

## CONDITIONS OF CARTAGE

### Definitions

In this document the following definitions apply;

Agreement means the contract of carriage of the Goods incorporating these terms and conditions. Carrier means FMC WEST PTY LTD, its employees, servants, agents and Subcontractors. Consignor means any person to whom the carriers delivers or is intending to deliver the Goods. Consignee means any person to whom the carrier delivers or is intending to deliver the Goods. Customer means the person requesting the carrier to provide the services and making payment to the carrier. Goods means any goods, substance or thing delivered or tendered to the carrier for cartage and/ or storage under this agreement and includes any container, pallet or packing which the Goods are on or on. Services means the service to be provided by the carrier or its subcontractors, to the customer pursuant to this agreement. Subcontractor means any person (including a person operating a railway) the carrier uses to perform all or part of the services instead of the carrier, and any person who is an employee, servant, agent, or subcontractor of such person. A reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity.

### Terms and Conditions

1. These conditions continue to apply despite any breach by the carrier or by the subcontractor, even if the breach is of a fundamental term.
2. The carrier is not a common carrier and will accept no liability as such.
3. The carrier reserves the right to refuse to carry or deal with any goods or class of goods for any person at its discretion.
4. The customer warrants that, when the customer gives, or arranges for another person to give, the carrier or a subcontractor Goods for carrier, the customer is acting as agent for each person who has an interest in the goods, each of them is a party to the contract and is bound by these conditions in the same way as the customer.
5. The carrier is entitled to depart from instructions given to it by the customer (including deviating from the usual route or changing the place of storage or mode of carriage) at the carrier's discretion.
6. The customer hereby authorises the carrier, if the carrier should think fit to do so, to use a subcontractor to perform all or part of the services instead of the carrier. The carrier enters into this agreement as agent or trustee for any subcontractor used. Each of them is a party to each agreement the carrier enters into with the customer. This agreement applies as if the subcontractor were the carrier. The carrier, or a subcontractor, may agree with a subcontractor to any terms that he subcontractor requires. Those terms will be binding on the customer. However, the subcontractor may choose whether to rely on the terms of this agreement or the terms on which it agrees to perform the services or part of them.
7. The carrier delivers the Goods when it leaves them at the place the customer nominates. If no-one is there, the carrier may choose whether to leave the Goods there, store them, or return them to the customer. If the carrier decides to store the Goods, or to return them to the customer, the customer must pay the carrier's reasonable charge. If the customer asks the carrier to on forward the Goods, the carrier delivers them when it gives them to the on forwarding agent.
8. Any storage by Goods by the carrier or arranged by the carrier shall be as agent of the customer and shall be solely at the customers risk.
9. A receipt from a person at the destination is proof of delivery.
10. The customer hereby warrants that the Goods are properly packaged, labelled, unitized scheduled and identified to the carrier and without limiting the foregoing warrants that:
  - 10.1 The Goods are specifically declared and fully described in the space provided on the consignment note.
  - 10.2 Except as specifically declared and fully described in the space provided on the consignment note, the Goods do not include;
    - 10.2.1 Goods which are liquid, explosive, inflammable, radioactive, corrosive, poisonous, infectious or otherwise of a dangerous, hazardous or noxious nature which are capable of causing damage or injury to any person, property, animal, store, vessel, vehicle, aircraft or other conveyance in which of with which such Goods may be loaded, carried, packed or stored;
    - 10.2.2 Goods the carriage or storage of which would be illegal or prohibited by any law or regulation relating to the nature, condition, packaging or labelling of such Goods; or
    - 10.2.3 Goods of a kind which are subject to special rates of carriage;
  - 10.3 It has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks or storage and /or carriage having regard the their nature;
  - 10.4 it has disclosed in writing to the carrier prior to this agreement any matter relating to the nature of the Goods or any particular care and attention which should be applied to the Goods and which could affect the likelihood of them being damaged or causing loss, damage or injury to any person or property.
11. The carrier is entitled to open anything in which the Goods are placed or carried in order to inspect them to find out their nature, condition or destination, or who owns them. The carrier shall not be liable for any loss or damage to the goods caused by or arising directly or indirectly as a result of such opening and inspection.
12. Subject to Clause 27, the carrier reserves the right to unpack any unitized freight and shall not be liable for any loss or damage to the Goods caused by or arising directly or indirectly as a result of such unpacking.
13. If the carrier thinks that the Goods are or may become dangerous or offensive, it may do anything it believes appropriate to avoid or minimise any loss, damage or offence. This includes destroying the Goods. This does not affect any other rights the carrier may have.
14. The customer must comply with all legal requirements, and any requirements of the person to whom we deliver the Goods, in relation to the Goods, including requirements relating to their shape, packaging, labelling and transportation.
15. The customer is liable for any loss or damage to the Goods caused directly or indirectly by their packaging.
16. At the end of the carriage, the customer must make sure that the customer returns to their owner any containers, pallets or packaging which is delivered to the carrier with the Goods.
17. The customer must pay the carrier's charges for its services. The carriers charges shall be considered earned as soon as the Goods are received by the carrier for carriage and/or storage and under no circumstances, subject to clause 27, will any charges paid to the carrier be refunded.
18. The customer can arrange for someone else to pay the carrier's charges. However, the customer remains liable to the carrier. If the customer is not told that payment is required when the Goods are received by the carrier, the customer must pay within 7 days after that day. The customer must pay the carrier whatever happens to the Goods- even if they are lost, damaged or destroyed.
19. Charged not paid by the due date shall be subject to a charge of 8% p.a. commencing from the due date of the charge until the charges are paid in full.
20. In the case of Goods of a kind referred to in clauses 10.2 or 10.4 the customer shall pay any additional freight charges in respect of such Goods as may be deemed necessary by the carrier.
21. The carrier may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods or require that the Goods be reweighed, remeasured or revalue and in the event of there being an increase in the weight, value or measurement of any of the Goods, then the carrier may claim an additional charge.
  - 21.1 Proportional to the increase disclosed; and
  - 21.2 On account of any penalty incurred by it as a result of the incorrect weight, measurement or value.
22. The customer must pay the carrier an additional reasonable charge in each of the following cases;
  - 22.1 The carrier or subcontractor has to perform services, or reasonably perform services, in addition to the service quoted for.
  - 22.2 The carriage is delayed for a reason that is not the fault of the carrier or of the relevant subcontractor.
23. The customer must also pay the carrier for any amount it has to pay, or relevant subcontractor has to pay, in relation to the goods or their carriage. This excludes a payment for subcontracting the carriage.
24. Any claims for overcharges, other than mathematical error apparent of the face on any invoice, are waived by the customer unless the claim is made in writing within 21 days of the date of relevant invoice.
25. Insurance cover is not included in the carrier's charges and will not be arranged by the carrier.

26. The carrier has a lien over the Goods and any relevant documents, and over other Goods and related documents of the customers in the carrier's possession, as security for payment of any money the customer owes the carrier. The carrier may sell the Goods or documents without giving the customer notice. If the carrier does so, it is entitled to offset the amount it received against the money the customer owes the carrier. This does not affect any other rights the carrier may have.
27. When the carrier performs services, to the extent permitted by law;
  - 27.1 Its liability is completely excluded;
  - 27.2 Any action must be commenced within 8 months after the date the Goods were delivered or should have been delivered; and
  - 27.3 In the case of services that are not of a kind ordinary acquired for personal, domestic or household use or consumption, the carrier's liability is limited to the supply of the services again, or the cost of the supply of the services again 28. Notwithstanding clause 27, when the carrier performs services for the purpose of a business, trade, profession or occupation carried on or engaged in by the customer, it do so entirely at the customers risk. No matter what the cause may be, the carrier is not liable under any circumstances for delay in delivery of the Goods, misdelivery of them, or total failure to deliver them; or for loss of the Goods or damage to them or deterioration of them. The carrier is not liable for negligence or wilful misconduct by it or by a subcontractor that it uses in relation to the carriage. The carrier is not liable for an act or omission that is not contemplated by its agreement with the customer.
29. If the customer thinks it has a claim against the carrier or a subcontractor, the customer must make the claim against the carrier and no-one else. The claim must be in writing and must reach the carrier within 7 days after the date the Goods were delivered or should have been delivered. The customer has no claim in any circumstances against any person (including the subcontractor) except the carrier.
30. The customer shall indemnify the carrier in respect of;
  - 30.1 The carriers liability for any loss of or damage or injury to any person, property or thing caused by, occurring during or arising from any packaging, loading, removal, assembly, erection or storage of the Goods.
  - 30.2 Any loss or damage which may be suffered by the carrier as a result of any breach by the customer of these terms and conditions.
  - 30.3 Any loss or damage to the carrier's property which occurs due to the nature or condition of the Goods.
31. The carrier shall not be bound by any agreement purporting to vary this agreement unless that agreement is in writing and signed on behalf of the carrier by a duly authorised officer of the carrier.
32. A waiver of any of the customer's obligations is ineffective unless it is in writing and signed by a duly authorised officer of the carrier.
33. In case any one or more of the provision contained in this agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such as invalidity, illegality or unenforceability shall not affect other provisions of this agreement and this agreement shall be construed as if it did not contain the invalid, illegal or enforceable provisions.
34. This agreement is governed by the law of Western Australia. Each party submits to the jurisdiction of the courts exercising jurisdiction in Western Australia and waives any right to claim that those courts are an inconvenient forum.