

# AMTAR REMOVALS

## TERMS AND CONDITIONS

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### 1. DEFINITIONS & INTERPRETATION

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1.1. In these Terms, unless the context otherwise requires:

- a) **ACL** means Schedule 2 to the *Competition and Consumer Act 2010 (Cth)*;
- b) **AT** means Amtar Pty Ltd (ACN 634 214 378);
- c) **Claims** means any claim, notice, demand, debt, account, action, lien, cost, loss, expense, liability, litigation (including legal costs on an indemnity basis), investigation, judgment or damages of any kind whatsoever, whether known or unknown.
- d) **Client** means the counterparty to these Terms and the person or entity to whom the Services are to be provided;
- e) **Client Warranties** mean each of the warranties and/or representations outlined at **Clause 3** of these Terms;
- f) **Deposit** means any part payment of the Price requested (whether verbally or in writing) by AT, which may be determined by AT in its sole and unfettered discretion;
- g) **Goods** mean any goods, chattels and/or other personal property belonging to the Client;
- h) **Nominated Address** means any address or location at which AT is directed to deliver the Goods;
- i) **Pickup Address** means any address or location at which AT is directed to collect the GOods;
- j) **Price** means an estimate of the payment required in respect of the Services, as advised by Amtar and as subsequently varied in accordance with these Terms;
- k) **Schedule of Rates** mean the rates prescribed by AT, from time to time, and annexed to these Terms as **Annexure A**;
- l) **Services** mean any services supplied by AT to the Client, including the transport of Goods;
- m) **Terms** mean this agreement.

### 2. SUPPLY OF SERVICES & PAYMENT

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#### Not a Common Carrier

2.1. Notwithstanding any provision of these Terms, AT is not (and will not provide any services as) a common carrier at law. Accordingly, AT accepts no liability as a common carrier at law and reserves the right to refuse to accept or provide a quote for the carriage of any goods, in its sole and unfettered discretion.

#### Quote & Acceptance of Price

2.2. AT will, upon request by the Client (and in reliance on each of the Client Warranties) provide a quote for the Price payable in respect of the Services by the Client, based on an estimate of the time required to provide the Services (**Quote**).

2.3. Upon:

- a) the Client's acceptance of the Quote, whether verbally, in writing, or by accepting any Services from AT;
- b) execution of these Terms by AT and the Client;
- c) payment of the Deposit (if any) by the Client; and

AT will provide the Services to the Client, in accordance with these Terms..

2.4. For the avoidance of doubt, AT will be under no obligation to provide any Services to the Client until the completion of each of the matters outlined in the foregoing clause.

2.5. The Client acknowledges that the Price **is an estimate only**, based on the information provided by the Client at the time of the Quote being issued. Accordingly, the Client acknowledges that in the event that:

- a) any of the Client Warranties is or becomes inaccurate, incomplete or inaccurate;
- b) AT is required to spend more time or incur further costs in providing the Services than estimated in the Quote, for any reason whatsoever other than its own negligence;

AT will be entitled to vary the Price, in accordance with its Schedule of Rates.

#### Payment

- 2.6. Unless expressly agreed otherwise by AT in writing, the Client must pay the Price, less any Deposit, immediately upon the Services being rendered by AT in accordance with these Terms, without set-off or deduction, as a debt due to AT.
- 2.7. AT may, upon completion of the Services in accordance with these Terms (and regardless of any dispute regarding the Services), deduct the Price from any bank account or credit card provided by the Client, without gaining any further consent or authorisation to do so.
- 2.8. If the Client fails to pay the Price in accordance with these Terms, AT may exercise a lien over any Goods which are, in AT's reasonable opinion, equivalent to the Price outstanding, until such time that AT has received payment of the Price in full.
- 2.9. For the avoidance of doubt, the Price will not be deemed to have been paid to AT until it is received in AT's nominated bank account, in cleared funds.
- 2.10. AT may levy interest on any unpaid portion of the Price, on and from the date that is 48 hours after the date on which the Goods are delivered at the Nominated Address, at a rate that is 10% greater than the penalty interest rate prescribed, from time to time, by the *Penalty Interest Rates Act 1983* (Vic).
- 2.11. A copy of these Terms, annexed to an affidavit sworn by a representative of AT confirming that the Services have been rendered in full will be conclusive evidence of:
  - a) the Client's indebtedness to AT for the Price;
  - b) the Client's consent to judgment in AT's favour for the Price (less the Deposit and any other payments made by the Client), in addition to interest pursuant to **Clause 2.10** and AT's legal costs in obtaining judgment, on an indemnity basis.

### Services Generally & Deposit

- 2.12. For the avoidance of doubt, AT may provide the Services using any mode of carriage that it considers appropriate in the circumstances, including by way of engaging sub-contractors to transport the Goods. However, AT will, notwithstanding the engagement of any sub-contractors, remain responsible for the provision of the Services.
- 2.13. In the event that the Client pays a Deposit in respect of the provision of Services, but cancels the Services within 24 hours of the date on which the collection of the Goods from the Pickup Address would have been required, AT will be entitled to retain the entire Deposit paid by the Client, without set-off or deduction.

## 3. CLIENT WARRANTIES

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- 3.1. The Client makes each of the warranties outlined in this Clause 3 to AT, as an inducement to enter into these Terms and provide the Services, at the time of:
  - a) accepting the Quote;
  - b) executing these Terms;
  - c) collection of the Goods at the Pickup Location;
  - d) delivery of the Goods to the Nominated Location:
- 3.2. The Client warrants to AT:
  - a) the Pickup Address, the Nominated Address and any other information provided to AT is accurate and complete;
  - b) unless expressly stated to AT, in writing prior to a Quote being issued, it does not require the relocation of:
    - i. any fragile, brittle or antique items which may be prone to breakage or deterioration during general transit;
    - ii. any individual item worth more than \$1,000;
    - iii. any commercial refrigeration units, or any double door domestic refrigerators;
    - iv. any glass top tables or other furniture;
    - v. any items made in whole or in part of marble or other stone;
    - vi. any musical instruments;
    - vii. any items longer than 3 metres in length, or weighing more than 60kg;
    - viii. any pot plants with a capacity larger than 8 litres.
  - c) unless expressly advised to AT prior to a Quote being issued, there are no clearance or other access restrictions at the Pickup Address or the Nominated Address;
  - d) all electrical goods have been appropriately disconnected from any power source(s) and are in good working order;
  - e) it is the legal owner of the Goods, or it holds written authority from the owner of the Goods to transport the Goods;
  - f) it is legally entitled to access both the Pickup Address and the Nominated Address for the purpose of collecting and delivering the Goods;
  - g) it or its duly authorised agent will, at all times, be in attendance at the Pickup Address during the collection of the Goods and at the Nominated Address during the delivery of the Goods;

- h) it has or will (as the case may be) taken clear, date and time stamped photographs of each of the Goods no more than 24 hours prior to the collection of the Goods from the Pickup Address, and no later than 24 hours after the delivery of the Goods to the Nominated Address;
  - i) it will, prior to the collection of the Goods, provide AT with an inventory sheet, outlining each of the Goods to be transported and their value;
  - j) the Goods do not include any firearms, goods which are illegal to possess, or goods which are or may become noxious, flammable, corrosive or otherwise hazardous during transit;
  - k) it will do all things required to provide AT with access to the Goods, the Nominated Address and the Pickup Address;
  - l) it will, upon request by AT (and in any event, within 24 hours of the delivery of Goods to the Nominated Address), complete any documentation required by AT confirming that the Services have been provided in full, without defect or omission;
  - m) that in the event that the Client believes that AT has not provided the Services in full, without defect or omission, it will provide, within 48 hours of the Goods being delivered to the Nominated Address, a written notice to AT outlining any alleged defects or omissions, in accordance with **Clause 5** of these Terms;
  - n) that in the event that it has not complied with the foregoing warranty, it will not bring (or attempt to bring) any Claim against AT in respect of the Services.
  - o) it will not, despite the existence of any dispute regarding the Services (including by way of the issuance of a notice in accordance with **Clause 5** of these terms), withhold or attempt to withhold payment of the Price (or any part thereof).
- 3.3. The Client acknowledges that AT will be entitled to vary the Price, refuse to collect any Goods, or refuse to provide the Services altogether (in its sole and unfettered discretion) in the event that any of the warranties outlined in this Clause 3 are or become untrue, incomplete, misleading or deceptive, at any time.
- 3.4. The Client indemnifies AT from any loss whatsoever (including by of a Claim) suffered by AT as a result of any of the warranties outlined in this Clause 3 being or becoming untrue, incomplete, misleading and/or deceptive, at any time.

#### 4. TITLE & RISK

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- 4.1. At all times during the transport of the Goods, AT will retain a lien over each of the Goods for any unpaid portion of the Price.
- 4.2. In the event that the Price is not paid in full to AT in accordance with these Terms for a period of 28 days, the Client authorises AT to sell any Goods that it holds and apply any proceeds to any outstanding monies due to AT, which will include any costs reasonably incurred by the AT in selling the Good in question. The Client releases and otherwise indemnifies AT from any Claims relating to the exercise of AT's powers under this provision.
- 4.3. Risk in the Goods will pass to the Client upon delivery of the Goods by the AT to the Nominated Address, whether or not the Client or any other person is in attendance at the Nominated Address.

#### 5. LOSS AND DAMAGE – PRIVATE REMOVALS

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- 5.1. For the avoidance of doubt, nothing in these Terms limits, exclude or modifies any warranties or guarantees that are provided by the ACL and/or which it is unlawful under the ACL to exclude.

##### Notice

- 5.2. In the event that the Client alleges that any Goods have been damaged or have gone missing as a result of the provision of the Services by AT, it must provide a written notice to AT, outlining the specific nature of the allegations, within 48 hours of the Goods being delivered to the Nominated Address (**Dispute Notice**).
- 5.3. The Dispute Notice provided by the Client must contain photographs of the Goods in question, and, in the case of allegedly missing Goods, a copy of the inventory list provided to AT indicating which items are alleged to have gone missing, in accordance with the Client Warranties outlined at **Clause 3** of these terms.
- 5.4. In the event that the Client fails to provide a Dispute Notice in accordance with this Clause 5, to the fullest extent possible:
- a) AT will not be responsible for the allegedly damaged and/or missing Goods; and/or
  - b) the Client will not be entitled to bring any Claim against AT in respect of the allegedly damaged and/or missing Goods.

##### Liability

- 5.5. Notwithstanding the provision of a Dispute Notice pursuant to these Terms, AT will not be responsible for any loss arising as a result of any damaged or missing Goods, or any other matter relating to the Services, unless:
- a) such loss has been caused by the negligence of AT or any of its employees, agents or subcontractors, and has not been caused or materially contributed to by matters outside AT's reasonable control (including the Client's failure to comply with these Terms); or

b) the ACL applies, and the Client is entitled to recover such loss pursuant to the ACL.

5.6. In any event, AT's liability for any loss will be limited, to the fullest extent possible, as follows:

- a) in the case of any missing Goods, the value of that item as outlined in the inventory sheet prepared by the Client;
- b) in the case of any missing Goods where the Client has failed to prepare an inventory sheet and/or take out insurance that provides coverage for the incident in question, a maximum of \$100 per item.
- c) in the case of any damaged Goods, a maximum of 30% of the value of that item, as outlined in the inventory sheet prepared by the Client;
- d) in the case of damaged Goods where the Client has failed to prepare an inventory sheet and/or take out insurance that provides coverage for the incident in question, a maximum of \$50 per item.

## 6. INDEMNITY

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6.1. The Client indemnifies AT from any Claim arising as a result of the Client's breach of these Terms.

## 7. GENERAL

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- 7.1. **(Counterparts)**; These Terms may be executed in any number of counterparts, including electronic counterparts, which are, to the fullest extent possible, to be taken to have the same effect as the delivery of an original counterpart of these Terms.
- 7.2. **(Dispute Resolution)**; The Client agrees that in the event of any dispute regarding the Services and/or any Goods, the Client will first contact AT in accordance with these Terms and provide AT with at least 90 days to resolve the dispute. The Client warrants that it will not, during this period, make any public comment (of any kind whatsoever) with respect to AT, Services and/or any Goods, or any related matters.
- 7.3. **(Entire Agreement)**; These Terms constitute the entire agreement between AT and the Client with respect to the Services. Any prior or other representations, statements or terms are, to the fullest extent possible, excluded and otherwise negated.
- 7.4. **(Governing Law)** These Terms are governed by the laws of Victoria, Australia. The parties irrevocably and unconditionally submit to the jurisdiction of the courts of Victoria and waive, without limitation, any claim or objection based on the absence of jurisdiction or inconvenient forum.
- 7.5. **(No Representations)**; The Client warrants that it has not relied on any statements or representations with respect to the Services (or any related matters) which are not contained within these Terms.
- 7.6. **(Notices)**; notices issued under these Terms must be in writing and delivered by hand, prepaid post or email. A notice will be deemed to have been served:
  - a) in the case of delivery in person, upon hand-delivery;
  - b) in the case of delivery by pre-paid post, on the third business day following postage;
  - c) in the case of delivery by email, the time at which it enters the recipient's information system.
- 7.7. **(Severability)**; If any provision of these Terms is invalid or not enforceable in accordance with its terms in any jurisdiction, it is to be read down for the purposes of that jurisdiction, if possible, so as to be valid and enforceable, and shall otherwise be capable of being severed to the extent of the invalidity or unenforceability without affecting the remaining provisions of these Terms or affecting the validity or enforceability of that provision in any other jurisdiction.
- 7.8. **(Waiver)**; The failure, delay, relaxation or indulgence on the part of AT in exercising any power, right or remedy conferred upon AT by these Terms does not operate as a waiver of that power, right or remedy, nor does the exercise of any single or partial exercise of any power, right to remedy preclude any other or further exercise of such power, right to remedy or the exercise of any other power, right or remedy under these Terms.

I/ we confirm that I / we wish to engage AT to provide the Services and/or supply Goods to me / us on the terms outlined in this document.

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Executed by **Amtar Pty Ltd (ACN 634 214 378)**

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Executed by the **Client**

Name of Director (if applicable):

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Name of Director (if applicable)

Please note that if you do not sign these Terms but accept the provision of any Services, you will be deemed to have accepted these Terms in their entirety.

**ANNEXURE A – SCHEDULE OF RATES**

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