts, agreements or understandings the Customer has with third

parties, loss of market and any other losses whatsoever that do not arise directly from physical damage to or loss of the Goods and are consequential in nature.

- 7.8.** Notwithstanding any other provision in these Conditions, but subject always to Clause 7.6 and Clause 7.7, if any liability whatsoever, howsoever arising, is found to attach to the Carrier or any subcontractor, the Carrier's liability shall be limited in the case of Services supplied under this contract to the lesser of:

- 7.8.1.** supplying the Services again
- 7.8.2.** payment of the cost of supplying the Services again; or
- 7.8.3.** the amount of AUD 250.00.

- 7.9.** The Carrier does not exclude or limit the application of any laws, including Schedule 2 of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those laws or cause any part of these conditions to be void.

## **8. Insurance and Freightsafe Warranty Cover**

- 8.1.** The Customer is responsible for insuring the goods.
- 8.2.** The Carrier offers to arrange an extended warranty cover for the goods during transit and incidental storage, and the details of the extended warranty and the rates are set out in the Freightsafe Warranty Terms and Conditions <https://au.inxpress.com/freight-safe/>.

## **9. Notice of Loss and Time Bar**

- 9.1.** Any claim for loss or damage to the goods or relating to the provision of the Services under this contract must be notified in writing to the Carrier within fourteen (14) days of delivery of the goods or the date by which the goods should have been delivered, whichever is the earlier. Should the Carrier not receive any such notice in writing the Carrier shall be forever discharged from any and all liability to any person (including the Customer) in respect of the goods and or the Services. In any event, the Carrier shall be discharged from any and all liability whatsoever unless suit is brought within six (6) months of the provision of the Services, delivery of the goods or when the Services should have been provided or when the goods should have been delivered, whichever is the earlier.

## **10. Lien**

- 10.1.** The Carrier will have a general and a particular lien over the goods and/or any other cargo or items the property of the Customer in the Carrier's possession in respect of any sums due to the Carrier, and without notice to the Customer, may sell all or part of the goods and/or any other cargo or items that are the property of the Customer which are in the Carrier's possession and out of the moneys arising from the sale retain the charges so payable together with all charges and expenses of the detention and sale, and shall render the surplus, if any, of the



moneys arising from the sale and such of the goods as remain unsold to the person entitled thereto.

## **11. Dangerous Goods and Unacceptable Goods**

**11.1.** The Customer or the authorised agent shall not tender for carriage any goods are or may be explosive, flammable or otherwise dangerous or damaging goods without presenting a full description of those goods and in default of so doing shall be liable for all loss and damage caused thereby.

**11.2.** The Carrier may at any time cause any dangerous goods or any goods which the Carrier believes are liable or may be liable to become dangerous goods to be destroyed, disposed of, abandoned or rendered harmless by the Carrier without compensation to the Customer and without prejudicing the Carrier's right to any reasonable charges payable by the Customer to the Carrier.

**11.3.** The Carrier will not carry arms or ammunition.

**11.4.** Except under special arrangements previously made in writing the Carrier will not accept bullion, coins, precious stones, jewellery, valuables, antiques, mirrors and artwork, personal effects such as clothing, toiletries or electronic devices, vital documents such as tenders, birth certificates or travel papers, livestock or plants and the Carrier will not accept any liability whatever for any such goods except under special arrangements previously made in writing.

## **12. Subcontractors**

**12.1.** The Carrier is hereby authorised to subcontract the whole or any part of the Services and such authorisation extends to any subcontractor.

**12.2.** Any clause herein excluding or limiting the liability of the Carrier or providing any right or exemption from liability to the Carrier shall also be available and shall extend to protect all subcontractors and every servant or agent of the Carrier and of any subcontractor. The Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of 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 this contract.

**12.3.** The Customer undertakes that no claim will be made against any servant, subcontractor or agent of the Carrier which imposes or attempts to impose upon any of them any liability whatsoever in connection with the goods or Services under this contract. If any such claim should nevertheless be made, the Customer shall indemnify the Carrier against the consequences thereof.

## 13. Goods and Services Tax

**13.1.** Words and expressions used in this Clause 13.1 which have a defined meaning in the A New Tax System (Goods and Services Tax Act) ("GST Act") have the same meaning in this clause as in the GST Act. Unless expressly stated otherwise, all consideration to be provided under this contract is expressed as exclusive of GST. If GST is payable by a supplier on any supply made under this contract, the recipient will, upon receiving a tax invoice from the supplier, pay to the supplier an amount equal to the GST payable on the supply.

## 14. Consumers and Small Business Contracts

**14.1.** In this clause, 'Consumer' means an individual who acquires the Services wholly or predominately for personal, domestic or household use or consumption and 'Small Business Contract' means a standard form small business contract as defined in section 23(3) of Schedule 2 of the Competition and Consumer Act 2010 (Cth).

**14.2.** If the Customer is a Consumer, or these Conditions qualify as a Small Business Contract:

**14.2.1.** Clause 3 is modified so that the Customer is not required to indemnify the Carrier to the extent that the loss or damage was directly caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the Carrier or its employees, agents and subcontractors.

**14.2.2.** Clause 7.6 is modified so that the Carrier's liability is not excluded to the extent that the loss or damage was directly caused by or in connection with a grossly negligent, unlawful, or wilful act or omission by the Carrier or its employees, agents and subcontractors.

**14.2.3.** Clause 7.7 is modified to the extent that the Carrier will not be liable for any consequential or indirect loss or damage, unless the Carrier had actual knowledge that such loss might be incurred.

**14.2.4.** Clause 7.8 is modified so that the Carrier's liability is limited to the lesser of the actual loss suffered by the Customer or the value of the Goods at the time the Goods were received by the Carrier.

**14.2.5.** Clause 10 is modified so that the Carrier may only exercise its right of sale under a lien over Goods after the Carrier has given 21 days' notice in writing to the Customer of its intention to do so.

**14.2.6.** Clause 12.3 is modified, so that the Customer:

- a)** may make a claim against or impose liability upon any subcontractor; and
- b)** is not required to indemnify the Carrier from and against any loss, to the extent that the claim, liability or loss was directly

caused by, or in connection with, a grossly negligent, unlawful, or wilful act or omission by the subcontractor.

- 14.2.7.** Clause 9 does not apply, and without limitation to any other clause in these Conditions, the Carrier will be discharged from liability in relation to any claim:
- a)** where the loss to the Customer results from the act of a subcontractor; and
    - i.** the Carrier's right to make a claim against that subcontractor is subject to time limitations; and
    - ii.** the Customer does not make its claim against the Carrier within a period reasonably sufficient to allow the Carrier to make a corresponding claim against the subcontractor within any applicable time limitation period, or
  - b)** in all other cases, where the Customer does not make its claim within 1 year from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.

## **15. Law and Jurisdiction**

- 15.1.** These Conditions shall be governed and construed in accordance with the laws of Queensland and the parties submit to the non-exclusive jurisdiction of the Courts of Queensland.

## **16. Privacy**

- 16.1.** The Carrier will collect, use and disclose a Customer's personal or other information in accordance with its Privacy Policy as amended from time to time, details of which can be found on the Carrier's Website.

## **17. Severability**

- 17.1.** If any provision of these Conditions is void, voidable by a party, unenforceable, invalid or illegal and would not be so if a word or words were omitted, then that word or those words are severed and if this cannot be done, the entire provision is to be severed from these Conditions without affecting the validity or enforceability of the remaining provisions of the Terms.