

Acceptance of these Conditions

Any instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to these Conditions and will be bound by them. Such instructions received by the Company for the supply of Services shall also constitute authorisation for the Company to act on behalf of the Customer in accordance with the Conditions.

Definitions

1. **“Company”** shall mean Ron Crouch Transport Pty Ltd (ACN 002 187 046), its employees, servants, agents, subsidiaries and/or associated entities.
“Customer” shall mean the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed, and includes all employees, officers, agents and contractors of the Customer, and anyone acting or purporting to act on their behalf.
“Goods” shall mean the chattels, articles or things tendered for carriage or bailment or other services by the Customer and shall include the container or containers, unit load devices or other packaging containing the same and any other pallet or pallets delivered with the same to the Company or Subcontractor.
“Services” shall mean the storage/warehousing, carriage, transport, movement, handling and/or any other service performed or arranged by the Company in any capacity pursuant to, or ancillary to, these Conditions with the Customer, and includes any advice and recommendations.
“Dangerous goods” shall mean such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to any thing in which those goods are carried, handled or stored.
“Valuables” shall mean bullion, coins, precious stones, jewellery, antiques, or works of art.
“Perishable goods” shall mean such of the Goods as shall be in fact or law liable to deteriorate in quality and/or value and shall include, but not be limited to, fruits, vegetables, dairy products, meat, etc.
“Subcontractor” shall mean and include:-
 - (i) Any person, firm or company with whom the Company may arrange to effect any service in respect of the Goods which are the subject of these Conditions.
 - (ii) Any person, firm or company which is now or hereafter a servant, agent, employee or independent contractor of any of the persons or entities referred to in (i) above.
 - (iii) Any other person, firm or company (other than the Company) by whom the Services or any part thereof are arranged, performed or undertaken.Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

Not a Common Carrier

2. The Company is not a common carrier and accepts no liability as such. Services are arranged or performed by the Company subject only to these Conditions which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the carriage of the Goods for any customer or any other Service whether before or after the carriage or Service has commenced and further reserves the right to open and inspect all Goods at its discretion and at the Customer's expense.

Agency/Subcontracting/Subbailment

3. Subject to and in accordance with these Conditions, the Company agrees and the Customer hereby employs and authorises the Company, as agent of the Customer, to contract either in its own name or in the Customer's name with any Subcontractor, and employs and authorizes any Subcontractor to subcontract with any other Subcontractor, for the performance of any Service to be performed or arranged by the Company pursuant to, or ancillary to, this contract. Any such contract may be made on any terms of contract whatsoever used by the Subcontractor with whom the Company or Subcontractor may contract for such Service(s) including in every case terms which may limit or exclude liability in

respect of the Service and any term whereby the Subcontractor may employ any person, firm or company for performance of the Service.

Prevention of Suit/Circular Indemnity and Himalaya

4. The Customer undertakes that no claim or allegation shall be made against any Subcontractor (other than the Company) or other party who may be vicariously liable for the acts or omissions of such Subcontractor which imposes or attempts to impose upon any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party and if any such claim or allegation should nevertheless be made to indemnify the Company against all consequences thereof. Without prejudice to the foregoing, every such party shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for its benefit, and in entering into these Conditions, the Company, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.

Warranties and indemnity by the Customer

5.1 The Customer warrants:

- (a) that it is the owner of the Goods or otherwise has the authority of the owner or person having an interest in the Goods or any part thereof to sign the Company's Consignment Note or Letter of Instruction and consign the goods upon and subject to these Conditions.
- (b) that the person releasing or delivering the Goods to the Company is authorised to sign the Company's Consignment Note or Letter of Instruction and accept these Conditions on the Customer's behalf.
- (c) the Goods are fit for carriage and storage;
- (d) the Goods are packaged to withstand handling, transport and storage;
- (e) that all descriptions, weights, volumes, packaging and values or other particulars provided to the Company for any purpose whatsoever are accurate;
- (f) the particulars relating to the Goods are correct and the Goods are adequately labelled and addressed to enable effective delivery to be made without delay;
- (g) it has complied with all laws and regulations of any government authority relating to the nature, condition, packaging, handling, storage and carriage of the Goods;
- (h) the Goods and their carriage do not contravene any applicable laws, and the performance of any Service provided or arranged by the Company to effect the instructions of the Customer in respect of the Goods shall not be in breach of any law;
- (i) it will provide and keep current all documents, information and assistance required by the Company to comply with the requirements of any government authorities, including but not limited to any information required under the Customs Act 1901 (as amended);
- (j) the Goods will not damage or cause loss to the container, other goods, the means of transport or other equipment;
- (k) the only person who will make a claim or bring proceedings against the Company is the person at whose request the Services were performed;
- (l) no claim will be made against any agent, subcontractor or any other entity involved in or providing any part of the Services; and
- (m) advice and information, in whatever form it may be given, are provided by the Company for the Customer's sole use.

- 5.2 The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax or other outlay whatsoever or howsoever incurred whether arising directly or indirectly from any Service arranged or performed by the Company in respect of the Goods and/or in respect of any such cost incurred as a result of any breach of the terms, conditions or warranties in these Conditions by the Customer.

Exclusion and Limitation of Liability

- 6 (a) Subject to the terms and conditions in this contract, the Company shall not be liable for any loss or damage to or deterioration of the Goods or for any misdelivery or failure to deliver or delay in delivery of the Goods, or failure to provide or delay in providing the Services for any reason whatsoever, , howsoever caused or arising, whether an authorized or unauthorized act under these Conditions, whether caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, agents, employees, subcontractors or otherwise, nor from any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods in carriage or subject of any Service.
- (b) No declaration will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer and accepted in writing by the Company.
- (c) Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Trade Practices Act 1974 or the Fair Trading Acts, or comparable legislation, in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- (d) In all cases where liability has not been, or cannot be, excluded by this agreement because of mandatory applicable statute, convention or law, the liability of the Company is limited to the lesser of AUD\$100.00 or the value of the Goods the subject of the agreement at the time the Goods were received by the Company.
- (e) Liability of the Company arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these Conditions by the Trade Practices Act (Cth) 1974 or the Fair Trading Acts, or comparable legislation, in each of the States and Territories of Australia, or howsoever arising, is limited to any of the following as determined by the Company:
- (i) in the case of Services:
 - (1) the supply of services again; or
 - (2) the payment of the cost of having the services supplied again.
 - (ii) in the case of goods as defined by the Trade Practices Act (Cth) 1974, or the Fair Trading Acts, or comparable legislation, in each of the States and Territories of Australia, and not as defined in these terms and conditions:
 - (1) the repair of the goods;
 - (2) the payment of the costs of having the goods repaired;
 - (3) the replacement of the goods or supply of equivalent goods;
 - (4) the payment of the cost of replacing the goods or acquiring equivalent goods.
- (f) Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for direct, indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss of profit or loss of contracts howsoever caused. The defences and limits provided for in these Conditions shall apply in any action against the Company for loss or damage whether the action be found in contract, tort or otherwise.

- (g) Further without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure or inability of the Company or Subcontractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.
- (h) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:
 - (i) Any claim for damage to Goods must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are completed, whichever date occurs first;
 - (ii) Any claim for loss/non-delivery of Goods must be notified in writing to the Company within 60 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first;
 - (iii) The Company shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought in the State of New South Wales and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.
- (i) It is specifically agreed that all rights, immunities and limitations of liability granted to the Company by the provisions set forth in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any condition hereof by the Company.

Loading and Unloading of Goods

- 7 (a) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle. The Company shall not be liable for any damage or losses of whatsoever nature incurred by the Customer resulting from any delay in the loading and unloading of the Goods.
- (b) In the event that there is a delay in the loading or unloading of the Goods by reason other than negligence of the Company, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- (c) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- (d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection or complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

Warehousing

- 8. The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company. In every case, whether warehousing is incidental or the primary Service provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any Service hereunder. Clause 6 of these Conditions applies in their entirety to Goods that are warehoused by the Company, whether the warehousing is incidental or the primary Service provided by the Company.

Insurance

9. Under Australian law the Company is not allowed to issue cargo insurance as the Company would be deemed to be providing the Customer with advice. The Company is able to offer the Customer the contact details of insurance companies / brokers so that the Customer can obtain insurance from them directly.

Quotations

10. Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion.

Routes and Procedures

11. If the Company is instructed by the Customer and agrees to use a particular method or mode of transport and/or Service, the Company shall give due consideration to the method or mode designated but shall at all times have the right to choose or vary such method or mode of transport and/or Service or route and procedure to be followed in respect of the Service performed. The Customer hereby authorises the Company to substitute alternate carriers or other Service providers without notice to the Customer.

Payment of Expenses/duties and Customer's Indemnity

12. (a) The Customer authorises the Company, but with no obligation on the part of the Company, to pay any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer shall be liable for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection therewith.

(b) The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever or howsoever caused, whether arising directly or indirectly from any Service arranged or performed by the Company in respect of Goods and/or in respect of any such cost incurred as a result of any breach of the terms, conditions or warranties in this contract by the Customer.

(c) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents, Subcontractors or any other party or authority.

Responsibility for Fees/Charges

13. (a) The Customer shall pay the Company for all fees rendered and any charges it incurs for any reason in respect of the Services performed. This includes the payment of fees/charges which the Company is advised or agrees will be paid by a third party which then fails to so pay. All fees/charges shall be deemed fully earned as soon as the Goods are delivered by the Customer to the Company and shall be non-refundable.

(b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.

(c) The Company may by giving notice to the Customer increase the price of the Services to reflect any increase in the cost to the Company beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).

(d) Time shall be of the essence for payment any amounts payable under any agreement between the Company and the Customer and the time for payment will be stated on the invoice, consignment note, airway bills, manifests or any other order forms. If no time is stated then payment shall be due thirty (30) days following the date of the invoice.

(e) If any amounts payable under any agreement between the Company and the Customer are not paid within seven days of the due date, the Customer is to pay to the Company, by way of liquidated damages, interest at the rate of 2 per cent per month on the amount outstanding calculated from the due date until payment is made in full. The Company may take legal proceedings to recover

amounts owing pursuant to these Conditions and the Customer will be liable to the Company for all legal fees incurred in doing so.

Lien

14. The Company shall have a particular and general lien on the Goods of the Customer and any documents relating thereto and on any other Goods of the Customer which are in, or may come into, the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company. In addition, the lien shall cover the costs and expenses of exercising the lien and of any subsequent sale of the Good including reasonable legal fees. Where the debt remains unsatisfied for a period of 7 (seven) days from the date which the Company gives notice of the exercise of lien to the Customer (or owner), the Company shall have the right to sell any such Goods or documents by public auction or private treaty without further notice to the Customer without being liable to any person for any loss or damage thereby caused. The Company may apply any such proceeds realised from such sale toward satisfaction of any funds owing and all proper charges and expenses in relation to the exercise of the lien and the sale of the Goods. The Company shall remit any surplus proceeds to the Customer.

Valuables, Dangerous goods, Perishable goods, Livestock, etc.

- 15.(a) (i) Except as agreed in writing, the Company will not accept Valuables, Dangerous goods, Perishable goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- (ii) Any such goods may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If such goods are accepted pursuant to a written agreement, they may nevertheless be destroyed or dealt with if deemed necessary in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event that the goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability therefore and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.
- 15.(b) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other devices they are carried in) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.
- 15.(c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.
- 15.(d) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.

Delivery

16. (a) The company is authorised to deliver the Goods to the consignee or its agent at the address nominated to the Company by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that the Carrier shall be deemed to have delivered the Goods in accordance with this contract if it obtains a receipt, signed delivery docket for the Goods or signature on its consignment note from any person at that address.
- (b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either leave the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.

- (c) Dates specified for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date or dates.

Containers

- 17. (a) Where the Company provides a container to the Customer, it does so as an agent for the owner of the container. The Customer must satisfy itself as to the condition and suitability of the container at the time of receipt. The Customer warrants that it will return the empty container in a clean and cargo worthy condition to the nominated delivery address within the time specified by the owner of the container, which is usually, but not always, 10 days for general containers and 5 days for other containers. The Customer agrees and acknowledges that the Customer will pay any container detention charges to the Company as agent for the owner. Detention charges will commence the day after the container is due to be returned to owner of the container at the nominated delivery address. Copies of the relevant provisions of the applicable container owner's tariff can be obtained from the relevant carrier or its agents upon request.
- (b) The Customer will indemnify the Company for all charges and liabilities arising in connection with the use of any container or containers including repair costs, cleaning costs and/or detention charges. The Customer's indemnity will include any reasonable costs, either administrative or Legal Fees, incurred in recovering from the Customer any amounts owing, pursuant to this indemnity.

Sale and Disposal of Goods

- 18. The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:
 - (a) Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee or for any other reason, and
 - (b) any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

Regulation Compliance

- 19. The Customer shall comply with all applicable laws and Government regulations including those relating to the packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision.

Representations

- 20. By signing the Consignment Note or otherwise accepting these conditions, the Customer agrees that it did not rely on any representation, promise, warranty or condition of the Company or its Subcontractor not expressly made (in writing) part of this contract.

Customer's Own Form

- 21. The use of the Customer's own form is no derogation to these Conditions.

Trade Practices

- 22. (a) Any relief from liability contained in this agreement is to be read subject to any restriction on contracting out of liability provided in any legislation binding on the Company so that the provisions for relief contained in this agreement are limited or rendered ineffective only to the extent required to give effect to that legislation but are otherwise fully effective and all the provisions hereof are severable and effective independently of any provisions which are null and void or ineffective by reason of any legislation.

- (b) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this agreement, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer, and not wholly or predominantly for the purposes of personal, domestic or household use or consumption.

General

- 23. The Company shall not be bound by any agreement purporting to waive or vary these Conditions unless such arrangement to waive or vary shall be in writing and signed by an executive officer of the Company.
- 24. All the rights, immunities and limitations of liability in these Conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this Contract or of these Conditions by the Company or any other person entitled to the benefit of such provisions.
- 25. If any provision or any part of any provision of these Conditions is unenforceable such unenforceability shall not affect any other provision or any other part of such provision.
- 26. Should the Company elect not to exercise any of its rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.
- 27. The Company reserves the right to review these Conditions at any time and from time to time. If, following any such review, there is to be any change in such terms and conditions, that change will take effect from the date on which the Company notifies the Customer of such change.
- 28. Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock out, industrial action, fire, flood, drought, storm or any other event beyond the reasonable control of either party.
- 29. Any notice required to be given to the Customer shall be delivered to the Customer to the Customer's address by post, fax or email, and any such notice shall be deemed to have been given when, in the ordinary course of transmission, it would have been received by the Customer.

Law and Jurisdiction

- 30. These Conditions and any collateral contracts will be governed and construed according to the laws of Australia.
- 55. Any dispute, controversy or claim arising out of, relating to or in connection with these Conditions or the Services, including any question regarding existence, validity or termination of these Conditions and any collateral contracts, shall be determined by the Courts of New South Wales or by any court of the Company's choice.