

## Millars Furniture Removals General Terms & Conditions of Contract/Carriage

1. (a) These conditions of contract shall apply to all contracts in respect of which the client has requested the company to arrange for the carriage of goods or the performance of other work or services on its behalf after 1<sup>st</sup> of May 2005, super cede any previously published conditions and take precedence over any conditions that may be printed on consignment notes, worksheets, manifests or other paperwork Accompanying any consignments which may be carried from time to time after that date.  
(b) The Client acknowledges that for every Contract referred to in these Conditions and thereby undertaken at the Clients Request/Instruction, the Company acts as a booking agent only and that the company has disclosed that fact to the client prior to the client entering into any contract.  
(c) By entering into any contract for the carriage of goods the client also accepts these terms and conditions of contract on behalf of all other persons on whose behalf the client is acting and where the client is an incorporated body the directors of the client guarantee their performance and any payments, in full, for any and all contracts entered into.  
(d) The words contractor, company, client and goods shall have the meanings ascribed to them in clause 9 (below).
2. The company is NOT A COMMON CARRIER and will accept no liability as such. All goods are carried by the company subject only to these conditions and the company reserves the right to refuse to carry any goods.
3. **Charging methods, trading terms and contractual liens**  
(a) The company shall calculate its charges in accordance with its current rates as amended from time to time at the company's discretion. Charges and quotation are calculated on the basis of information supplied by the client as to the nature and quantity of items to be moved and as to any difficulties in gaining access at the pick up or delivery locations, and additional charges will become payable if the information supplied is incorrect or inaccurate.  
(b) In the case of pre-authorised credit account customers, the company shall invoice its charges on 7 DAY TERMS from DATE OF INVOICE (unless otherwise stated by the company) together with any out of pocket expenses, accounting fees and industry surcharges. In all other cases charges are payable as follows: Monetary deposit, being an amount at the company's discretion is payable upon booking with the balance of charges payable prior to completion of unloading for local transport and no later than at time of pick up for contracts where transit is in excess of 100km. Payment is required in the form of cash, bank cheque, direct credit of cleared funds to company account, VISA card, Mastercard or Bankcard. (An additional surcharge of up to 3% will apply to all credit card transactions to cover administrative costs and banking fees for the same). The company shall have the right to defer or refuse delivery at the client's expense should it become apparent that the client is unwilling or unable to pay in the required form or at the required place or time.  
(c) All goods of the client received by the company shall be subject to a general lien for any monies owed by the client to the company as a result of this agreement or any previous agreement of any nature whatsoever.  
(d) If any person fails to pay, or indicates any inability or unwillingness to pay the total charges that in the opinion of the company are due to the company in respect to any services rendered by the company under this contract or any previous contract, the company may retain any partial payments and/or deposits, and retain and sell all or any of the goods of that person which are in its possession. If such charges have been outstanding for a period of 28 days, the company may give 28 days written notice by certified or registered mail to the last known address of the client of intention to sell, and if the amount owing is not paid within that period may SELL ALL OR ANY OF THE GOODS by public auction or by private treaty and out of the monies arising retain charges so payable and all charges and expenses of the detention and sale and shall pay the surplus, if any, to the person entitled to it. Any such sale shall not prejudice or affect charges due or payable in respect of such service or the said detention or sale.  
(e) In the case where pre-authorised credit is extended to the client, the client acknowledges that should any monies remain outstanding at 14 days from date of invoice, the Company will reserve the right to engage an external debt recovery agent, whom shall be at the companies discretion. The client also acknowledges in such circumstance where any such agent is engaged by the company, all amounts outstanding to date, in addition to any and all costs associated with the recovery of such debt, by both the company and the external debt recovery agent will be the autonomous responsibility of the client or where the client is an incorporated body, the directors of the client
4. **Engagement Fee – 17.5% of Annual Charge**  
Where within 18 months of the client entering into a contract governed by these Terms and Conditions, the Client engages the services of any Contractor, introduced to the Client by the Company, for the carriage of goods or the performance of other work or services on its behalf, the CLIENT AGREES that in consideration of the company introducing the contractor it will, WITHIN 7 DAYS, pay an engagement fee equal to 17.5% of any charges made by the Contractor for such services, or \$250.00, whichever the GREATER.
5. **Terms relating to the Carriage of Goods**  
(a) The client expressly warrants that the client is either the owner or the authorised agent of the owner of any goods or property the subject matter of this contract.  
(b) Goods are accepted by the company on the condition that they comply with the requirements of any applicable law relating to the nature, condition and packaging of the goods, and without limiting the generality hereof: (i) That the client notifies the company whenever the Dangerous Goods Act (QLD)(DGA) applies to any goods and guarantees that all requirements of the DGA have been met, and (ii) That the goods are fully described in writing on all relevant paperwork, including their name and nature, and in the case of goods to which the DGA applies, are accompanied by a consignment note that complies with the Act.  
(c) The method, route and time by which the work or services under which this contract are performed shall be at the absolute discretion of the company.  
(d) The company shall, at its discretion, without notice to the client, subcontract on any terms all or part of the carriage of goods, and as a result of such, the client indemnifies the company from any delay, damage or misdelivery resultant from acts or omissions of the subcontractor, its servants, and/or agents.  
(e) The client shall provide an authorised representative who will be responsible for ensuring that the correct goods are loaded and whether or not such a representative is provided the client shall pay all additional charges whatsoever resulting from the movement of incorrect goods or non movement of goods that the client intended to have moved.  
(f) The client acknowledges and accepts without limitation that any time or date advised by the company to the client pertaining to the uplift and/or delivery of any goods or the provision of any service are indicative only and hence are not guaranteed to be met. In the case where pre-advised times or dates cannot in the company's view be reasonably met, the company reserves the right at any stage to alter the time or date to another time or date that in the company's view is reasonably practicable.  
(g) If there is no one in attendance at the place for the delivery of the goods the company shall be entitled at its discretion to leave the goods at that place or to return at a later time until delivery is affected, storing the goods at any convenient place in the mean time, and the client agrees to pay any additional charges incurred thereby to the company for any storage and/or redelivery.
6. **No Liability for Loss or Damage**  
(a) Save as expressly provided hereunder the company shall not be liable to the client for any loss or damage WHATSOEVER, suffered by the client directly or indirectly caused by:  
(i) A misdelivery, delay in delivery or non delivery of goods;  
(ii) The carriage of goods by a route other than the shortest or usual route;  
(iii) Any damage, loss or destruction to goods whilst in the possession of the company **whether in transit** (which, without limiting the generality thereof includes any handling, installation, removal, assembly or erection of any kind) **or in storage** or after they have been delivered or misdelivered;  
(iv) Any failure to collect cash on delivery (COD) on behalf of the client; and this clause shall apply whether or not such occurrence was due to any wilful, fraudulent, negligent or other act or omission of the company.  
(b) For the purpose of clause 6(a), "Loss or Damage" shall include all direct or consequential loss or damage to the client whatsoever and howsoever arising and without limiting the generality of the foregoing includes the loss of profits, liability of the client to third parties (whether actual or contingent) the cost of repair or replacement of goods and the cost of collecting and redelivering goods.  
(c) The reference in clause 6(a) to damage or to loss and destruction of goods shall include damage, loss or destruction caused by theft, fire, road accident, mishandling, incorrect loading or unloading or stowage of any vehicle, the method by which it is driven or through any other cause whatsoever.  
(d) The client INDEMNIFIES the company against any action, claim, suit, fine, or demand brought by any third party or the client against the company as a result of or in connection with any of the events listed in this clause or clause 5 OR as a result of a breach by the client of any term of this contract and this indemnity shall extend to the solicitor client costs of the company in defending any action and in enforcing this indemnity.  
(e) For the purpose of this clause and clause 5 the company enters into this agreement both in its own right and as agent and trustee for any contractor, subcontractor, servant or agent of the company and the exclusions from liability and the indemnity contained in these clauses shall extend to and ensure for their benefit PROVIDED THAT this clause shall not be construed as imposing or implying any additional liability on those persons to any person for any reason.
7. **Trade Practices Act**  
Nothing herein shall be construed as having the effect of in any way excluding, restricting or modifying any warranty express or implied by virtue of the provisions of the Trade Practices Act (1974 as amended), that otherwise all warranties and conditions to the maximum extent allowed by law are hereby negated and excluded.
8. **Insurances**  
(a) Insurance against any loss, damage or destruction shall be arranged independently of the company by the client prior to the commencement of any contract for the carriage of goods, and advice of the same will be provided to the company by written confirmation in Quotation Acceptance and Insurance Instruction section of Booking Confirmation.  
(b) The client acknowledges the company's indemnity from any loss, damage or destruction to any item which the client has contracted the company to transport or handle, as well as any structural or cosmetic damages to any vehicle, dwelling, premise or structure, or part thereof whether owned or leased by the client or client's agent.  
(c) Any liability resulting from the acceptance of an increased level of responsibility relating to antiques, jewellery, collections, documents, works of art, and the contents of individual cartons with a value of over \$250.00 is limited to \$250.00; or \$500.00 if nominated in writing prior to pickup.  
(d) In the case where increased liability is accepted by the Company, the first \$200.00 of any claim will be payable by the Client.  
(e) It is agreed between the client and the company that the company shall not bear any responsibility to the client if a claim made to their independent insurer fails or is limited in any way because any policy of insurance is void, voidable, unenforceable, or has expired, or because of an exclusion or restriction or other term of the policy of insurance, whether or not such failure or limitation arising directly or whether wilful, fraudulent, negligent or not indirectly from any act or omission of the company.  
(f) Nothing in this clause shall operate in any way to extend the liability of the company or to vary clauses 5, 6 and 7.  
(g) Fraud or attempted fraud shall void any and all liability and subsequent cover if applicable and all subsequent claims thereof.
9. **Definitions**  
In this agreement;  
(a) "Contractor" shall mean any person who has appointed the company as agent to find work on behalf of that person.  
(b) "Company" shall mean the person whose name is printed on relevant contractual documents pertaining to the contract for carriage or in the absence thereof who is otherwise identified as the person with whom the client has booked or otherwise entered into a contract for the carriage of goods, and includes contractors for whom the company acts as agent and servants, agents and subcontractors of the company. The words contractor, subcontractor and agent of the company shall extend to their servants, agents, spouse, parents, children, any partnerships of which they are a member, any non public incorporated body of which they are a member, any non public incorporated body of which they (or their spouse, parents or children) have a direct or indirect interest as share holders or are directors servants or agents, to the trustee of any trust in which they or their spouse, parents or children have an actual or contingent interest and to the beneficiary of any trust of which they are a trustee.  
(c) "Client" shall mean the person (or any servant or agent or "associate" of that person within the meaning of section 50 of the Corporations Law) who requests the company to arrange for the carriage of goods or for the performance of other work or services on its behalf. By entering into this contract the client also accepts these terms and conditions of contract on behalf of all other persons on whose behalf the client is acting and where the client is an incorporated body the directors of the client guarantee their performance.  
(d) "Goods" shall mean any goods which the company has been requested to carry or to arrange to be carried.
10. **Interpretation**  
(a) Unless otherwise specified or unless the context otherwise requires words importing the singular number include the plural and vice versa and words importing the masculine gender include the feminine and neuter genders and vice versa and words importing natural persons include corporations and vice versa.  
(b) Bold headings are for guidance only and do not and shall not be deemed to form part of this agreement.  
(c) Any provision of this agreement which is capable of being interpreted as being void, voidable, illegal or unenforceable, shall not be so interpreted if at all possible, and shall otherwise be severed to the minimum extent necessary with the remainder of the agreement remaining in force.  
(d) All the rights, immunities and limitations of liability in the above conditions of contract shall continue to have their full force and effect in all circumstances, not withstanding any breach of contract (including fundamental breach of contract) or any condition thereof by the company.  
(e) This agreement shall be governed by and interpreted and enforced in accordance with the laws applicable in the State of Queensland. This agreement shall be deemed to have been entered into in the State of Queensland.