

CONDITIONS OF CONTRACT Incorporating CONDITIONS OF CARRIAGE, CREDIT & FREIGHT WARRANTY



Please read the following conditions carefully and in their entirety. You will be bound by these conditions if we carry or store goods for you. This means:

- You should take out your own insurance cover over the goods.
- If you are operating a business:
 - the goods will be at your sole risk and our services are priced on this basis; and
 - we will not be liable for any loss of or damage to the goods, or any other losses you suffer, regardless of the cause of such loss or damage.

If you qualify for and pay for Freight Warranty with respect to the Goods, clause 19 of this agreement explains the terms on which you may receive compensation if the Goods are lost or damaged.

Border Express may negotiate changes to these conditions. Please contact our office before we transport or store goods for you if you want to negotiate amendments to these conditions.

All dealings for the provision of Services by Border Express are subject to the following conditions unless otherwise expressly agreed in writing:

1. Agreement commencement

This Agreement shall commence on the earlier of the date in Schedule 1 (if completed) or the date the Services are first provided by Border Express under this Agreement.

2. Definitions

For the purposes of this document:

"ADGC" means the Australian Code for the Transport of Dangerous Goods by Road and Rail.

"Agreement" means the contract incorporating these conditions, as lawfully varied from time to time.

"Approved Dispatch System" means a system for the transmission of electronic dispatch data, created by Border Express (currently two alternatives exist called "Border Express Online" and "TSLite"), or a system approved by Border Express.

"Border Express" means Border Express Pty Ltd (ABN 82 000 533 880) and any "related entity" (as that term is defined in the *Corporations Act 2001* (Cth)), its servants, agents and any successors or assigns.

"Business Hours" means the period between 7:30 am and 5:30 pm.

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

"Charges" mean amounts as stated under the rates schedule or other agreed rates; any surcharges and any tax including a GST levied directly on a transaction or supply under this Agreement; fuel and congestion surcharge; Freight Warranty charge; amounts or liabilities owing to Border Express under this Agreement; any expenses and charges incurred by Border Express 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; and Border Express' reasonable costs of undertaking tasks in relation to the actual or anticipated provision of the Services (if not otherwise provided for).

"Claim" includes all actions, suits, causes of action, arbitrations, claims, demands, proceedings, complaints and objections in respect of any debts, dues, costs, expenses, obligations, liabilities, interest, verdicts, orders or judgments either at law or in equity or arising under a statute and whether ascertained or unascertained, or immediate, future or contingent.

"Consequential Loss" means 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 or at the time of provision of the Services.

"Control" has the same meaning as in section 50AA of the *Corporations Act 2001* (Cth).

"Cubed Weight" is the cubic area (linear length x width x height) of the Freight Unit (not the individual items making up the Freight Unit) multiplied by a conversion factor.

"Customer" means the Person at whose request or on whose behalf Border Express is undertaking the Services. Customer includes a Customer's Related Entities, all successors and assignees and the Customer in its own capacity and as trustee of each and every trust of which it is trustee.

"Deadweight" means the motionless weight of the Goods.

"Delay Days" means where the transfer of Hire Pallets takes place at a future date to the date the Goods are moved.

"Dispute" means any dispute between the parties relating to the interpretation of this Agreement or the performance by any party of its obligations under this Agreement.

"Excluded Goods" means each of the following items: currency; negotiable instruments; jewellery; gemstones; antiques; works of art; securities; drugs; weapons; living animals or plants; refrigerated/perishable goods; household and personal effects; second hand goods; dangerous goods as described in clause 4.5.3, and any valuable documents.

"Freight Unit" means the largest discrete item of freight being moved. For example, where a number of items are loaded and packaged on a pallet for the purposes of the freight movement then the Freight Unit is the pallet and all items on it.

"Force Majeure Event" means an act, event or cause that is beyond the reasonable control of Border Express including acts of God, lightning, earthquakes, floods, storms, other natural disasters, explosions, fires, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, revolution, sabotage, malicious damage, any order or temporary or permanent injunction of any court or acts of a government or government instrumentality, strikes, lockouts, labour disputes (to the extent they exceed seven days), road closure, traffic congestion, quarantine or customs restriction, embargo, interruption of power supply, scarcity of fuel, accident, collision or breakdown of vehicle, machinery or equipment.

"Freight Warranty Limitation Amount" is the prearranged maximum amount payable for compensation under the Freight Warranty.

"Goods" means Goods (as that term is defined in the PPSA) accepted from, or on behalf of, the Customer together with any container, packaging, or pallets received therein. Without limiting the above, Goods include Goods either in transit or in Storage.

"GST" means the tax imposed or sought to be imposed by the GST Acts.

"GST Acts" means *A New Tax System (Goods and Services Tax) Act 1999* (Cth) and the related imposition Acts of the Commonwealth.

"Hire Pallets" means wood pallets owned by, and the subject of hire charges from, third party pallet providers approved by Border Express, such as Chep and Loscam.

"IATA" means International Air Transport Association.

"Lien" means a right to retain possession of property pending discharge of a debt.

"Paperless Dispatch" means where Border Express has agreed to allow the Customer to dispatch Goods to Border Express without the need to generate printed consignment notes at the point of dispatch.

"Person" includes any individual, firm, corporation, trust or government authority.

"POD" means Proof of Delivery.

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

"Receiver" means any Person to whom Border Express delivers or is intending to deliver the Goods.

"Related Entity" means any of the following:

- an associated entity of the Customer within the meaning of that term as defined in the *Corporations Act 2001* (Cth);
- any Person that is Controlled by the Customer;
- any Person that Controls the Customer;
- if the Person is a company, any director of that company and any shareholder who (or who together with their Related Entities) owns at least 40% of the issued shares;
- the trustee of any trust in which the Customer and any of its other Related Entities have fixed interests in 40% or more of the income or capital, have ever received 20% or more of all distributions of income or capital in a financial year or have the power to change the trustee or vary the terms of the trust.

"Sender" means any Person from whom Border Express receives the Goods.

"Services" means the whole of the operations undertaken by Border Express in connection with the Goods (whether gratuitous or not) including but not limited to transport, Storage, picking, packing, loading and unloading and associated tasks to be provided by Border Express or its Sub-Contractor(s) for the Customer pursuant to this Agreement.

"SSCC" (Serial Shipping Container Code) means the GS1 identification key for an item of any composition established for transport, storage or both which needs to be managed through the supply chain. The SSCC is assigned for the lifetime of the transport item and is a mandatory element on the GS1 logistic label using application identifier (00).

"Storage" means the whole of the storage operations undertaken by Border Express for the Goods but does not include collection of the Goods or their delivery when taken out of store.

"Sub-Contractor" means any Person with whom Border Express may arrange to provide the Services, or any part of the Services, and any Person that Person may arrange to provide the Services.

“Transport Document” means a document complying with the requirements for dangerous goods transport documentation in accordance with Part 11 of the ADGC.

“Working Day” means a day other than a Saturday, Sunday or public holiday in the place where a thing is to be done or a notice served.

3. Subcontracting and extension of conditions

- 3.1. All Goods are carried or transported, and all Storage and other Services are performed by Border Express (or such Sub-Contractor as may be used by Border Express or Border Express’ Sub-contractor) subject only to this Agreement.
- 3.2. Border Express in its discretion may subcontract on any terms the whole or any part of the Services.
- 3.3. Every exemption, limitation, condition and liberty contained in this Agreement and every right, exemption from liability, defence and immunity of whatsoever nature applicable to Border Express or to which Border Express is entitled under this Agreement will also be available and will extend to protect all Subcontractors and every employee or agent of a Sub-Contractor.
- 3.4. For the purposes of clause 3.3 Border Express is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such Persons.

4. Customer warranties

The Customer warrants that:

4.1. Compliance with laws

The Customer has complied with all applicable laws and regulations, including any relating to:

- (a) the nature, condition, packaging, Storage or carriage of the Goods (including chain of responsibility obligations under the *Heavy Vehicle National Law, Road Traffic (Administration) Act (WA)* and *Road Traffic (Vehicles) Act (WA)*); and
- (b) workplace health and safety. Border Express reserves the right to conduct site assessments and inspect relevant records relating to any sites that it is required to visit.

4.2. Description of Goods

The Goods will at all times be fully and accurately described, including their nature, weight and measurements; including in writing on the label, the consignment note, in quotation requests and in the Paperless Dispatch system (if used).

4.3. Packaging

4.3.1. The Customer is responsible for, and will ensure:

- (a) that Goods are packaged in a manner adequate to withstand the ordinary risks of carriage and Storage without any special care in handling or movement; and
- (b) the conformity of containers, packaging and pallets with any requirements of the Receiver.

4.3.2. Where Border Express considers the packaging is not suitable for the transport or Storage of Goods, it may, at its absolute discretion, repack those Goods and levy an additional charge for that service.

4.4. Goods delivered

If Goods are delivered to Border Express, the Person delivering the Goods is authorised to do so and to sign documents in relation to the transport or Storage on behalf of the Customer.

4.5. Dangerous Goods

4.5.1. The Customer has complied with all applicable laws and regulations governing the transport and Storage of dangerous Goods (including the ADGC and, where applicable, the Civil Aviation Regulations, IATA Regulations and the International Maritime Dangerous Goods Code). This includes ensuring compliance with the notification, classification, description, labelling, transport, packaging and Storage of all Goods with a dangerous goods classification.

4.5.2. A Person who offers dangerous goods for transport by road must describe the dangerous goods on a Transport Document and supply the Transport Document to the driver.

4.5.3. Goods provided to Border Express shall never include any Class 1 - explosives, Division 6.2 - infectious substances or Class 7 - radioactive substances per the ADGC. Goods will also not include flammable or other dangerous goods other than as are specifically and fully described and disclosed as such by the Customer in writing to Border Express (including on any consignment note and Transport Document relating to the Services).

4.5.4. If, in the opinion of Border Express, the Goods, either by themselves or in conjunction with any other goods, are liable to become dangerous, flammable, explosive, volatile, offensive or of a damaging nature, the Goods may be retained, destroyed, disposed of, abandoned or otherwise rendered harmless. Should this occur, the Customer agrees that no compensation will be payable to the Customer and the action does not prejudice Border Express’ rights to any Charges, including the cost of such

action.

4.6. Incompatible Goods

Goods provided to Border Express will not include Goods which may be liable to damage other goods or property, other than as are specifically and fully described and disclosed as such by the Customer in writing to Border Express (including on any consignment note relating to the Services).

4.7. Title to Goods

The Customer is either the owner of the Goods, or the duly authorised bailee or agent of such owner for the purposes of entering into this Agreement.

5. Warranties by Border Express

Border Express warrants that it complies with all applicable laws and regulations relating to the Services.

6. Acknowledgements by Customer

6.1. The Customer:

- (a) agrees that all Related Entities that request Border Express to provide Services are parties to this Agreement;
- (b) enters into this Agreement on its own behalf and on behalf of all Related Entities;
- (c) warrants that it has the authority of all Related Entities to enter into this Agreement on their behalf; and
- (d) will procure the compliance by any Related Entities with the terms of this Agreement.

6.2. The Customer has entered into this Agreement after completing any investigations and enquiries to its satisfaction.

6.3. This Agreement represents the entire agreement between the parties and supersedes all prior representations, agreements, statements and understandings between the parties.

7. Liability of and rights of Border Express

7.1. Common Carrier

Border Express is not a common carrier. Border Express reserves the right in its absolute discretion to refuse to provide Services in relation to articles or goods for any Person, or any class of articles or goods.

7.2. Applicable Law

Border Express continues to be subject to any implied warranty or guarantee provided by the CCA and any applicable State Fair Trading legislation if and to the extent that the said CCA or state legislation is applicable to this Agreement and prevents the exclusion, restriction or modification of that warranty or guarantee.

7.3. Survival of obligations

Notwithstanding any other provision of this Agreement, it is expressly agreed that all the rights, immunities, waivers, indemnities, exemptions from and limitations of liability granted to the parties by the provisions set forth in this Agreement shall survive any termination of this Agreement, and continue to have their full force and effect in all circumstances.

7.4. Amendment of conditions

The Customer and Border Express agree that the terms of this Agreement may be amended unilaterally by Border Express giving 30 days’ written notice. Clerical errors are subject to correction without notification. The Customer has the right to terminate the Agreement, within the notice period, if it does not agree with the changes proposed by Border Express and the changes are materially detrimental to the Customer.

7.5. Insurance

Insurance cover is not provided by Border Express and it is the responsibility of the Customer to implement whatever insurance cover the Customer requires at the expense of the Customer.

7.6. Exclusion of liability

Subject to the terms and conditions of the Freight Warranty (if applicable):

7.6.1. It is the responsibility of the Customer to ensure that the Services are sufficient and suitable for the Customer’s purpose. The Customer should make and rely upon the Customer’s own assessments and enquires to verify the accuracy of the information provided by Border Express.

7.6.2. Apart from clause 5, Border Express gives no warranty in relation to the Services.

7.6.3. The Goods are at the risk of the Customer and not Border Express. Unless expressly agreed in writing, Border Express excludes all liability to the Customer in tort (including negligence), contract, bailment or otherwise for:

- (a) loss of, damage to, deficiency in, deterioration, evaporation or contamination of any Goods or other property; and
- (b) delay in delivery or misdelivery or non-delivery of the Goods.

7.6.4. The Customer irrevocably waives any entitlement to allege or claim (except if permitted by Border Express) and hereby agrees to forever hold Border Express harmless from any apportionment which may be sought against Border Express, under either Part 4

Civil Liability Act 2002 (NSW) or any equivalent law in any other state or otherwise.

- 7.6.5. Notwithstanding any other provision of this Agreement, Border Express will under no circumstances be liable for any Claim for Consequential Loss and the Customer releases and indemnifies Border Express against any Claim for Consequential Loss.

7.7. Notice period for Claims

- 7.7.1. Notwithstanding any other provision of this Agreement, Border Express will be discharged from all liability in respect of the Goods or the Services or both unless written notice of a Claim is given in writing to Border Express within seven (7) days of the Services being undertaken or the removal of the Goods from Storage. In the event of alleged failure to undertake or properly undertake the Services, any Claim must be given in writing to Border Express within seven (7) days of when the Services would, in the ordinary course of business, have occurred.

- 7.7.2. Border Express will be discharged from all liability in respect of the Goods or the service or both unless an action is brought within twelve (12) months from the date of the service or removal of the Goods from Storage. The date of the service shall be the date of the consignment note or, if there is no consignment note, the date on which Border Express took delivery of the Goods or, if neither is applicable, the date the service was invoiced.

7.8. Legal protection

- 7.8.1. Border Express does not give any express or implied warranties or guarantees, and makes no representations in relation to its Services including quality, completeness, accuracy, suitability, acceptability or fitness for purpose.

- 7.8.2. Where clauses 7.6.3, 7.6.4 or 7.6.5 cannot legally operate and to the extent permitted by law, Border Express' liability to the Customer is limited, at the option of Border Express to:

- (a) supplying the same service again for replacement goods of the same quantity and type as any lost or damaged Goods; or
- (b) the payment of the cost of another Person supplying the same service again for replacement goods of the same quantity and type as any lost or damaged Goods.

7.9. Indemnity

The Customer indemnifies Border Express against any:

- (a) Claim, loss, damage, expense, penalty, fine or liability arising from a breach by the Customer of this Agreement;
- (b) liability (without limiting the foregoing, whether arising as a result of any breach of this Agreement, negligence or wilful act or omission or misconduct on behalf of Border Express) in respect of the Goods to any Person (other than the Customer) who claims to have, who has or who may hereafter have any interest in the Goods or any part thereof; and
- (c) costs and expenses incurred by Border Express in enforcing, or defending, its rights under this Agreement (including any and all mercantile agents' fees and legal costs on an indemnity basis).

7.10. Application of exclusions, releases and indemnities

The exclusions, releases and indemnities in clause 7 apply in all circumstances, including if a Claim arises as a result of the negligence, breach of contract or wilful act or default of Border Express.

7.11. Authority to inspect

Border Express is entitled to open any document, wrapping, package or other container (of whatever description) in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination.

8. Collection of Goods

The Customer must, unless otherwise agreed, give at least twenty-four (24) hours' notice to Border Express of its intention to collect Goods or have them collected or redelivered.

9. Cancellations

- 9.1. The Customer agrees to provide Border Express with no less than four (4) hours' notice (unless otherwise agreed) when cancelling any order.
- 9.2. Where Border Express incurs charges due to the cancellation of an order, the Customer agrees to compensate Border Express for these charges.

10. Equipment to facilitate the Service

Border Express may use any property, equipment or device to provide the Services. A Charge may be levied where this property, equipment or device is not expressly included in the standard Charges of the Customer.

11. Method and timing of effecting the Service

- 11.1. If the Customer instructs Border Express in writing to use a particular method of handling or Storage, route or time window in providing the Services, Border Express will give priority to that instruction. However, if Border Express cannot conveniently do so, the Customer authorises Border Express to provide the Services by another method, route or time convenient to Border Express.
- 11.2. The Customer acknowledges and agrees that Border Express may consolidate

the Goods with other compatible goods.

12. GST

- 12.1. Unless a contrary intention appears, any term used in this Agreement shall have the same meaning in this Agreement as defined in the GST Acts.

- 12.2. The Customer acknowledges that the charges listed in Border Express' published rate schedule and any special rates, ancillary charges and charges for the Freight Warranty quoted by Border Express to the Customer do not include GST.

- 12.3. The Customer must pay to Border Express, in addition to any other consideration for that supply, an amount equal to the GST payable by Border Express in connection with that supply (as determined by Border Express in good faith and not in contravention of the law).

13. Trading terms

- 13.1. For Customers without a Border Express credit facility, payment is required at the time the request is made for the Services to be performed. Services will not commence until payment has been confirmed.

- 13.2. For Customers with a current credit facility, Charges are immediately due upon the issue of an invoice. However, an extended period is allowed for cleared funds to be received into the bank account of Border Express within seven (7) calendar days of the date of the invoice. This time period is strictly enforced.

- 13.3. For the purposes of this clause, the date of the invoice is the last date of the invoice period as applied by Border Express to the Customer and not the date the invoice is generated, dispatched or received.

- 13.4. Payment must be received by the last day of the extended payment period. **This means that electronic payments must be transmitted by 5pm EST.** If the last day falls on a weekend or a public holiday, then payment is to be made on an earlier day that is a Working Day.

- 13.5. The Customer may request Border Express to collect the Charges from a Person other than the Customer. If that Person fails to pay within applicable credit terms, or if such payment is later void or voidable, then the Customer's obligation to pay shall be deemed to have continued.

- 13.6. Any credit facility, credit limit or time period for payment is an indication only of the intention of Border Express at the time. Border Express may vary, suspend or discontinue provision of credit or the Services at any time at its discretion and without any liability to the Customer or any other party.

- 13.7. This Agreement is a "Security Agreement" for the purposes of the PPSA, and the security interest/s attaching under it apply to all supplies from time to time of the Services. Each supply of the Services is not a separate Security Agreement for the purposes of the PPSA.

- 13.8. The Customer agrees that Border Express does not give cash refunds.

- 13.9. All monies owing by the Customer shall become immediately payable if Charges are not paid in accordance with this Agreement.

- 13.10. Unless it has the prior written consent of Border Express, the Customer agrees to pay all sums due to Border Express without any deduction, counterclaim or set-off.

- 13.11. Interest may be charged on late payments at the rate provided for from time to time by the Supreme Court (NSW) for the purposes of Section 100 of the Civil Procedure Act 2005 (NSW) plus a rate of 2% per annum, or at a rate of 10% per annum whichever is greater, until payment in full.

TRANSPORTATION OF GOODS

14. Labelling

It is the Customer's responsibility to appropriately label the Goods. This includes:

- (a) clear labelling of destination, ideally in an SSSC approved bar code format, and
- (b) labelling freight on both of the loading faces where the Freight Unit is designed to be lifted using a forklift, i.e. both sides where a forklift can access the Freight Unit using the holes at the base of the Freight Unit.

15. Paperless Dispatch

- 15.1. All Paperless Dispatch consignments must be dispatched using an Approved Dispatch System.

- 15.2. The data transfer to Border Express must occur before 5pm of the day of pickup.

- 15.3. Data in the transfer file must match the items picked up. Additional Charges, due to the need to check and adjust the data, may apply if they do not match.

- 15.4. Where consignments sent by Paperless Dispatch contain dangerous goods (DG), the Customer must provide to Border Express a Transport Document in addition to all DG details being contained in the electronic data file.

- 15.5. The Customer must use its best endeavours to control and monitor the transfer of accurate data to Border Express on a daily basis and understands that the failure to do so may result in late delivery of the Goods.

- 15.6. The Customer will provide Border Express with after-hours contact numbers and authorises Border Express to contact those numbers in the event that data is not received by Border Express and corrective action is required to be taken.

16. Loading/unloading

The Customer is responsible for, and must supply appropriate labour, processes and machinery for, loading the Goods at the Sender's premises and unloading the Goods at the Receiver's premises. This includes the use of appropriate loading/unloading

exclusion zones for use by Border Express drivers.

17. Delivery of Goods

- 17.1. Border Express will only deliver on Working Days. Where delivery is scheduled for a particular day, taking into account the number of agreed transit days:
- 17.1.1. if that day is a Working Day, delivery may occur at any time during Business Hours and the delivery deadline will be considered met if delivery has been attempted or successfully occurs at any time during Business Hours;
- 17.1.2. if that day is not a Working Day, the delivery may occur at any time during Business Hours on the next Working Day.
- 17.2. An additional Charge may be levied if delivery is required by a specific time during the day.
- 17.3. Border Express is authorised to deliver the Goods to the Receiver's address given to Border Express by the Customer for that purpose. If such delivery address is unattended, Border Express may at its option deposit the Goods at such address (which shall be conclusively presumed to be due delivery hereunder) or store the Goods.
- 17.4. Border Express will deliver Goods at intermediate points rather than at the delivery address only where special arrangements have been made between the Customer and Border Express.
- 17.5. Border Express shall be conclusively presumed to have delivered the Goods to the Receiver if Border Express obtains from any person present at the delivery address, confirmation of receipt of the Goods by way of signature on the consignment note or any other acknowledgment of receipt of the Goods (including electronic proof of delivery) which proof shall be binding on the Customer or any other Person liable to pay the Charges.
- 17.6. Border Express may at its option store the Goods and levy Charges against the Customer if delivery cannot be completed as agreed, for example a problem with the labelling, inappropriate site access, or the driver believes the process of delivery poses a risk of injury to themselves or another Person.
- 17.7. Border Express shall be at liberty to re-deliver the Goods to the Sender or Receiver from the place of Storage at the sole cost and expense of the Customer.
- 17.8. The Customer must, within 7 days of a written request, make arrangements, satisfactory to Border Express, to accept delivery of Goods held. If the Customer fails to make such arrangements, then without prejudice to any other rights of Border Express, the Goods shall be deemed abandoned by the Customer. Border Express may dispose of such abandoned Goods in any manner it deems fit. The costs of Storage and sale are to be at the Customer's account, and the net sale proceeds applied against any debt owed by the Customer.
- #### **18. Charges – Transport**
- 18.1. Border Express' Charges shall be considered earned as soon as the Goods are loaded and dispatched from the Sender's premises.
- 18.2. A fuel and congestion surcharge (as advised from time to time) may apply. The workings of how the surcharge is calculated are available from Border Express on request.
- 18.3. The Customer will pay any Charges for delays, handling, Storage and subsequent delivery caused by Border Express not being able to collect or deliver Goods, or not being able to collect or deliver Goods at the time arranged, for reasons outside the reasonable control of Border Express.
- 18.4. Border Express may charge for the Services by weight or measurement calculated as follows:
- (a) A measure of 250 kilograms per cubic metre applies to all consignments unless otherwise agreed in writing. The charge will be based on the greater of the Deadweight or the Cubed Weight using the measurements of the consignment, i.e. length x width x height x 250, rounded up to the nearest whole kilogram.
- (b) Weight and measurement shall include packaging, including any pallet on which the Goods reside.
- (c) Measurements are to be the furthest points of the Freight Unit representing the length, width and height.
- (d) Each dimension (length, width, height) of Goods is measured in metres rounded up to one (1) decimal place.
- (e) Freight Units described as a "pallet" carry minimum dimensions of 1.2m (long) x 1.2m (wide) x 0.2m (high). Care should be taken to use an accurate description. Freight Units with a smaller length and width are commonly referred to as a "skid".
- 18.5. Border Express may from time to time re-weigh or re-measure the Goods and charge proportional additional freight, a surcharge and an administration fee if the Goods are wrongly described.
- 18.6. Border Express activities outside of standard practices may incur an additional service fee. Without limiting the scope of these charges, they include activities such as:
- (a) providing a quotation where the Customer could have facilitated the quotation themselves on-line;
- (b) manually entering a consignment note where the Customer could have facilitated the entry themselves on-line;
- (c) invoices and statements requested to be sent by post rather than electronically;

- (d) providing a POD where the POD was available on-line for the Customer to access it themselves; and
- (e) resolving issues that arise because of an incorrect street address, or suburb and postcode data that does not conform with the Australia Post master list (refer <http://auspost.com.au/apps/postcode.html>).

19. Freight Warranty

19.1. Coverage and qualification

The Services will be subject to the terms of the Freight Warranty unless the Customer is ineligible or the Customer has elected prior to commencement of the Service that Freight Warranty will not apply.

To be eligible for the Freight Warranty, Customers must qualify based upon a gross trading value.

19.2. Claim parameters

19.2.1. Any claim under the Freight Warranty for damage to or loss of Goods (FW Claim) must be made in writing on a claim form supplied by Border Express. The claim form is to be sent to the address details listed in this Agreement or emailed to: salesadministrators@borderexpress.com.au.

19.2.2. The Customer must notify Border Express in writing of any FW Claim within the following time limits:

- (a) where the Receiver has indicated in writing on the consignment note that loss or damage has occurred in respect of the Goods, within seven (7) days of the Services being undertaken; or
- (b) where the Receiver has acknowledged that the Goods have been delivered and received in good order and condition, within twenty-four (24) hours from the date of delivery of the Goods to the Delivery Address; or
- (c) in respect of FW Claims for non-delivery, within seven (7) days of the Services being undertaken.

19.2.3. The Customer may only make one (1) FW Claim per consignment note.

19.2.4. The Customer must attach to any claim form (either physically or electronically), documentary evidence acceptable to Border Express (for example, receipt, valuation or tax invoice) as proof of value of the Goods.

19.2.5. FW Claims will only be paid by Border Express after the Customer has paid all outstanding Charges in respect of the consignment which is subject to the FW Claim. For clarity, Charges include the charge for movement of the freight and the applicable Freight Warranty charge.

19.2.6. Where the Customer makes a valid FW Claim and there are outstanding amounts owed by the Customer to Border Express, Border Express reserves the right to pay the FW Claim either directly to the Customer or as a credit to the Customer's account.

19.3. Limitations

The Freight Warranty is subject to the following limitations:

19.3.1. FW Claims are limited to loss of or damage to the Goods only. For the avoidance of doubt, the Freight Warranty does not cover any Consequential Loss suffered by the Customer.

19.3.2. The maximum amount that may be claimed from Border Express under the Freight Warranty is the lesser of:

- (a) the Freight Warranty Limitation Amount; and
- (b) the cost price of the Goods, as supported by documentary evidence acceptable to Border Express (for example receipt, valuation or tax invoice from the seller of the Goods).

19.3.3. GST and freight charges relating to the consignment covered by the Freight Warranty shall not be included in the calculation of any amount payable under the Freight Warranty in respect of the Goods and any payment by Border Express arising out of any FW Claim made by the Customer will be exclusive of GST.

19.3.4. Where a FW Claim has been paid in full for Goods damaged, Border Express reserves the right to take possession of the Goods as salvage and to dispose of such Goods as it sees fit.

19.4. Exclusions

Border Express will not be liable for any FW Claims made by the Customer in any of the following circumstances:

- (a) Where the Customer has not selected a level of Freight Warranty to apply to the consignment or has not paid the Freight Warranty charge;
- (b) Where the Customer fails to submit the FW Claim to Border Express within the relevant time limits;
- (c) Where Border Express is in possession of a POD for the consignment signed by a person to indicate that the Goods were received in good order and condition;
- (d) Where the Goods consigned are Excluded Goods;
- (e) Where Border Express in its reasonable opinion considers the

- (f) Where the Goods are determined by Border Express to have been defective prior to the Services;
- (g) Where damage, mechanical failure or other operational defect in the Goods could not, in the reasonable opinion of Border Express, have been caused by the Services;
- (h) Where Border Express fails, delays or is unable to carry out its obligations under this Agreement due to a Force Majeure Event;
- (i) Where Border Express has not been responsible for the total Services provided with respect to the Goods;
- (j) Where the Goods have not been packed in the original manufacturer's packaging or the equivalent;
- (k) Where the delivery address is a post office box, a roadside drop or postal mail box.

Express reserves the right to transfer the pallets back to the Sender or apply a charge (see clause 20.5 below).

20. Pallets

20.1. Equipment

Border Express will only accept the transfer of good quality Hire Pallets onto its accounts. The transfer of other CHEP or Loscam equipment will not be accepted. Plain pallets are not returned or exchanged.

20.2. Pallets on pickup/branch drop

- 20.2.1. Direct Transfer (Sender to Receiver) - Border Express prefers the Sender to transfer pallets direct to the Receiver. Two copies of the pallet transfer docket are to be provided to Border Express.
- 20.2.2. Transfer to Border Express - Transfers to a Border Express pallet account are also acceptable in accordance with Delay Day rules, documentation requirements and the Receiver having a pallet account.
- 20.2.3. Delay Days - Transfers onto a Border Express pallet account are to be based upon a 14 day delayed transfer from pickup date. Where Delay Days are also applied by the Receiver, Border Express will adjust the effective date of the transfer so that it represents the Receiver Delay Days plus 14 days (i.e. for GHPL 33 + 14 = 47 Delay Days). The table below lists known Receiver Delay Days:

Receiver	Receiver Delay Days (From the receipt of Goods day)	Net Delay Days (From the pickup day)
Staples, Aldi	28 Days	42 days
Woolworth's, Big W, Harris Scarfe, Costco	30 Days	44 days
GHPL (Coles, Kmart, Target, Officeworks, etc.)	33 Days	47 days
Metcash, CCC, IGA, ALM, Bidvest, McAlpine, Mitre 10	45 Days	59 days

- 20.2.4. Documentation Requirements - For all transfers, the Sender is to provide a correctly completed pallet transfer docket to Border Express for each load. For multiple destination loads, separate transfer dockets must be provided to match the Delay Day profile of each group of Receivers. At least one Consignment Number must be used as the pallet transfer docket reference number. Transfers may be rejected if the pallet transfer docket is not correctly completed.
- 20.2.5. Transfer Accounts - Border Express Pallet Accounts are in the table right. Sending customers are to transfer pallets to their sending state/territory:

State/Territory	Loscam Account	Chep Account
ACT	368257	1610306728
NSW	368257	1610306728
QLD	368257	1610306728
SA/NT	368257	1610306728
VIC	368257	1610306728
WA	368257	1610306728

- 20.2.6. Un-recoverable Pallets - Where Receiver's pallets are considered un-recoverable (e.g. mine sites, wharfs, events, etc.), the Sender is to package the freight on plain pallets and recover the cost of packaging and handing through their Receiver. Border Express can provide Senders with a list of plain pallet providers in each state.
- 20.2.7. No Exchange on Pickup/Branch Drop - Border Express will not exchange pallets on pickup/branch drop.

20.3. Pallets on delivery/branch collect

- 20.3.1. Transfer to Receiver - Border Express will transfer pallets to the Receiver. No Delay Days can be applied by the Receiver to a Border Express pallet account.
- 20.3.2. Border Express may also one for one exchange with the Receiver. If one for one pallets are not available for exchange, then Border Express will transfer the pallets to the Receiver's pallet account. In the event that transfer to a Receiver is unsuccessful, Border

20.4. Pallet Claims

Border Express will accept pallet claims within 3 months of pickup date without penalty. Pallet claims up to 12 months from pickup date may be accepted but the effective date of transfer will be the date of written claim enquiry to Border Express.

20.5. Charge for Hire Pallets not recovered

A charge of \$50 per pallet (includes GST, administration fee and compensation for hire costs incurred) will be levied on the Customer where Border Express cannot balance the Hire Pallets used in providing services for that Customer (for example, through an inability to retrieve pallets or complete a pallet transfer).

20.6. Variations

No variations are to be made to these pallet terms or additional agreements are to be made unless agreed upon in writing by the Border Express National Pallet Manager.

STORAGE AND HANDLING OF GOODS

21. Right to store Goods

Border Express may, at its discretion, store the Goods in any place, store or warehouse and remove the Goods from one place, store or warehouse to another without cost to Border Express.

22. Removal of stored Goods

Without waiver of its other rights, Border Express may give notice at any time in writing to the Customer requiring the Customer to remove Goods from Storage. The Customer must pay any Charges outstanding and then remove the Goods within the period specified in such notice.

23. Pick Bays

Pick Bays will be charged for a predetermined total number of bays occupied agreed with by the Customer. This may be varied at any time by the Customer with fourteen (14) days' written notice.

24. Order Close Off

All orders for next Working Day dispatch are to be received by 5:00 pm, unless alternate arrangements are made in writing.

25. Pallets

- 25.1. Storage will be charged for each week or part thereof for each standard pallet. This will be calculated on opening balance plus receipts.
- 25.2. A standard pallet is no greater than 1.4 metres high x 1.2 metres depth. Any pallet which exceeds this dimension will be restacked, if practicable, to be within standard dimensions. Any pallet not able to conform to a standard pallet will be charged as multiple standard pallet units.

26. Charges

- 26.1. All labour, provision of lifting equipment and transport of lifting equipment to and from the site, for counting of stock in a specific stocktake will be Charges.
- 26.2. Border Express' Charges are earned as soon as the Goods are delivered to Border Express and whether redelivered to the Customer or not and whether damaged or not.

GENERAL CONDITIONS APPLICABLE TO THIS AGREEMENT

27. Force Majeure Event

- 27.1. Non-performance by either party (other than the failure to make payment of Charges) caused by a Force Majeure Event will be excused as long as the Force Majeure Event exists.
- 27.2. If either party is affected by a Force Majeure Event, it will promptly notify the other and the parties will enter into good faith discussions to agree to alternative arrangements that are fair and reasonable.
- 27.3. Notwithstanding clauses 27.1 and 27.2, Border Express may terminate this Agreement if a Force Majeure Event occurs over a 45 day period, or on more than 30 days over a six month period.

28. Severability

In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect other provisions of the Agreement and this Agreement shall be constructed as if it did not contain the invalid, illegal or unenforceable provision.

29. Construction

- 29.1. Where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
- 29.2. Words in the singular include the plural and vice versa.
- 29.3. A reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.

30. Dispute resolution

30.1. Parties to attempt resolution

- 30.1.1. It is the desire of the parties to resolve a Dispute as quickly and with as minimal cost as possible. The parties must use their best

endeavours to resolve the Dispute between themselves without delay.

- 30.1.2. In the event of a Dispute not being resolved by the usual staff of the parties, a representative of the owners or a very senior executive of the parties, plus any other persons invited by these persons, must meet to attempt to resolve the Dispute within fourteen (14) days of written notice being received for such a meeting.

30.2. **Mediation**

- 30.2.1. If the parties have not resolved the Dispute as above either party may require, by written notice, the Dispute to be referred to mediation.
- 30.2.2. The mediator to be appointed must be agreed by the parties within five (5) days of the written notice, but failing agreement, appointed by the President for the time being of the Institute of Arbitrators and Mediators Australia (IAMA).
- 30.2.3. Mediation must occur within fourteen (14) days of selection or nomination of a mediator, on such procedural terms as agreed or, failing agreement, as stipulated by the mediator.
- 30.2.4. The costs of any mediation must be shared equally by the parties, other than the costs of the parties themselves and their advisers considering the subject of the Dispute and attending the mediation.
- 30.2.5. Any determination made by the mediator shall be advisory in relation to the Dispute. Nothing in this clause will be interpreted to prevent the parties from agreeing that the determination is or will be binding.
- 30.2.6. Unless a party has complied with this clause, that party may not commence court proceedings relating to a Dispute except where that party seeks urgent interlocutory relief in which case that party need not comply with this clause before seeking relief.

31. **Termination of Agreement**

- 31.1. This Agreement will continue until terminated, by written notice, by Border Express or the Customer.
- 31.2. A minimum of one month's notice must be given unless a shorter period is agreed.

32. **General Lien**

- 32.1. The Goods are accepted subject to a general lien, that attaches when the Goods are accepted by Border Express, for all Charges due or that may become due to Border Express by the Customer on any account whatsoever, regardless of whether the Charges relate to the Goods or not.
- 32.2. The Customer (and if more than one then each individually) agrees to do anything that Border Express reasonably requires to ensure that Border Express has at all times continuously perfected security interests granted under this Agreement.

If the Customer is a company (including a corporate trustee of a trust) or partnership, then it will procure its directors or partners to sign a Deed of Guarantee and Indemnity with Border Express in terms set out at Schedule 2 or otherwise satisfactory to Border Express to secure the obligations owed by the Customer from time to time.

33. **Governing Law**

This Agreement shall be governed and construed in accordance with the laws of the State of New South Wales and the parties submit to the non-exclusive jurisdiction of the Courts of that State.

34. **Notice**

- 34.1. The Customer shall notify Border Express in writing of an address to which Border Express may forward any notice to the Customer, and shall promptly notify Border Express in writing of any change of such address.
- 34.2. Any notice to be given shall be sufficiently given if:
- (a) given personally to a person of appropriate seniority; or
 - (b) sent by ordinary post, in the case of Border Express to the Customer, to the last address of the Customer known to Border Express or in the case of the Customer to Border Express, to the registered office of Border Express;
 - (c) sent by electronic mail (email) in the case of Border Express to the Customer, to the last email address of the Customer known to Border Express or in the case of the Customer to Border Express, to info@borderexpress.com.au.
- 34.3. Any notice sent by ordinary post shall be deemed to be delivered six Working Days after the date of postage.
- 34.4. Notification of amendment to this Agreement may be posted on the Border Express web site.

The Customer acknowledges and agrees that, by signing this document:

- a) it has read and understood the conditions set out in this Agreement, and in particular clause 7, which provides that the Goods are at the sole risk of the Customer, and Border Express accepts no liability for loss of or damage to Goods regardless of the cause of such loss or damage;
- b) it has been advised by Border Express to take out insurance cover over the Goods;
- c) it has authority to sign on behalf of all Related Entities;
- d) it authorise Border Express Pty Ltd to obtain relevant information as required to grant a line of credit from the references states and / or from a credit reporting agencies of our choice. The purpose for which this information may be used includes but is not limited to assessing the application for credit, notifying other credit providers of a default by the applicant, assessing the applicant's credit worthiness and assessing the applicant's position if the applicant falls into arrears with Credit provider and other credit providers.

On behalf of _____

ABN: _____

Name: _____

Title: _____

Signature: _____

Date: ____ / ____ / ____

On behalf of **Border Express Pty Ltd**

ABN: 82 000 533 880

Name: _____

Title: _____

Signature: _____

Date: ____ / ____ / ____

SCHEDULE 1

Item

1. Commencement date
The agreed date for commencement of this Agreement is the _____ (day) of _____ (month), 20____ (year).

2. Customer Details

Registered Name	
Trading Name	
ABN / ACN	
Registered Address	
Mailing Address	
Company Type	<input type="checkbox"/> Sole Trader <input type="checkbox"/> Partnership <input type="checkbox"/> Company <input type="checkbox"/> Trust
Chief Financial Officer Name	
Email	
Phone	
Account Payable Contact Name	
Email	
Phone	
Method of Payment	<input type="checkbox"/> Cheque <input type="checkbox"/> EFT <input type="checkbox"/> Credit Card (Surcharge Applies)
Do you use pallets?	<input type="checkbox"/> Chep (Acct No _____) <input type="checkbox"/> Loscam (Acct No _____) <input type="checkbox"/> Plain
Payment Terms	<input type="checkbox"/> Standard 7 Days from Invoice <input type="checkbox"/> Special (Terms: _____)
Freight Warranty	<input type="checkbox"/> Yes We require Automatic Freight Warranty, for up to \$5,000.00 (excl GST) of the cost price of our consigned goods, for a fee of \$_____ (excl GST) per consignment.
	<input type="checkbox"/> No We do not require Automatic Freight Warranty on all our consignments. We hereby accept that by declining the Freight Warranty service, all goods are consigned without the Automatic Freight Warranty, and are done so at our own risk as per these Terms & Conditions.

3. Special conditions

SCHEDULE 2 - GUARANTEE, INDEMNITY AND CHARGE

In consideration of Border Express agreeing to supply, and further supply, the Services to the following Company/ Partnership/ Trust/ Sole Trader:

Enter Customer Name Here

("the Customer") Services on credit -

I/We

_____	Of	_____
Name of Guarantor 1		Address of Guarantor 1
&		
_____	Of	_____
Name of Guarantor 2		Address of Guarantor 2
&		
_____	Of	_____
Name of Guarantor 3		Address of Guarantor 3
&		
_____	Of	_____
Name of Guarantor 4		Address of Guarantor 4

(hereinafter referred to as "the Guarantor" or "the Guarantors" as the case may be)

- | | |
|---|---|
| <ol style="list-style-type: none"> 1. Do hereby jointly and severally guarantee the due and punctual payment of all obligations (including payment of monies) which may now or in the future be or become due and payable to Border Express by the Customer on any account whatsoever. 2. DECLARE that this Guarantee shall be a continuing guarantee and shall remain in full force and effect and the Guarantor/s shall remain liable hereunder notwithstanding the granting by Border Express of time, credit or any other indulgence or concession to the Customer or the Guarantor/s or the waiver by Border Express of any breach by the Customer of its obligations to Border Express or the liquidation of the Customer or the bankruptcy or death of the Guarantor/s or all of them (as the case may be) or the liability of the Customer ceasing or becoming extinguished for any reason other than payment in full, or due to any variation in the Customer's Agreement with Border Express or any changes in the Customer's corporate structure. 3. DECLARE that I/We will make due and punctual payment to Border Express upon demand being made by notice or letter given to the Guarantor/s and such demand or notice or letter shall be deemed to be duly made or given if the same shall be in writing and left at or sent by pre-paid post to the address of the Guarantor (and if more than one Guarantor, the address of each of them) as set out above. 4. DECLARE that the Guarantor/s shall pay all costs, fees, charges and expenses including (but not limited to) legal costs on a solicitor and own client basis incurred by Border Express of and incidental to this Guarantee or any matter arising out of or incidental to this Guarantee or the performance of or failure to perform by the Guarantor/s of the covenants contained herein. 5. DECLARE that if any of the obligations hereby guaranteed shall not be enforceable against the Customer purported to be primarily liable then this Guarantee shall be construed as an indemnity and the Guarantor/s hereby indemnify and agree to keep indemnified Border Express in respect of any failure by the Customer to make payment or perform or observe any covenant, obligation, term or condition of this Guarantee. 6. DECLARE that the proper law of this Guarantee shall be the laws of the State of New South Wales and that any proceedings to be taken by Border Express may be taken in the Courts of the State of New South Wales. 7. The Guarantor/s agree (where they are not holders of an ABN) to grant a charge, and (where they are a holder of an ABN) do hereby grant a charge, to Border Express overall and any of their present and after acquired property ("APAAP") under the <i>Personal Property Securities Act 2009</i> (Cth) as security for their indebtedness and obligations under this Guarantee. For the purposes of section 20(1) and (2) of the PPSA, and to ensure maximum benefit and protection for Border Express under the PPSA, the Guarantor/s confirm and agree that the Guarantor intend to and will grant to Border Express, as security for its indebtedness and obligations, a charge over all of the Guarantor's present and after-acquired property. 8. The Guarantors also hereby grant and acknowledge that such covenant to repay contained in this Guarantee is also, a charge over any interest in real property of the Guarantors (both present and future) and they consent to a caveat being lodged against the title to any real property or any interest in real property owned by the Guarantors, including that where the Guarantor/s is/ are or becomes a trustee of a | <p>trust (whether or not such trust is disclosed herein), the Guarantors in such capacity hereby charge all real and property of such trust (including all present and after acquired real property) with the obligations contained herein and declare that such charge is given in consideration of the terms herein, and Border Express agreeing to sell or continue to provide the Services to the Customer and at the request of and for the benefit of such trust .</p> <ol style="list-style-type: none"> 9. AGREE to be further bound by the terms of the Agreement set out above (as amended from time to time) and make the declarations and give the consents and authorities contained therein as if they were the Customer and the terms were repeated fully within this Guarantee and the Guarantors were the Customer named therein. 10. AGREE that the Guarantors' liability shall not be affected or discharged by any failure by Border Express to properly attach, perfect or continuously perfect any security interest against any collateral of the Customer and/ or any one or more of the Guarantors (if more than one) or any other person. 11. DECLARE that I/WE understand the nature and effect of the within Guarantee & Indemnity and I/We declare that I/We have had the opportunity of obtaining independent legal advice prior to signing this Guarantee & Indemnity. 12. SIGN (as applicable) both in our personal capacity, as a duly authorised partner of the Customer and/ or as Trustee of every trust of which we are trustee. 13. AGREE to notify Border Express within 7 days of any material change in the legal structure and/or management of the Customer including: <ol style="list-style-type: none"> (a) any sale or disposition of any part of the business of the customer and/or of any trust of which the Customer is Trustee; (b) any change in director, shareholder, management, partnership and/or trusteeship; (c) any new charge, mortgage and/or security given to any supplier and/or financier; and/or (d) any involvement in any franchised business in any capacity. 14. Several guarantors: If more than one of us is named and/or intended to sign as Guarantor(s) we each agree to be bound and liable for the full amount owed to Border Express even if all of us don't sign and whether or not any amount is extinguished and/or comprised in any way. Border Express may make any arrangement and/or compromise with any of us, obtain additional guarantees, indemnities and/or securities from any party and/or release and/or compromise with any of us and/or any other party without otherwise affecting our joint and several liability to Border Express. Neither Border Express nor the Customer is required to sign this Agreement. 15. Credit limit: Any credit granted by Border Express to the Customer is at the discretion of Border Express and shall not affect our joint and several liability. 16. Attornment: To give effect to our obligations arising under this Agreement we irrevocably appoint any lawyer for Border Express as attorney for each of us. |
|---|---|

DATED:

SIGNED by the Guarantor(s) in the presence of a witness:

_____ Signature of Guarantor 1	_____ Signature of Witness
	_____ Name of Witness (Please Print)
_____ Signature of Guarantor 2	_____ Signature of Witness
	_____ Name of Witness (Please Print)
_____ Signature of Guarantor 3	_____ Signature of Witness
	_____ Name of Witness (Please Print)
_____ Signature of Guarantor 4	_____ Signature of Witness
	_____ Name of Witness (Please Print)