



ABN: 43-111-904-682
PORTPARK CORPORATE
Building 1, Suite 34
574 Plummer St Port Melbourne Vic 3207
Ph: 03 9681 7770 / 1300 000 ATM
Fax: 03 9681 9247

Freight Broker Agreement Terms and Conditions

The Customer (**Customer**) and Australian Transport Management Pty Ltd ABN 43 111 904 682 (**ATM**) hereby agree as follows:

1. Parties

The Customer is a shipper and/or Consignee of certain goods it desires to have transported. ATM is a Freight Forwarder. ATM is not acting as either a Motor Carrier, or a Common Carrier within the meaning permitted by applicable laws in Australia. ATM contracts with a variety of freight carriers (**Carriers**) on behalf of the Customer for the purpose of obtaining discounted rates for transportation. ATM reserves the right, in its sole discretion, to refuse any shipment at any time. ATM and the Customer may be collectively referred to as the **Parties** in this Agreement.

2. Consignment Note

In the event of a conflict in the terms of this Agreement and an applicable Carriers Consignment Note (**Consignment Note**) then in effect with a selected carrier, in every instance the Consignment Note shall take precedence and control the interpretation of the rights and obligations of the Parties. If no conflict exists with respect to the Carrier's Consignment Note, this Agreement shall apply. The Customer is responsible for requesting and reviewing Consignment Notes in effect with a designated Carrier. ATM is not obligated to provide copies of Consignment Notes, or any information contained therein, to the Customer.

3. Bills of Lading

The Customer shall use ATM Bills of Lading. The Customer shall cause to be completed all the appropriate documents required for carriage, in regard to the services being requested, and the pick up or destination desired. In the event the Customer fails to properly and expeditiously complete the appropriate documents, the Customer hereby instructs ATM, where permitted by law and ATM may at its option, but without obligation, complete, correct or replace the documents for them at the expense of the Customer. If a substitute form of bill of lading (**BOL**) is needed to complete delivery of this shipment for any reason and ATM completes that document, the terms of the completed BOL will govern and ATM will be exonerated from all liability for undertaking such actions on behalf of the Customer including specifically liability for, in whole or in part, negligence by ATM. All Bills of Lading are non-negotiable and have been prepared by the Customer or by ATM on behalf of the Customer in accordance with the Customer's instructions and approved by the Customer, and shall be deemed, conclusively, to have been prepared by the Customer. The Customer is required to provide the BOL to the Carrier designated by ATM. Any failure to provide the proper BOL to the designated Carrier shall render the entire transaction void ab initio. ATM shall have no obligation to make any payments or honour any rate quotes in any of the following instances: (a) the unauthorised alteration or use of bill of lading, or (b) tendering of shipments to any carrier other than that designated by ATM, or (c) the use of any bill of lading not authorised or issued by ATM.

4. Customer Representations and Warranties to ATM

The Customer represents and warrants that at all times during the terms of this Agreement, it will be in compliance with all applicable laws, rules, and regulations (**Laws**) including applicable Laws relating to customs, import and export required by country to, from, through or over which the shipment may be carried. The Customer agrees to furnish such information and complete and attach to the Consignment Note/BOL such documents as are necessary to comply with such Laws. Any individual or entity acting on behalf of the Customer in scheduling shipments or undertaking any other performance hereunder warrants and represents that he, she, or it has the right to act on behalf of and legally bind the Customer. ATM assumes no liability for any loss or expense due to the failure of the Customer to comply with the provisions of this paragraph and the Customer shall indemnify and hold ATM and the Carrier harmless for any claims or damages resulting from violation of this paragraph, including legal fees and costs.

5. Payment

All charges are payable in Australian Dollars and are due and payable fourteen (7) days from the date of billing (net 7). Past due payments shall be subject to an additional charge at the rate of 1.5% per month on the average outstanding balance due, or the highest rate of interest permitted by applicable law, whichever is less. All funds received by ATM will be applied to the oldest (based on pick up date) invoiced Consignment Note/BOL that is outstanding. Overpayments do not accrue interest. In the event this Agreement is placed by ATM in the hands of a solicitor or collection agency for collection, the Customer agrees to pay, in addition to the account balance, all collection costs including reasonable legal fees, (including such fees and costs incurred in the successful defence of any crossclaim or counterclaim brought against ATM).

6. Credit Approval

Payment terms and credit limits are subject to credit approval, which shall be determined periodically, at the sole and absolute discretion of ATM. The Customer grants ATM the right to perform such credit and background searches as ATM deems necessary. When paying by credit card or electronic funds, the Customer agrees it will be responsible for all charges due and owing, including any adjustments, on account of such Customer's shipment. The Customer authorises ATM to charge the Customer's credit card or bank account for any charges including merchant fees.



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7. Determination of Charges

The Customer shall be liable for all charges payable on account of such Customer's shipment. Such charges may include transportation, fuel, and other applicable accessorial charges, all adjustments issued by the carrier(s) after the shipment, and all duties, customs assessments, governmental penalties, fines and taxes. ATM reserves the right to amend or adjust charges and to re-invoice the Customer in the following events: (a) if the original quoted amount was based upon incorrect information provided by the Customer, or (b) if additional services by the carrier were required, or (c) if the Customer authorised the carrier to perform the pick up, transportation and delivery functions other than directed by the Consignment Note/BOL. Any disputes by the Customer of any invoice issued by ATM shall be made in writing, specifically indicating the nature of the dispute and received by ATM at their office(s) within 30 days from the date of the invoice. In the event ATM does not receive timely written notice of the dispute, the charges will be definitively and conclusively presumed to be valid. The Customer authorises ATM to advise third parties of asserted liens and to hold possession of any shipment against which a lien is asserted.

8. Lien

ATM shall have a lien on the shipment for all sums due to it relating to this shipment or any other amounts owed by the Customer.

9. Claims and Limitations of Liability

ATM is not liable for any loss, damage, mis-delivery or non-delivery caused by (a) the act, default or omission of a Carrier, the Customer or any other party who claims interest in the shipment, or (b) the nature of the shipment or any defect therein, or (c) a violation by the Customer of any provision of this Agreement, the Consignment Note/BOL, the Carrier's Consignment Note, including, improper or insufficient packaging, securing, marking or addressing, or (d) failure to observe any of the rules relating to shipments not acceptable for transportation or shipments acceptable only under certain conditions, or (e) acts of God, perils of the air, public enemies, public authorities, acts or omissions of Customs or quarantine officials, war, riots, strikes, labour disputes, shortages, weather conditions or mechanical delay or failure of vehicles, aircraft or other equipment, or (f) the acts or omissions of any person other than employees of ATM, or (g) the selection of Carrier for a particular shipment. The Customer acknowledges that in order to provide competitive rates for the services requested, that the parties have agreed as a material term of this Agreement that the burden of any loss or damage incurred as a result of ATM or the Carrier's alleged liability has been shifted to the Customer, and that in any event the maximum amount of ATM's liability is limited to the fees that ATM has earned with respect to the subject shipment. The Customer specifically acknowledges that ATM or the Carrier shall have no liability for negligent acts or omissions of its employees except to the extent such actions or omissions constituted gross negligence.

10. Insurance

The Customer will look solely to insurance provided by the Carrier for damage to goods in transit. Each Carrier's governing Consignment Note will determine the standard liability cargo insurance coverage offered on any shipment, subject to any exception value. If the shipment contains freight with a predetermined exception value, as determined by the selected Carrier, the maximum exception liability will override the liability coverage otherwise provided by the Consignment Note. The Customer acknowledges a claim for damages does not relieve it for payment under the terms of this Agreement. Timely payment is a condition precedent to the processing of a damage or insurance claim. All freight cargo claims should be submitted immediately to ATM to help ensure timely resolution. ATM will attempt to assist in the resolution of freight claims, but has no responsibility or liability therefore. Where a damage claim is submitted with a carrier on behalf of the Customer, ATM has a lien on any amounts recovered to the extent of open past due invoices on the Customer's account. ATM may have optional Shippers Interest Contingent Cargo Liability Insurance (Third Party Insurance) available for purchase by the Customer. ATM has no responsibility or liability with respect to the issuance or denial of Third Party Insurance, or in the payment or denial of claims.

11. Disclaimer of Warranties

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND SUBJECT TO ANY NON-EXCLUDABLE PROVISIONS IN THE AUSTRALIAN CONSUMER LAW, ATM EXPRESSLY DISCLAIMS ANY IMPLIED OR EXPRESS WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS WITH REGARD TO SHIPMENTS, WAREHOUSED GOODS, ITEMS IN TRANSIT OR DELIVERIES OR WITH REGARD TO THE INFORMATION PROVIDED ON ITS WEBSITE OR SERVICES RELATED TO TRANSACTIONS CONDUCTED ON THE WEBSITE. ATM CANNOT GUARANTEE DELIVERY BY ANY SPECIFIC TIME OR DATE. IN NO EVENT SHALL ATM BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFITS OR INCOME, WHETHER OR NOT SUCH DAMAGES WERE REASONABLY FORESEEABLE.



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12. Rates

Less than truckload (LTL) rates are based on the freight class as determined by the National Motor Freight Classification (NMFC) and are weight based. All transit times are estimates only and do not include date of pick up. LTL pick up dates are not guaranteed. Truckload (TL) rates are based on Dock Door Pickup/Dock Door Delivery and Shipper Load/Consignee Unload and are state to state and mileage based. Additional fees may apply for other charges including but not limited to: Tractor Detention, Trailer Detention, and Driver Assistance. The Customer must tender this load to the Carrier at the agreed upon rate or pay a Hourly rate for truck ordered, not used, penalty. ATM rates are based on the greater of actual or dimensional weight. If an Air Freight shipment contains oversized freight, additional charges and transit days may apply. Van Line rates are driven by state to state mileage, weight (actual or density) and commodity product/type. Flatbed rates are based on equipment type, state to state mileage, and weight. If a flatbed shipment contains oversize freight, additional charges and transit days may apply. All transit times are estimates only and do not include day of pick up. Pick up dates are not guaranteed.

13. Guaranteed Services

ATM will provide LTL Guaranteed Services for an additional charge, if such services are requested by the Customer, and are subject to availability. LTL delivery times generally do not begin until the day after the pick up of the shipment, except as otherwise noted by the Carrier selected. Guaranteed Service transit times do not include holiday and/or non-service days as defined by the individual Carrier. The Customer is liable for all charges related to the shipment. In the event of a Carrier's failure to comply with the Guaranteed Service requested, the Customer shall have fourteen (14) days from the actual delivery date of shipment to deliver a written claim request to ATM. If ATM does not receive a claim request in a timely manner within the said fourteen (14) days, the service provided by the Carrier will be deemed to have met all Guaranteed Service standards and the claim request will automatically be considered invalid and denied. In the event of the Carrier's failure to comply with the Guaranteed Service requested and after the Carrier has agreed to liability and has paid the amount awarded to the Customer to ATM, ATM will credit the account of the said Customer with such amount awarded and paid by the Carrier. In no event shall ATM be liable nor will any account be credited if the Customer does not use ATM's Consignment Note/BOL.

14. Legal Fees

Should any proceeding (including arbitration) or litigation be commenced between the Parties hereto concerning the terms of this Agreement, or the rights and duties of the Parties hereto, the prevailing party in such proceeding or litigation shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for the prevailing party's legal fees.

15. Binding Nature of Agreement Assignment

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors and assigns, except that no party may assign, delegate or transfer any of its obligations under this Agreement without the prior written consent of the other parties hereto, which consent shall not be unreasonably withheld.

16. Headings

The headings used in this Agreement are for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Agreement.

17. Execution

This Agreement shall become binding upon written acceptance by ATM of the Customer's acknowledgment of its intent to be bound thereby, as evidenced by its designation of acceptance on ATM's web page or by its execution of the Consignment Note/BOL, or by acknowledgment by the Customer.

18. No Other Parties to Benefit

This Agreement is made for the sole benefit of the Parties hereto and their successors and permanent assigns. Except as expressly provided herein, no other person or entity is intended to or shall have any rights or benefits hereunder, whether as third-party beneficiaries or otherwise.

19. Remedies

In the event of a breach of this Agreement or any term hereof by any party, the other Party shall have all rights and remedies available at law, in equity, or under the terms of this Agreement, except as otherwise limited herein.

20. Construction

This Agreement is intended to express the mutual intent of the Parties hereto, and irrespective of the identity of the Party or drafter who prepared this document, no rule of strict construction shall be applied against any Party.

21. Governing Law; Forum; Venue

This Agreement is deemed executed, delivered, and performed in the State of Victoria, and the substantive laws of the State of Victoria and Commonwealth law as applied in Victoria (without reference to choice of law principles) and specifically excluding the United Nations Convention on Contracts for the International Sales of Goods, shall govern its interpretation and enforcement. Any action brought to interpret or enforce any provisions of this Agreement, or otherwise relating to or arising from this Agreement, shall be commenced and maintained in the courts in the State of Victoria and each of the Parties consents to jurisdiction and venue in such courts for such purposes.



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22. Modification and Waiver

No provision of this Agreement shall be amended, waived, or modified except by an instrument in writing signed by the Parties hereto.

23. Materiality

All covenants, agreements, representations and warranties made herein shall be deemed to be material and to have been relied on by the Parties in entering into this Agreement and shall survive the acceptance of this Agreement.

24. Severability

The inapplicability or unenforceability of any provision of this Agreement shall not limit or impair the operation or validity of any other provision of this Agreement. This Agreement and the documents incorporated into this Agreement by reference, constitutes and embodies the full and complete understanding and agreement of the Parties hereto and supersedes all prior understandings, whether oral or written. No representation, promise, inducement or statement of intention has been made by any Party hereto which is not contemplated by or embodied in this Agreement, and no Party hereto shall be bound by or liable for any alleged misrepresentation, promise, inducement or statement of intention not so set forth.

25. Indulgence Not Waiver

Neither the failure nor any delay on the part of any Party to exercise any right, remedy, power or privilege under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor shall any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence.

26. Additional Instruments and Acts

The Parties to this Agreement shall execute (with acknowledgment or in affidavit form, if required) any further or additional instruments, and shall perform any acts, which are or may become reasonably necessary to effectuate and carry out the purposes of this Agreement, without the necessity of incurring any additional expense.

27. Interpretation

In this Agreement the singular includes the plural, and the plural the singular; words importing any gender include the other genders; references to writing include printing, typing, lithography and other means of reproducing words in a tangible visible form; the words including, includes, and include shall be deemed to be followed by the words without limitation.

28. Authority

By execution of this Agreement, the signatories hereto represent and warrant their authority to act in the capacity stated. By execution of this Agreement each Party represents and warrants its right, power and authority to enter into and to perform its obligations under this Agreement.



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ACKNOWLEDGMENT

The Customer specifically acknowledges that:

1. The Customer makes representations and warranties to ATM concerning Customer's compliance with all applicable laws, rules and regulations as set forth in Clause 4 of the Terms and Conditions;
2. The Customer agrees to be liable for all charges, payable on account of such Customer's shipment, including charges made as a result of adjustment(s) issued by the carrier(s) after shipment, duties, customs assessments, governmental penalties, fines and taxes as set forth in Clause 7 of the Terms and Conditions. The Customer specifically acknowledges that post-shipment adjustments may be made, and will be paid by the Customer, if (a) if the original quoted amount was based upon incorrect information provided by the Customer, or (b) if additional services by the carrier were required, or (c) if the Customer authorised the carrier to perform the pick up, transportation and delivery functions other than contemplated by the Consignment Note/BOL;
3. The Customer must comply with all notice and time requirements for any claims as set forth in the Terms and Conditions;
4. ATM's liability is limited as set forth in the Terms and Conditions; and
5. This Acknowledgment shall signify the Customer's acceptance of the Terms and Conditions for all current and future shipments.

Date: ____ / ____ /20 ____

Customer name:

ACN if a company: ____ - ____ - ____ - ____

Customer address:

Signature:

Printed Name of Director/Authorised Officer:

Signature:

Printed Name of ATM Director/Authorised Officer:
