

DSE Terms & Conditions

1. Definitions

In these Terms:

“Carriage” means and includes the whole of the operations and services undertaken by the Carrier in respect of the Consignment;

“Consignment Note” means a form signed by the Consignor contracting DSE to transport a Consignment on behalf of the Consignor or Contracted Party; Contracted Party irrevocably authorises the Consignor to sign any Consignment Note as agent for the Contracted Party;

“Confidential Information” means all information, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of these Terms or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates;

“Consignment” means freight and consignment notes accepted from the Consignor together with any containers, packaging or pallets supplied by or on behalf of the Consignor and used in the provision of the Services;

“Consignor” means the person who is the sender of the consignment and for the purpose of the Terms is considered the same as the Contracted Party;

“Contracted Party” means any party who has signed Rates Schedules with DSE to supply the Contracted Party or another party as authorised, transportation services and is responsible to DSE for all charges associated;

“DSE” means DSE Pty Ltd ABN: 94 091 381 510, registered address C/- Thomas Davis & Co, level 20, 68 Pitt Street Sydney NSW 2000; DSE also means authorised Subcontractors engaged by DSE.

“Rates Schedule” means the list of rates for collection, carriage, transportation, delivery and storage of goods charged by DSE to a Contracted Party for the provision of the Services as issued by DSE from time to time;

“Receiver” means the person to whom the Consignment is delivered or addressed;

“Re-delivery” may occur if the Receiver directs DSE to unload the Consignment at an address other than the site delivery address in accordance with clause 11.6;

“Runsheets” means a work sheet listing starting and finishing times and for the purpose of these Terms has the same meaning as Consignment Note;

“Services” means the whole of the operations and services undertaken by DSE in connection with the Consignment, including but not limited to the collection, carriage, transportation, delivery and/or storage of the Consignment and the provision of any advice concerning the collection, carriage, transportation, delivery and/or storage of the Consignment;

“Site Delivery” means the place nominated for the consignment to be delivered to;

“Subcontractor” includes any person who pursuant to a contract of arrangement with any other person (whether or not DSE) performs or agrees to perform the Carriage or any part thereof;

“Terms” means these terms and condition of service.

2. Application

The acceptance of Services by the Consignor is taken to constitute acceptance of these Terms on their behalf and as authorised agent for the Contracted Party

3. Inconsistency

These Terms must be read in conjunction with any Terms displayed at <http://www.dsetrucks.com.au/terms.aspx>, printed on DSE invoices, Consignment Notes, Runsheets, or Site Delivery documentation or as provided by DSE to the Contracted Party from time to time.

If there is any inconsistency between these Terms and any terms and conditions printed on DSE invoices, Consignment notes, Runsheets or Site Delivery documentation, Terms displayed at <http://www.dsetrucks.com.au/terms.aspx> will prevail to the extent of the inconsistency.

For the avoidance of doubt, Terms displayed at <http://www.dsetrucks.com.au/terms.aspx> will prevail over any terms or conditions provided to the Contracted Party (subject to point 24.2) by DSE in respect of a Consignment and the Terms will not be affected by any "subject to check" or similar stamp or annotation made by the Receiver.

4. Not a common Carrier

DSE is not a common carrier and will accept no liability as such. DSE reserves the right to refuse the collection, carriage, transportation, delivery and/or storage of goods, or certain classes of goods, in its absolute discretion.

5. Warranties and Indemnities

The Consignor warrants that:

- (a) any person who delivers a Consignment to DSE for or on behalf of the Consignor is authorised to do so; and
- (b) it is, or has all necessary authority of, the person or persons owning or having any interest in the Consignment.

If any person makes a claim or commences proceedings against DSE alleging an interest in any part of a Consignment then the Consignor indemnifies DSE, its employees, Subcontractors and agents from and against all liability, injury, loss and damage suffered by DSE as a result.

6. Carriage and Return of Pallets

The Consignor is at all times responsible for the return of any pallets used in providing the Services to the pallet owner or other nominated person as instructed by the pallet owner. The Consignor may request DSE to collect and deliver any pallets as needed in writing and pay DSE any amount shown on the Rate Schedule. DSE will not accept any pallets on their account.

7. Subcontracting

DSE (and any Subcontractors) may subcontract the Services on such terms as it thinks fit.

8. Risk

The Consignment will be collected, carried, transported, delivered and stored at the risk of the Consignor.

Without limiting clause 19, DSE will not be responsible in negligence, tort, contract, bailment, or otherwise for:

- (a) any delay in the collection or delivery of the Consignment;
- (b) any loss of or damage to or deterioration of the Consignment; or
- (c) any misdelivery or failure to deliver the Consignment, for any reason whatsoever.

9. No Insurance

The Contracted Party have full knowledge that DSE offers no insurance covering the Consignment and irrevocably indemnify DSE against any claim for compensation for whatever reason.

The Contracted Party agree to provide twenty four (24) hours prior written notice to DSE on any occasion the combined value of any Consignment loaded on one vehicle exceed A\$ 200, 000.00.

Should DSE become liable under law for any compensation the Contracted Party agrees to compensate DSE for any insurance excess paid.

10. Provision of Services

If the Consignor instructs DSE to use, or it is agreed that DSE will use, a particular method of handling or storing the Consignment or a particular method or carriage, DSE will give priority to that method where convenient for DSE but the method of handling, storing and/or carriage adopted by DSE will be determined at the discretion of DSE.

DSE may, in its absolute discretion, notwithstanding any prior instruction or agreement between the Consignor and DSE, select the route of carriage or place of storage of a Consignment.

If any identifying document or mark is lost, damaged, destroyed or defaced, DSE may open any document wrapping, package or other container to inspect goods in order to determine their nature, condition, ownership or destination.

In the event of this contract of Carriage including and handling, installation, removal, assembly or erection of any kind whatsoever the same is undertaken on the strict basis that the Carrier accepts no liability for any loss, damage or injury of any kind whatsoever, however arising or incurred or occurring during any part of the carriage. This disclaimer extends to include not only loss of or damage to itemized equipment itself but loss, damage, injury to any

person, property or thing damaged during the Carriage and to include any loss consequentially or otherwise arising from any loss, damage, injury aforesaid.

11. Toll Roads

If the consignor instructs DSE (or any subcontractor), or it is agreed that DSE will use the toll roads by means of travel, DSE (or any subcontractor) shall write the toll time (and amount if known) on their Runsheet and the Consignor warrants that full payment shall be paid to DSE at time of invoice for that particular assignment.

12. Delivery of Consignments

DSE is authorised to deliver the Consignment at the address given to DSE by the Consignor or any other address directed by the Receiver and DSE will be taken to have delivered the Consignment if at either address DSE obtains from any person an acknowledgement of delivery.

If the Site Delivery or Re-delivery location is unattended or if delivery cannot be effected by DSE (whether due to lack of equipment at the relevant location or otherwise), DSE may, in its absolute discretion:

- (a) deposit the Consignment at that place and such action will be deemed to constitute valid delivery;
- (b) return the Consignment to the sender and charge the Consignor any costs incurred by DSE in the unsuccessful delivery attempt; or
- (c) store the Consignment, in which case the Consignor must reimburse DSE for all costs and expenses incurred in connection with such storage.

In the event that DSE stores the Consignment under clause 11.2(c), DSE will re-deliver the Consignment to the Receiver at a time mutually agreed between the parties. The Consignor must pay any costs incurred by DSE in both the initial delivery and the re-delivery and storage fees.

Where the Consignment is accepted for forwarding by rail to an address at a place where DSE has no receiving depot, the Consignment will be deemed duly delivered when it is delivered to the nearest railhead.

A charge may be made to the Contracted Party in respect of any delay in loading or unloading after a reasonable time, unless such delay arises solely from the default of DSE. Additional Labour to load or unload the Consignment may also be required and chargeable.

If the Receiver requested (or its contactor) upon delivery to make a subsequent Re-delivery of the Consignment, DSE may charge the Receiver or the sender or the Contracted Party (in DSE absolute discretion) the relevant fee as set out in the Rates Schedule or not.

DSE (or its contractor) may refuse to make a Re-delivery for any reason, including (but not limited to) if;

- (a) Re-delivery documentation in a form satisfactory to DSE has not been completed and executed by the Receiver;
- (b) the equipment required to unload the Consignment is not available at the Re-delivery location; or
- (c) Access to the premises at the Re-delivery location is restricted.

In which case clause 11.2 will apply.

If the Carrier is liable for damage to or loss of the Consignment or any part thereof, no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing at an office of the carrier in the State in which the Consignment Note is issued within seven (7) days of delivery being effected or would in the ordinary course of business have been effected.

If the Consignor requests DSE to make a Site Delivery or Re-delivery at a location where the equipment required to unload the Consignment is unavailable, and DSE agrees to manually unload the Consignment, such action will not affect any other clause of these Terms, including clause 19.

The Consignor acknowledges that delivery or collection of stored goods will only be affected where a reasonable notice in writing has been given to DSE prior to the relevant delivery or collection date.

13. Invoicing

If the Contracted Party has a customer account with DSE then, subject to clause 13.3, DSE will invoice the Contracted Party weekly and the Contracted Party must pay DSE the full amount of each invoice within 30 days of the date of the invoice or as otherwise agreed to in the Rate Schedule.

If the Contracted Party defaults in the payment of any money payable under these Terms, or any other agreement between DSE and the Contracted Party, for a period of time more than 7 days then DSE may do one or both of the following:

- (a) suspend performance of its obligations under these Terms until the amount outstanding is paid in full; and

- (b) charge interest on the amount outstanding at a rate of 0.05% per day, with such interest being payable on the written demand of DSE.

Provided that the Receiver holds a customer account with DSE, the rates payable for any Consignment where the associated Consignment Note is marked "Receiver To Pay" will be invoiced by DSE, directly to the Receiver. If the Receiver does not pay the full amount of the relevant invoice by the due date, the Contracted Party will be held liable for any unpaid amount, together with any reversal fees charged by DSE to the Contracted Party in its absolute discretion.

14. Fees and Charges

Any charges made by DSE will be deemed fully earned as soon as the Consignment is loaded and dispatched from the Consignor's premises or accepted for storage.

The rates payable by the Contracted Party to DSE for the Services will be the rates set out in the Rates Schedule from time to time. Consumer Price Index (CPI) Increases are automatically added to all Rates Schedules each 12 months.

DSE may at any time, in its absolute discretion, amend the Rates Schedule on 14 days written notice to the Contracted Party.

Fuel levy changes if applicable are adjusted as needed, in line with world oil prices; Contracted Party are provided 7 days notice to adjust Fuel Levy.

Sunday, Public holiday or night work (any job starting before 5am or finishing after 10pm) will be charged depot to depot (4 hours minimum) plus a surcharge of 40%.

Bookings that are futile (where the vehicle has started to proceed to the pickup point and the job has cancelled) will be charged at the minimum rates shown on the Rate Schedule

15. Expenses

If DSE incurs any extraordinary expenses in connection with the Consignment, the Contracted Party must reimburse and indemnify DSE in respect of such expenses plus 15% administration costs.

DSE reserves the right to weigh all Consignments at a public weigh bridge and pass the cost on to the Contracted Party (for full and half load shipments)

16. Lien

DSE will have lien over the Consignment (and any documents relating to the Consignment) and over any other goods of the Contracted Party in the possession of DSE (and any documents relating to such goods) for an amount equal to all sums owing by the Consignor to DSE.

If fees are not paid when due, DSE may at its absolute discretion and in addition to any other rights it may have:

- (a) store the Consignment as it thinks fit, and charge the Contracted Party for such storage; and
- (b) open any packaging and sell any part or all of the Consignment as DSE thinks fit and apply the proceeds to discharge the lien and costs of sale.

17. Uncollected Consignment

The Contracted Party is aware of and understands all applicable legislation relating to the disposal of uncollected goods. The Consignor's place of abode for the purpose of that legislation is the principal place of DSE.

18. Nature of goods and packaging

DSE does not accept consignments of the following:

- (i) Dangerous goods – Unless stated in Rates Schedule
- (ii) Jewelry & precious metals
- (iii) Cash & Bonds
- (iv) Livestock
- (v) Explosives

The Consignor must:

- (a) not tender for carriage or storage any goods which are or may become dangerous, inflammable or offensive, or goods which are or may become liable to damage any property;
- (b) comply with all laws and regulations relating to the nature, packaging, labeling, storage and carriage of the Consignment;

- (c) pack the Consignment in a manner adequate to withstand the ordinary risks of storage, transportation and carriage having regard to its nature; and
- (d) ensure that any containers, packaging or pallets conform with any requirements of DSE.

If, in the sole opinion of DSE, the Consignment becomes or is liable to become of a dangerous, inflammable, offensive or damaging nature, it may at any time be retained, destroyed, disposed of, abandoned or rendered harmless by DSE, without compensation to the Consignor and without prejudice to DSE right to payment of any rates or fees under clause 14 of these Terms.

The Consignor indemnifies DSE for any liability whatsoever, and for all damage, injury, costs and expenses, that it suffers or incurs as a result of or arising out of the Consignor's failure to comply with this clause 18.

19. Limitation of Liability

Subject to this clause 19 and to the maximum extent permitted by law, DSE is not liable to the Consignor or to any other person for:

- (a) any loss, damage, injury or liability of any kind caused by or resulting from any act or omission of DSE or any of its employees, agents or contractors; or
- (b) any loss of profits or anticipated profits, economic loss, loss of business opportunity, or any special, incidental, indirect or other consequential loss or damage,

even if notified of the possibility of that potential loss, damage, injury or liability and irrespective of whether it is due to negligence, breach of contract or any other cause.

Any representation, warranty, condition or undertaking that would be implied in these Terms by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

Nothing in these Terms excludes, restricts or modifies any condition, warranty, right or remedy conferred on the Consignor by the Trade Practices Act 1974 (Cth) or any other applicable law that cannot be excluded, restricted or modified by agreement.

If DSE is found to be liable to the Consignor or any person acting for the Consignor, DSE liability is limited (in DSE absolute discretion) to:

- (a) the cost of supplying the Services; or
- (b) supplying the Services again,

and any such claim must be made in writing in such form as is reasonable required by DSE.

Without limiting any other provision of these Terms, if DSE in its sole discretion elects to pay any amount to the Consignor in respect of a damaged Consignment, then upon payment of that amount, title in the Consignment will pass to DSE.

All the rights, immunities and limitations of liability in the terms and conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of contract or of any conditions hereof by DSE.

It is hereby agreed that if any provision or part of any provision of this contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.

20. Waiver

These Terms may only be waived or varied if such waiver or variation is in writing signed by an authorised representative of DSE.

21. Cubic conversion

DSE may, in its absolute discretion, choose to apply cubic conversion. 1m³ = 333kgs to any Consignment.

22. Governing Law and Jurisdiction

These Terms are governed by the laws in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State in respect of all matters arising out of or relating to these Terms, their performance or subject matter. Any proceedings against DSE shall be brought in that State and not elsewhere within six (6) months from the date of the consignment note to which the claim relates.

In respect of the contracts made in Queensland these conditions shall be read subject to the *Carriage of Goods by Land (Carriers Liability) Act 1967* of that State but exempt where repugnant to the provisions of that Act shall continue to apply.

23. Variations To Terms

These Terms can be amended from time to time and any amendments will be highlighted on the website at <http://www.dsetrucks.com.au/terms.aspx> for a three (3) month period from the date of change. Individual Terms agreements between DSE and Contracted Party will prevail over these Terms if both parties agree in writing; refer clause 20. These Terms will prevail twelve (12) months from the date of any such agreement if not renewed.

24. Relationship of parties

Unless these Terms expressly provide otherwise, nothing in these Terms may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

26. Restraint from Approaching Subcontractors

26.1 Contracted Party agree that under no circumstance to offer carriage directly or indirectly to any subcontractor who was introduced to the Contracted Party by or through DSE, for a period of not less than three months after the last date of any assignment where the subcontractor was used for carriage by You or You will be liable for an introduction fee of \$5, 000 plus GST.