

# Topex Haulage Terms

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## 1. CONTRACT

- 1.1 Topex Mining Solutions Pty Ltd Pty Ltd (ABN 54 638 028 930), including our employees, contractors, agents, subsidiaries and/or associated entities (we, us, our), agrees to deliver the Services to the shipper, receiver, owner of the Goods, bailor of the Goods or any other relevant person (you, your) in return for payment of any agreed fee and otherwise in connection with any other services agreement in existence between us but subject to the following Haulage Services Terms. The Contract is formed on the earliest of the following events:
- you instruct us to proceed (orally or in writing) with the Services after you have received these Terms;
  - you issue a purchase order in relation to the Services; or
  - the collection by us or delivery by you to us of the Goods.
- 1.2 Your request for the Services and any proposal or consignment note issued by us, together with these Terms and any other documents attached or referred to in our proposal or consignment note, will form a contract between you and us, under which you engage us to carry out the Services (the **Contract**). To the extent of any inconsistency between the Contract and any other services agreement between us, the terms of the Contract will prevail.
- 1.3 The Goods will be transported or dealt with entirely at your risk. If any communication by you contains any terms and conditions, including terms that purport to allocate liability to us, including any purchase order, consignment note or other communication, those terms are deemed to be withdrawn in favour of these Terms, even if we sign those terms or the document to which they are attached. A purchase order on different terms is not a counteroffer.
- 1.4 In this Contract:
- "Goods" means the cargo accepted from you, including chattels, articles, or things to be transported, including the container/s, unit load device or other packaging and any other pallet/s delivered to us to transport the chattels, articles, or things; and
  - "Services" means the carriage, transport, storage/warehousing, movement, handling, lifting, skating and/or any other service we perform under this Contract.

## 2. NOT A COMMON CARRIER

- 2.1 We are not, and accept no liability as, a common carrier. We reserve the right to refuse the carriage of any Goods, in our absolute discretion and with no obligation to provide a reason.
- 2.2 We reserve the right to, at your cost:
- refuse carriage of Goods for any customer or any other Service, whether before or after the carriage or Service has commenced; and
  - open and inspect all Goods.

## 3. WARRANTIES

- 3.1 You warrant that you own the Goods or are authorised by the owner or a person with an interest in the Goods to engage us to transport the Goods, and you consign the Goods subject to these Terms. You indemnify us in respect of any liability in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part of the Goods.
- 3.2 You warrant that:
- you have authorised any person releasing or delivering the Goods to us to engage us to carry out the Services;
  - you have packaged the Goods appropriately for the delivery;
  - the accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to us for the carriage, customs, consular and any other purposes, and you indemnify us against all loss, damage, expenses and fines arising from any inaccuracy or omission in this respect;
  - you warrant that the Goods will be suitable for carriage or service by vehicle; and
  - the performance of the Services by us will not cause us to be in breach of any law.

## 4. DELIVERY

- 4.1 You authorise or arrange for us to be authorised to deliver the Goods to the consignee or its agent at the address nominated to us by you, the consignor, the consignee or their agents. We will be deemed to have delivered the Goods in accordance with this Contract on the earlier of delivery to the nominated address and us obtaining a receipt, signed delivery docket for the Goods or signature on the consignment note from any person at that address.
- 4.2 If the nominated delivery address is unattended or if delivery cannot be effected, we may elect either to deposit the Goods at the nominated place or store the Goods at your risk and expense, both of which will be deemed to be delivery of the Goods under this Contract.
- 4.3 Dates specified for completion of carriage or any other Service are estimates only. We are not liable for failure to complete carriage or any other Service on such dates.

## 5. LIABILITY

- 5.1 Notwithstanding any other term of this Contract, to the extent permitted by law, we accept no liability for any loss of, damage or failure to deliver the Goods or any other loss or damage suffered by you or any person in connection with this Contract, however arising, whether under statute, tort or an indemnity or:
- caused by an act or omission of our agents, employees, subcontractors or otherwise, including any negligence, recklessness and/or wilful misconduct;
  - resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given by or on behalf of us or our 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 subject of any Service,
- and this Contract may be pleaded as a bar against any proceedings commenced against us connected with the Services or this Contract.
- 5.2 To the extent permitted by law, the obligations of a bailor are excluded.

- 5.3 If liability cannot be excluded by law, our liability is limited to the lesser of:
- (a) re-supplying the Services; or
  - (b) the cost of having the Services resupplied.
- 5.4 Without limiting clause 5.3, we are not liable for direct, indirect or consequential loss or damage arising out of this Contract, including loss of market, loss of profit, loss of product or loss of contracts however caused, irrespective of whether such liability could be foreseen before the commencement of the Services.
- 5.5 We accept no liability for any loss or damage suffered by you or any other person due to a failure or inability by us to collect or receive cash on delivery payments from consignees or their agents.
- 5.6 You agree that all rights, immunities and limitations of liability granted to us by these Terms survive with full force and effect in all circumstances, notwithstanding any breach of the Contract by us.
- 5.7 You must not make any claim against our personnel, subcontractors or any other party who may be vicariously liable in connection with this Contract. Our personnel and subcontractors benefit from these Terms as if the terms were expressly for their benefit. We enter this Contract on our behalf and as their agent and trustee.
- 5.8 You indemnify, release and hold us harmless in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay in connection with the Services, whether arising directly or indirectly from any Service arranged or performed by us 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 you.
- 5.9 Without limiting clause 5.8, you remain responsible to us for all charges (cash on delivery or otherwise) paid by us to any of our agents, subcontractors or any other party or authority.
- 5.10 You indemnify, release and hold us harmless in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.
- 5.11 You must notify us in writing of any claim intended to be made under this Contract within 14 days after the date or planned date of delivery. Unless made within that period, the claim is deemed to be extinguished and will not be enforceable against us.
- 6. INSURANCE**
- 6.1 You acknowledge that we are not an insurer of Goods, either warehoused or in transit. You must obtain your own insurance coverage. We will not effect any insurance in relation to the Goods except as required by law.
- 6.2 We are not obliged to effect separate insurance on each consignment. If any insurers underwriting insurance required by this clause 6 dispute liability for any reason, you as the insured have no recourse against us whatsoever and any recourse by you will be against the insurer.
- 7. LOADING AND UNLOADING**
- 7.1 Unless we agree otherwise in writing, you are responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the transportation vehicle.
- 7.2 We are entitled to claim any expenses incurred in connection with any delay in the loading, unloading, carriage or handling of the Goods, including demurrage costs.
- 7.3 You must provide suitable facilities and equipment for loading and unloading the Goods from the transportation vehicle.
- 7.4 You must inspect the transportation/handling/skating or lifting vehicles or machinery before loading the Goods or commencement of the Services and notify us of any inadequacy or unsuitability. If you do not conduct this inspection, the relevant vehicle or machinery will be deemed adequate and suitable for the Services, and we will have no liability for any loss or damage caused by any inadequate or unsound condition of the vehicle or machinery.
- 8. STORAGE**
- 8.1 The Goods may be warehoused or otherwise held or stored at any place or at any time be removed from any location at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise, at our sole discretion. In every case, whether warehousing is incidental or an agreed aspect of the Services, it will be provided at your risk and expense, and we will be entitled to charge you a storage fee and a re-delivery fee.
- 9. ROUTES AND MODES OF TRANSPORT**
- 9.1 We reserve the right to choose or vary the method or mode of transport and Service or route and procedure to be followed in performing the Services. You hereby authorise us to substitute modes of transportation, alternate carriers or other Service providers without notice to you.
- 10. PAYMENT**
- 10.1 You must pay us all fees and any charges that we incur for any reason in respect of the Services performed, together with our fee for the Services, within the time stated on any tax invoice submitted to you or, if no time is stated, within 7 days. We will be entitled to claim payment in full as soon as the Goods are loaded and dispatched from your premises, the collection address, or otherwise delivered by you to us. The fee will be immediately payable on demand and non-refundable.
- 10.2 If you do not pay any payment by the due date, we may suspend performance of the Services until payment is made.
- 10.3 We will charge interest on the balance of any payment not made by its due date, calculated daily at 10% per annum until payment.
- 10.4 You authorise us, but with no obligation on our part, to pay any duties, taxes, imposts, fuel charges, late fees, costs associated with picking up, loading or unloading, outlays or charges in respect of the Goods. We are entitled to claim reimbursement of such disbursements together with an administration fee and for payment of any fine, expense, loss or damage incurred by us in connection with the Contract.
- 10.5 You must not defer or withhold payment or deduct any amount from our account because of any claim you allege against us.
- 11. LIEN AND SECURITY**
- 11.1 We will have a lien on the Goods, any documents relating to the Goods and any other Goods which are in or may come into our possession for all sums payable by you to us. If any payment due to us remains unpaid for 30 days after we notify you that we intend to exercise our lien, we will be entitled to sell any such Goods or documents by public auction or private treaty without further notice to you, with no liability to any person for any loss or damage thereby caused. We may apply the proceeds realised from such sale toward the satisfaction of any outstanding payments owed by you to us and all proper charges and expenses in relation to the exercise of the lien and the sale of the Goods. We are entitled to retain any surplus proceeds.
- 11.2 You grant us a security interest under the *Personal Property Securities Act 2009* (Cth) in all Goods held in our possession.
- 11.3 You consent to us registering a security interest in the Goods at your cost. You must execute any documents, provide all necessary information and do anything else we require to perfect that security interest for registration.

## 12. DANGEROUS AND PERISHABLE GOODS AND VALUABLES

12.1 In this clause 12 the following definitions apply:

“Dangerous Goods” means Goods that are noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable of causing damage or injury to any person, to other goods or to anything in which those goods are carried, handled or stored.

“Perishable Goods” means Goods capable of deteriorating in quality and/or value, including fruits, vegetables, dairy products, meat, etc.

“Valuables” means bullion, coins, precious stones, jewellery, antiques, or works of art.

12.2 Notwithstanding any other term of the Contract, unless otherwise agreed in writing, we will not carry out Services in relation to Valuables, Dangerous Goods, Perishable Goods, livestock or plants. If you deliver any such goods to us or cause us to handle or deal with any such goods otherwise than as agreed in writing, you will be liable for any loss or damage, whether direct, indirect or consequential and however caused. You indemnify and release us from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection with those goods.

12.3 Goods referred to in clause 12.2 may be destroyed at our absolute discretion or at the discretion of any other person in whose custody they may be, if reasonably deemed necessary. We take no liability for goods that are destroyed or otherwise dealt with as contemplated by clause 12.3, and you indemnify and release us from and against all such costs and expenses.

12.4 You warrant that any goods referred to in clause 12.2 (including their covering, packaging, containers and other devices they are carried in) will be distinctly marked regarding their nature. You further warrant 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 applicable laws and regulations. You indemnify and release us from all claims, losses, damages or expenses arising from any breach of this provision.

## 13. SALE AND DISPOSAL OF GOODS

13.1 To the extent permitted by law, we will be entitled (at your cost) to sell or dispose of:

- (a) Goods that have not been collected within 1 month of the date for collection;
- (b) Goods which, in our opinion, cannot be delivered because of the Goods being insufficiently or incorrectly addressed or because of the Goods not being collected or accepted by the Consignee or for any other reason; and
- (c) any Perishable Goods which, in our opinion, appear to be deteriorating if you fail to adequately instruct us concerning those Perishable Goods or pay any costs necessary to implement your instructions.

## 14. COMPLIANCE WITH LAW

14.1 You must comply with all applicable laws and regulations, including those regarding packing, carriage, handling, lifting, storage, customs clearance, delivery or other Services regarding the Goods.

14.2 It is your responsibility to comply with all applicable laws (including, where necessary, the Australian Code for the Transport of Dangerous Goods by Road and Rail, Civil Aviation Regulations and International Maritime Dangerous Goods Code) relating to the notification or description of the Goods on the consignment note or in another written form.

14.3 You will provide us with such documents and information as necessary to comply with such laws and regulations. We are not liable for loss or expense due to your failure to comply with this clause 14.

## 15. REPRESENTATIONS

15.1 In entering this Contract, you agree that you did not rely on any representation, promise, warranty or condition made or imposed by us or our personnel, except to the extent set out in this Contract.

## 16. FORCE MAJEURE

16.1 Where we cannot carry out any obligation under the contract due to any circumstance, matter or thing beyond our reasonable control (including severe or unsafe weather conditions), we are excused from such obligations to the extent of such prevention, restriction or interference.

## 17. GENERAL

17.1 This Contract constitutes our entire agreement concerning its subject matter and supersedes all prior oral or written representations and agreements. It may only be varied in writing and signed by us both.

17.2 We may assign and/or subcontract any of our rights or obligations under this Contract on any terms, including terms that may limit or exclude liability for the Service.

17.3 You may not assign your rights or obligations under this Contract without our written consent.

17.4 Waiver by either of us of a breach of any term of this Contract does not constitute a waiver of any later breach of the same or any other term.

17.5 If any provision or part-provision of this Contract is invalid or unenforceable, that provision will be deemed deleted to the extent necessary, and the remaining provisions of this Contract will remain in full force and effect.

17.6 Nothing in this Contract creates a relationship of employer and employee, principal and agent, partnership or joint venture between you and us or between us and any third party.

17.7 Neither of us has authority to act for or to bind the other than as expressly contemplated by this Contract.

17.8 Provisions of this Contract capable of having effect after the termination or expiry of this Contract remain in full force and effect following its termination or expiry.

17.9 The laws of Western Australia govern this Contract. We each submit to the jurisdiction of the courts of Western Australia.