

<b>STANDARD POLICY DOCUMENT</b>		Terms and Conditions of Carriage		
<b>POL 2213</b>		<b>Version: 1.4</b>	<b>Review Date: 26<sup>th</sup> June 2020</b>	
<b>Author</b>	<b>Name</b>	<b>Title</b>	<b>Signature</b>	<b>Date</b>
	Document Author	Bradley Smidt (FSS)	<i>B. Smidt</i>	26/6/2019
<b>Authorised By</b>	Document Authorisation	Scott Smidt (GM-FSS)	<i>[Signature]</i>	26.06.19

**POL 2213 – Terms and Conditions of Carriage**

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## CONDITIONS OF CARRIAGE

### 1.0 DEFINITION OF TERMS

1.1 The meanings of the terms used in this agreement are set out below.

Term	Definition
Carriage	The whole of the operations and services undertaken by the Carrier or any Person on behalf of the Carrier in respect of the Goods (whether gratuitously or not), including but without limiting the generality of this definition, loading, unloading and storage of the Goods and the towing of a trailer.
Carrier	Scott Smidt (ABN 21 243 134 606) trading under the business name ICE Couriers or Intrastate Cold Express Couriers or under any other business name and its officers, servants, agents and Subcontractors.
Consequential Loss	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 and whether or not foreseeable at the time of entering into this agreement.
Customer	The Person who engages the Carrier to provide services of Carriage.
Dangerous Goods	Goods that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever.
Enforcement Costs	Any fees, costs and expenses, including legal expenses, incurred by the Carrier in connection with any default under or enforcement or attempted enforcement of these conditions on an indemnity basis.
Goods	The property from time to time accepted by the Carrier for Carriage and includes any container or packaging supplied by or on behalf of the Consignor or the Customer
Interest	An amount that is calculated on any Outstanding Amount at the rate prescribed for the purposes of court action.
Outstanding Amount	Any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Customer is otherwise liable, pursuant to these conditions, to the Carrier.
Person	Includes a corporation, company, partnership or any other entity.
Subcontractor	Includes any Person who pursuant to a contract or arrangement with any other Person (whether or not the Carrier) performs or agrees to perform the Carriage or any part of it.

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**2. NEGATION OF LIABILITY AS A COMMON CARRIER**

The Carrier is not a common Carrier and will accept no liability as such. All Goods are carried and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the Carriage of Goods for any Person and the Carriage of any class of goods at its discretion.

**3. CUSTOMER'S WARRANTIES**

3.1 The Customer warrants that:

- (a) the Goods are fit for Carriage and have been suitably packaged for those purposes;
- (b) the Customer has the authority of all Persons owning or having any interest in the Goods to enter into this agreement on their behalf;
- (c) the Customer has effected and will maintain a policy of insurance to cover any loss of or damage to the Goods during Carriage;
- (d) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer or any other party are correct;
- (e) there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (f) the place from which any Goods are to be collected will have safe and adequate loading facilities and equipment available;
- (g) where required by law, it has accurately completed and supplied a container weight declaration form;
- (h) refrigerated Goods are supplied to the Carrier at a temperature suitable for Carriage; and
- (i) unless specifically declared in writing prior to Carriage, the Goods are not Dangerous Goods.

3.2 The Customer:

- (a) acknowledges that the Carrier has no responsibility or liability in relation to any pallet used for Carriage;
- (b) must ensure that 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 the Carrier from and against any liability in relation to the loss of pallets or failure of any party to transfer pallets on or off any hire account.

3.3 The Carrier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer and the Consignor, but does not admit their accuracy.

3.4 The Carrier accepts no responsibility for collection of cash or other payments from any party.

3.5 The Customer undertakes to indemnify the Carrier in respect of any liability whatsoever in respect of the Goods to any Person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods.

**4. RIGHT TO SUBCONTRACT**

The Carrier at its discretion may subcontract on any terms the whole or any part of the Carriage.

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**5. EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS**

5.1 The Customer agrees that no claim or allegation may be made against any servant, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Goods or the Carriage of them whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences of any such claim or allegation.

5.2 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available to and will extend to protect:

- (a) all Subcontractors;
- (b) every servant or agent of the Carrier or of a Subcontractor;
- (c) every other Person (other than the Carrier) by whom the Carriage or any part of it is undertaken; and
- (d) all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within clauses 5.2(a), 5.2(b) or 5.2(c).

5.3 For the purposes of clause 5.2 the Carrier is or will be deemed to be acting as agent or Trustee on behalf of and for the benefit of all such Persons and each of them and all such Persons and each of them will to this extent be or be deemed to be parties to this agreement.

**6. LIABILITY OF CARRIER**

6.1 The Customer acknowledges and agrees that neither the Carrier nor any servant or agent or Subcontractor of the Carrier nor any other Person who undertakes the Carriage of the Goods at any time pursuant to this agreement will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:

- (a) any loss of or damage to, deterioration, evaporation or contamination of the Goods, or
  - (b) mis delivery, delay in delivery or non-delivery of the Goods or any of them,
- whether in the course of Carriage or otherwise including where such loss, damage, deterioration, evaporation, contamination or mis delivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence of the Carrier or its officers, servants, agents or Subcontractors.

6.2 The Carrier will be entitled to the benefit of the exclusion of liability provided for in clause 6.1 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

6.3 Nothing whatsoever done or omitted to be done or other conduct by the Carrier 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 the Carrier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Carrier 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.

6.4 Notwithstanding any other provision of these conditions, the Carrier will under no circumstances be liable for any claim for Consequential Loss.

6.5 Where clauses 6.1, 6.2, 6.3 or 6.4 cannot legally operate and to the extent permitted by law, the Carrier's liability for breach of any warranty, guarantee or any term implied by law into this Agreement is limited to:

- (a) in the case of the supply of Carriage, the cost of having those services supplied again; or
- (b) in the case of the supply of Goods, the lowest of the cost of replacing the Goods, acquiring equivalent goods or having the Goods repaired.

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## 7. ROUTE AND DEVIATION

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

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

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## 8. DELIVERY

8.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Customer for that purpose. The Carrier will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.

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

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## 9. STORAGE

9.1 Where Goods are stored by the Carrier 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 Goods; and
- (c) an inventory of the Goods to be stored.

9.2 The Carrier may remove the Goods from a place of storage to another place of storage at its discretion.

9.3 The Customer must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.

9.4 The Carrier will not be obliged to deliver any Goods except to the Customer or to a person authorised in writing by the Customer to receive the Goods without:

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

9.5 The Customer will remove its Goods from storage within seven days of receipt of written notice from the Carrier.

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

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**10. GENERAL LIEN**

10.1 The Goods are accepted subject to a general lien for all charges now due or that may become due to the Carrier by the Customer on any account whatsoever, whether in respect of the Goods or in respect of any other goods for which the Carrier provides or has provided services of Carriage.

10.2 If charges are not paid when due, or the Goods are not collected when so required or designated, the Carrier may, without notice, and immediately:

- (a) remove all or any of the Goods and store them as the Carrier thinks fit at the Customer's risk and expense;
- (b) open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.

10.3 The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for Carriage.

10.4 The Customer agrees that the lien arising under these Conditions of Carriage is a security interest.

10.5 If the Carrier requests, then the Customer must promptly upon receipt of a request from the Carrier do anything for the purposes of ensuring that any security interest created under, or provided for by, these Conditions of Carriage is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Customer to be done under this clause will be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.

10.6 The parties agree that, to the extent permitted by the PPSA:

- (a) sections 125, 142 and 143 of the PPSA do not apply (unless the Customer is otherwise notified in writing by the Carrier);
- (b) any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived; and
- (c) any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under or provided for by these Conditions of Carriage is waived.

**11. DELAY IN LOADING OR UNLOADING**

The Customer will be and remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in excess of 10 minutes in loading or unloading. Such permissible delay period will commence upon the Carrier reporting for loading or unloading. Economy Services include no provision for loading/unloading charges.

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## 12. CARRIER'S CHARGES

12.1 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier and are non refundable in any event.

12.2 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 Goods the Customer will pay such charges.

12.3 The Customer must pay the Enforcement Costs and Interest in respect of any Outstanding Amount.

12.4 Where the Carrier stores Goods for the Customer, the Customer must:

- (a) pay the Carrier'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 Goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) that the Carrier becomes liable to pay or pays;
- (c) supply or pay for labour or machinery or both to load or unload the Goods;
- (d) compensate the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the Goods;
- (e) if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.

## 13. DANGEROUS GOODS

13.1 If the Carrier accepts Dangerous Goods for Carriage, such Goods must be accompanied by a full written declaration disclosing the nature of such goods.

13.2 The Customer will indemnify the Carrier against all loss (including Consequential 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 Goods.

13.3 If, in the opinion of the Carrier, the Goods are or are liable to become of a dangerous or flammable or damaging nature, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Carrier's right to charge for the Carriage of the Goods.

13.4 The Customer warrants that it has complied with all laws and regulations relating to the nature, packaging, labelling or cartage of any Dangerous Goods and that the Dangerous Goods are packed in a manner adequate to withstand the ordinary risks of Carriage having regard to their nature and agrees to indemnify the Carrier for any liability whatsoever as a result of or arising out of the Customer's failure to comply with each of these warranties.

## 14. FORCE MAJEURE

The Carrier will not be liable for any failure or delay in performance of the Carriage if such failure or delay is due, in whole or in part to any cause whatsoever beyond its control.

## 15. NOTIFICATION OF CLAIM

15.1 Notwithstanding any other provision of this agreement (other than clause 16), the Carrier will in any event be discharged from all liability whatsoever in respect of the Goods 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 the Carrier:

- (a) in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within two hours from the delivery of the Goods or from the time at which in the ordinary course of business, delivery would have been effected; or
- (b) in the case of Goods allegedly lost or damaged during storage, within two hours of the time of removal of

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the Goods from storage.

15.2 The Carrier will, in any event, be discharged from all liability whatsoever in respect of the Goods unless suit is brought:

(a) in the case of Goods allegedly lost or damaged in the course of loading, unloading or transit within twelve months of their delivery or of the date on which they should have been delivered; or

(b) in the case of Goods allegedly lost or damaged during storage, within twelve months of the date of removal or attempted removal of the Goods from storage.

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## 16. APPLICABLE LEGISLATION

Notwithstanding anything contained in this agreement, the Carrier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the Competition and Consumer Act 2010 or any other Commonwealth or state legislation in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

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## 17. ENTIRE AGREEMENT

17.1 This agreement sets out the entire agreement of the parties with respect to its subject matter. No other agreement, warranty or representation, express or implied has been given or made by the parties with respect to the Carriage of Goods.

17.2 The Carrier will not be bound by any agreement purporting to vary these terms and conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

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## 18. GENERAL

18.1 This agreement will be construed in accordance with the laws in force in New South Wales and the parties submit to the jurisdiction of the courts of New South Wales.

18.2 Headings are included for convenience only and do not affect interpretation of this agreement.

18.3 Words importing the singular include the plural and vice versa and words importing a gender include other genders.

18.4 Where the Customer, Consignor or Consignee comprise two or more Persons an agreement or obligation to be performed or observed by the Customer, Consignor or Consignee binds those Persons jointly and severally.

18.5 If any part of this agreement is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and this agreement will remain otherwise in full force.

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