

Bowmans Rail Standard Conditions of Contract

1. Definitions

"CCA" means the *Competition and Consumer Act, 2010* (Cth).

"charges" means our quoted charges for services calculated under our rates schedule or other agreed rates, any taxes, duties and government charges levied on the services including, without limitation, any other amounts under condition 6.3.

"claim" means any costs, expenses, losses, damages, actions, claims or proceedings.

"consumer" has the same meaning as in the CCA.

"contract" means the transport or services contract between you and us including these conditions.

"credit note" means a document entitled "Credit Note" we give you or a person you nominate in writing.

"dangerous goods" means any articles or substances which are, or may become, a risk to health, safety, property or the environment and include, without limitation, articles or substances so classified, specified or listed in laws or the International Air Transport Association dangerous goods regulations.

"force majeure event" means anything outside our reasonable control, including without limitation, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, wharf delays, war, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of air traffic control, airline pilot or any third person or public authority.

"goods" means the goods picked up or received from you or on your behalf.

"laws" means all applicable laws, regulations, guidelines, codes, standards or policies of the Commonwealth of Australia, any state, territory or local authority.

"liability" means liability in contract, tort (including, without limitation, negligence), in equity or under statute, whether present, future or contingent and whether known or unknown.

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

"receiver" means a person who is to, or does, receive the goods.

"services" means the operations we undertake for the goods including our IT systems, processes and software.

"sign" or "signature" includes provision in electronic form.

"subcontractor" means any person we arrange to provide services for the goods and any person who is an employee, agent or subcontractor of that person.

"us", "we", "our" means Bowmans Rail Pty Ltd ABN 87 105 070 451 and its officers, employees, agents and subcontractors.

"writing" means any representation of words, figures or symbols capable of being rendered in visible form.

"you", "your" means the person contracting with us.

2. Consumer contract

If you are a consumer the contract does not affect any rights you have under Schedule 2 of the CCA.

3. What you need to know about us and our services

3.1 We are not common carriers, do not accept any liability as common carriers and may refuse to provide services to any person or goods for any reason.

3.2 We rely on the details supplied to us but we do not admit their accuracy or completeness and our signature is only an acknowledgement for the number of items picked up or received by us.

3.3 Our services commence when we pick up or receive the goods and we earn our charges then.

3.4 We will not collect any cash on delivery unless we agree in writing.

3.5 We will have delivered the goods if we leave them at the delivery address even if you have requested that we obtain an acknowledgement of delivery.

3.6 We can:

(a) deviate from any usual route or method of transport to provide the services;

(b) subcontract the whole or any part of our services;

(c) do anything appropriate including disposing or destroying goods if we think the goods are misdescribed, you haven't given us an appropriate declaration about them, or they are or may become dangerous goods;

(d) open and inspect the goods at any time without notice to you to determine their nature, condition, ownership or destination;

(e) carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the goods with others;

(f) lease, hire or enter into any agreement for, or use, any aircraft, ship, container, pallet or rail wagon to provide the services; and

(g) complete any documents on your behalf required to comply with any law.

3.7 If we store the goods:

(a) we can require you to remove them if you don't pay the charges when due;

(b) we don't have to make them available until all charges have been paid and you sign, or a person authorised in writing by you signs, a receipt for them; and

(c) we can return them to you at your last known address if you don't remove them when we require or we give you notice to remove them.

3.8 We may sell or dispose of any uncollected or undeliverable goods 30 days after making reasonable efforts to contact you and do not have to account to you for the sale or disposal unless required by laws.

3.9 We:

(a) claim a general or particular lien over the goods for all charges under

the contract and under any other contract between us and whether the subject of a demand or not;

(b) may under the lien sell the goods by public auction or private sale to recoup any overdue charges without any notice to you; and

(c) may set-off or deduct from any payment due to you any amount you owe us.

3.10 If a temperature control section is completed on our or your documentation, then:

(a) we will try to provide the services at temperatures;

(b) you acknowledge temperature variations can occur; and

(c) any temperature record maintained by us will be conclusive of the temperatures during the services.

3.11 We contract as agent and trustee for our employees, agents and subcontractors so they also have the benefit of the contract (including, without limitation, any exclusions or limitations of liability we have) to the same extent as us and as if they were parties to it.

4. Your promises

You promise us:

(a) you are either the owner or the authorised agent of the owner of the goods and have authority to enter into the contract;

(b) you or your agent have fully and accurately described the goods and their value; and

(c) you will comply with all laws and the goods can be safely handled and transported and are packed to withstand the ordinary risks of the services. Further, you acknowledge and agree that if we give you possession of our plant, container or equipment ("personal property") at any time during our provision of the services:

(d) the personal property is and remains at all times our property and at all times you hold the personal property as bailee for us; and

(e) you must not offer to sell, assign, sub-let, mortgage, pledge or

otherwise part with possession or deal with the personal property in any way which is inconsistent with our rights over the personal property; and

(f) we are permitted at any time to retake possession of the personal property; and

(g) you will not retain continuous possession of the personal property for more than 90 days (in the case of *serial numbered goods* as defined under the PPSA), or more than 1 year in any other case.

5. What you must do and not do

5.1 You must, or cause your agent to:

(a) provide us with all necessary documentation for the services and fully, accurately and legibly complete the label on the goods and the sender and receiver panel on the front of the contract or any of our, or your, documentation;

(b) give us an appropriate declaration about any dangerous goods and notify us if the goods require special handling;

(c) if you are not the receiver, make the goods conform to the receiver's requirements;

(d) if our services include storage or holding of goods:

(1) give us at least 7 days' notice if you intend to collect them or have them collected or redelivered; and

(2) remove the goods within 7 days if we give you notice to remove them; and

(e) if requested by us, do all things and execute all documents necessary or we require to give full effect to the contract and the transactions contemplated by it.

5.2 To the extent permitted by law, you indemnify us, keep us indemnified and hold us harmless from all liability in respect of any claims suffered or incurred by us or brought, made or recovered by any person against us in connection with:

(a) any breach of the contract by you;

(b) any act or omission (whether negligent or otherwise) of you, your employees, agents or contractors including, without limitation, the receiver;

(c) the goods being dangerous, unsafe or incorrectly packaged; and

(d) any injury or death of persons, or damage or destruction of property, caused or contributed to by you or the goods,

and there is no need for us to suffer loss or damage before enforcing this right of indemnity.

5.3 You irrevocably waive any rights you may have to receive notices under sections 124(4) (enforcement of liquid assets – notice to grantor), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account if no disposal), 135 (notice of retention) and 157(1) (verification statement) of the PPSA.

6. Our charges

6.1 You must pay our charges within 7 days of the date of invoice unless otherwise advised by us in writing.

6.2 You must also pay:

(a) an additional charge as reasonably determined by us if condition 3.7 applies, or if there is any delay outside our control in loading or unloading greater than 30 minutes;

(b) our cost to comply with any laws or requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority not included in our charges;

(c) any excise, customs duty or applicable taxes (including any fine or penalty);

(d) the cost, expense or loss to us of destruction or disposal under condition 3.6(c), of opening or inspecting under condition 3.6(d); redelivery, storage or return under conditions 3.7 or 3.8 and of sale under conditions 3.8 or 3.9;

(e) the cost of labour or machinery or both to load, unload, maintain or protect the goods; and

(f) interest at the rate being the Reserve Bank of Australia Cash Rate plus 2% if any charges are not paid on the date for payment.

6.3 We may change our rates schedule or other agreed rates at any time with notice to you.

6.4 You can claim up to the dollar amount of a credit note, or we will provide our services at our GST inclusive charges up to the dollar amount of a credit note, within 3 months of its date.

6.5 We do not have to repay you any amount you overpay us on an invoice unless you claim that amount within 3 months of the overpayment.

6.6 You must pay all amounts due to us under or in connection with the contract without any deduction, withholding or set-off.

7. Limitations and exclusions on our liability to you

7.1 We do not exclude or limit the application of any laws, including Schedule 2 of the CCA, where to do so would contravene those laws or cause any part of the contract to be void.

7.2 We exclude from the contract all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any the exclusion of which would contravene any laws or cause this condition to be void ("Non-Excludable Condition").

7.3 The goods are at your risk at all times and we exclude all liability for any claims in respect of any damage to, or destruction or theft of, the goods. You release us from all liability for any claims you have or may have in respect of any damage to, or destruction or theft of, the goods including, without limitation, in connection with misdelivery, delay, deterioration, contamination, our failure to deliver the goods or perform the services. You indemnify, will keep indemnified and hold us harmless from all liability for any claims any third party has or may have in respect of any damage to, or destruction or theft of, the goods including, without limitation, in connection with misdelivery, delay, deterioration, contamination, our failure to deliver the goods or perform the services.

7.4 We have no liability for any loss or damage to documents, goods in prepaid wallets, satchels or envelopes, appliances with electrical components, computers, jewellery, pictures or picture frames, porcelain china, ceramic items, crystal, marble or enamel goods, goods the production, sale, import or export of which is prohibited by laws, dangerous goods, glass (including bottles and their contents), windscreens, car panels, precious stones or metals, currency or negotiable instruments, produce, liquids, perishable goods, floor or wall tiles, fragile goods, regulated waste, cigarettes or goods under bond.

7.5 We have no liability for any loss of or damage to goods if it is caused by ordinary loss in weight or volume, shrinkage, ordinary leakage, ordinary wear and tear, insufficient and/or unsuitable packing or preparation, delay, inherent vice, a force majeure event, electrical or mechanical derangement or you or your agent overload or incorrectly load the transport vehicle.

7.6 Our liability to you for any breach of a Non-Excludable Condition is limited, at our option, to supplying the services again, or the cost of supplying the services again.

7.7 We have no liability for any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, business, anticipated savings or claims by your customer, even if we know they are possible or otherwise foreseeable.

7.8 The contract applies even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

7.9 If the parties' rights, obligations or liabilities arising out of or otherwise relating to the contract are subject to laws that apportion liability for apportionable claims between concurrent wrongdoers then, to the extent permitted by law, that legislation is excluded and does not apply.

8. Force majeure

If we cannot carry out an obligation under the contract either in whole or in part because of a force majeure event, then our obligations under the contract will be suspended for the duration of the event or waived to the extent applicable.

9. Other matters which affect the contract

9.1 The laws of South Australia apply to the contract and you must bring any proceedings against us in a court of South Australia.

9.2 If a condition or part of a condition is unenforceable, it must be severed from and does not affect the rest of the contract.

9.3 We are not bound by any waiver, discharge or release of a condition or any agreement which changes the contract, unless it is in writing and signed by or for us.

9.4 Conditions 3, 4, 5, 6, and 7 are essential conditions of the contract.

9.5 A reference to any law includes any statutory modification, substitution or re-enactment of it.



BOWMANS RAIL