



DSE Terms & Conditions

1. Definitions and Interpretation

1.1. In these Terms:

Carriage means, in respect of Goods, the whole of the operations and services undertaken by DSE in relation to those Goods pursuant to these Terms, including but not limited to the collection, carriage, transportation, delivery and/or storage of the Goods, and the provision of any advice concerning the collection, carriage, transportation, delivery and/or storage of the Goods;

Charges means the amounts and charges calculated in accordance with, or as set out in, the Rates Schedule and other amounts, charges and rates that may be agreed between the Sender and DSE in writing from time to time;

Claims includes all manner of actions, claims, causes of action, arbitrations, debts, dues, costs, interest, demands, verdicts, judgements, fines and penalties, both at law or in equity or arising under the provisions of statute.

Confidential Information means in respect of a party, all trade secrets and knowhow, financial information and other commercially valuable 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;

Consequential Loss includes any lost revenues, lost profits, lost business, lost data or data use, lost goodwill or anticipated savings, incidental damages, indirect damages, consequential damages, special damages, economic damages, punitive damages.

Dangerous Goods has the same meaning as in Regulation 1.2.1.2.5 of the Australia Code of the Transport of Dangerous Goods by Road and Rail;

Delivery Location means the place advised by the Sender to DSE as the place to which the Goods are to be delivered;

DSE means DSE Transport Pty Ltd ACN 630 466 545.

DSE Indemnified Party means each of:

- (a) DSE;
- (b) the Related Bodies Corporate of DSE;
- (c) each employee, Subcontractor and agent of DSE; and
- (d) each employee, Subcontractor and agent of each Related Body Corporate of DSE.

Fuel Levy Schedule means the schedule of fuel levies charged or imposed by DSE from time to time, as issued or published by DSE from time to time;

Goods means goods of any type or description whatsoever whether originally contracted for in the Order, substituted for or added to an Order, together with any containers, packaging or pallets supplied by or on behalf of the Sender;

GST has the same meaning as in Section 195-1 of A New Tax System (Goods and Services) Act, 1999;

Losses includes all Claims, losses, costs (including legal costs on a solicitor and own client basis), expenses, damages and injury, including Consequential Loss.

Order means an electronic order submitted by the Sender to DSE on a digital platform maintained by DSE to transport Goods, and includes particulars of the Goods, the Sender, the Receiver, the Delivery Location and other information as DSE may require.

Rates Schedule means the schedule of rates and charges for collection, carriage, transportation, delivery and storage of Goods agreed between DSE and the Sender or as published by DSE from time to time;

Receiver means the person to whom the Goods is or are to be delivered or to whom the Goods are addressed;

Re-delivery Request means a request in writing from the Sender or the Receiver to DSE to unload the Goods at an address other than the Delivery Location in accordance with clause 7;

Re-delivery Location means the location advised by the Sender or the Receiver to DSE in a Re-delivery Request as the location to which the Goods are to be delivered;

Relocation Time means DSE's reasonable estimate of the time it would take the vehicle to travel from the last delivery carried out by that vehicle to the first pickup location for an Order, which will be a minimum of thirty (30) minutes.

Sender means the person that has submitted an Order with DSE and is responsible to DSE for the Charges with respect to that Order;

Subcontractor includes any person who pursuant to a contract or 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 conditions of service.

1.2. Unless the context otherwise requires:

- (a) references to a party to these Terms includes the executors, administrators, successors and permitted assigns of that party;
- (b) references to any statute, ordinance or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactment's or replacements thereof;
- (c) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
- (d) where any word or phrase is given a defined meaning in these Terms, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (e) headings included in these Terms are for convenience only and must be disregarded in the construction of these Terms.

1.3. Inconsistency

- (a) These Terms must be read in conjunction with DSE invoices, the Order, the Rates Schedule and other documentation as provided by DSE to the Sender from time to time.

- (b) If there is any inconsistency between these Terms and any terms and conditions printed on any DSE invoice, any Order, the Rates Schedule or other documentation, these Terms will prevail to the extent of the inconsistency.

2. Acceptance

Any request by the Sender to use the services of DSE constitutes acceptance of these Terms by the Sender.

3. Negation of liability as a common carrier

DSE is not a common carrier and does not undertake the obligations or liability of a common carrier. DSE reserves the right to refuse Carriage or transport of Goods for any person or entity in its absolute discretion.

4. Sender Obligations

4.1. The Sender must:

- (a) comply with all obligations and best practices in relation to the Heavy Vehicle National Law and Regulations;
- (b) reasonably assist DSE in complying with their obligations under the Heavy Vehicle National Law and Regulations;
- (c) comply with all laws and regulations (including the Australia Code of the Transport of Dangerous Goods by Road and Rail) relating to the nature, packaging, labelling, storage and carriage of the Goods and must ensure that the Goods are packed in a manner adequate to withstand the ordinary risks of storage, transportation and carriage having regard to the nature of the Goods;
- (d) ensure that any containers, packaging or pallets conform with any requirements of DSE;
- (e) 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 whatsoever without presenting a full description disclosing the nature of such Goods; and
- (f) comply with these Terms.

5. Sender Warranties and Indemnities

5.1. The Sender warrants that:

- (a) the Sender has fully and adequately described the Goods, the nature, weight and measurements of the Goods and complied with all applicable laws about notifications, classification, description, labelling, transport and packaging of the Goods;
- (b) any person who delivers the Goods to DSE for Carriage for or on behalf of the Sender is authorised to do so and to sign any note or documents in respect of the Goods for the Sender; and
- (c) the Sender has the authority of each person that has an ownership or other interest in the Goods to deal with the Goods in accordance with, or as contemplated by, these Terms.

5.2. If any person makes a Claim or commences proceedings against DSE alleging an interest in any part of the Goods, then the Sender indemnifies each DSE Indemnified Party from and against all Losses suffered or incurred by any one or more DSE

Indemnified Party arising from or in connection with a breach of the warranties or obligations of the Sender set out in clauses 4 and 5.

- 5.3. DSE holds for itself and on trust for each other DSE Indemnified Party the benefit of each indemnity in these Terms expressed to be for the benefit of a DSE Indemnified Party.

6. Right to Subcontract

- 6.1. DSE or any Subcontractors, or both, shall be entitled to subcontract the whole of or any part of the Carriage on such terms as DSE or the Subcontractor thinks fit.

7. Delivery of Goods

- 7.1. DSE is authorised to deliver the Goods to the Delivery Location or, if the Sender or the Receiver makes a Re-delivery Request, to the Re-delivery Location. It is expressly agreed that DSE will be taken to have delivered the Goods if DSE has delivered the Goods to either the Delivery Location or the Re-delivery Location, regardless of a Re-delivery Request.
- 7.2. If the Delivery Location or Re-delivery Location (as applicable) 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 Goods at the Delivery Location or the Re-delivery Location (if applicable) and such action shall constitute valid delivery by DSE;
 - (b) return the Goods to the Sender and charge the Sender any costs incurred by DSE in the unsuccessful delivery attempt; or
 - (c) store the Goods, in which case the Sender must pay or indemnify DSE for all costs and expenses incurred by DSE in connection with such storage.
- 7.3. In the event that DSE stores the Goods under clause 7.2(c), DSE will deliver the Goods to the Receiver at a time mutually agreed between the parties. The Sender must pay any costs incurred by DSE for the initial delivery, the re-delivery and storage fees.
- 7.4. DSE or any Subcontractor, or both, may refuse to accept a Re-delivery Request for any reason, including (but not limited to) the following:
- (a) the Receiver has not completed and executed the relevant delivery or re-delivery documentation in a form satisfactory to DSE;
 - (b) the equipment required to unload the Goods is not available at the Re-delivery Location;
 - (c) access to the premises at the Re-delivery Location is restricted in which case clause 7.2 will apply;
 - (d) DSE has not received reasonable notice of the Re-delivery Request or has already commence or completed delivery of the Goods to the Delivery Location (or both).
- 7.5. For the purposes of the Rates Schedule and the calculation of the Charges, the Sender acknowledges and agrees that:
- (a) Relocation Time is added to every Carriage depending on the vehicle size, duration of the Carriage and start and finishing locations of the Carriage;
 - (b) for a Carriage which is to be invoiced by DSE on hourly rates, the time for such Carriage is calculated from when the driver arrives to the first pickup location to when the driver finishes at the last delivery location. Relocation Time is then added;

- (c) for 'depot to depot' Carriages:
 - (1) the time for such Carriage commences and concludes at the DSE local branch of operation, with a minimum time of 60 minutes; and
 - (2) no Relocation Time is added.

8. Handling of Goods

- 8.1. If the Sender expressly or implicitly instructs DSE to use, or it is expressly or implicitly agreed that DSE will use, a particular method of handling or storing the Goods or a particular method of Carriage, DSE will give priority to that method but if DSE cannot conveniently adopt that method, the Sender authorises DSE to adopt another method, at the discretion of DSE.
- 8.2. DSE may, in the absolute discretion of DSE, notwithstanding any prior instruction or agreement between the Sender and DSE, select the route of Carriage or place of storage of the Goods.
- 8.3. If any identifying document or mark in respect of the Goods is lost, damaged, destroyed or defaced:
 - (a) DSE may open any wrapping, packaging or container to inspect the Goods in order to determine any one or more of the nature, condition, ownership and destination of the Goods;
 - (b) in the event of 8.3(a) occurring, to the fullest extent permitted by law, DSE accepts no liability for any Loss however arising or incurred.
- 8.4. Where DSE considers the mode of Carriage or route quoted (if any) is not, at the time the Goods are to be carried, the most practical or feasible route or mode of Carriage to be used, DSE reserves the right to vary the mode of Carriage or route, or both and charge any extra costs thereby incurred to the Sender.

9. Insurance

- 9.1. DSE has no obligation to, and does not, arrange insurance for the Goods or the Carriage of the Goods. Insurance for the Goods and the Carriage of the Goods is the responsibility of the Sender and is at the cost of the Sender.
- 9.2. If the Sender requires DSE to arrange insurance cover for the Goods or the Carriage of the Goods, or both, in respect of an Order, DSE may, but is not obliged to, arrange the required insurance for an additional fee, as advised by DSE to the Sender. The Sender agrees to pay such additional fee to DSE.
- 9.3. DSE may, at its sole discretion, require the Sender to arrange its own insurance cover for the Goods or the Carriage of the Goods, or both, and include DSE as an insured party on that insurance policy.
- 9.4. The Sender must provide twenty-four (24) hours prior written notice to DSE on any occasion where the combined value of the Goods loaded on one vehicle exceeds A\$250,000.
- 9.5. Should DSE become liable for any compensation which is to be met by a payout under an insurance policy, the Sender agrees to compensate DSE for any insurance excess paid by, or on behalf of, DSE.

10. Return of Pallets

The Sender is at all times responsible for the return of any pallets used in the Carriage of the Goods to the pallet owner or other person nominated by the pallet owner. The Sender may request DSE, in writing, to collect and return pallets as

required under this clause. If DSE agrees to collect and return any pallets as requested by the Sender, the Sender must pay DSE an amount as shown in, or calculated in accordance with, the Rates Schedule, or such other amount as may be agreed in writing between DSE and the Sender. The Sender must not transfer any pallets to any account DSE may have with a pallet owner.

11. Extension of Exemptions to Subcontractors

- (a) Every exemption, limitation, condition and provision contained in these Terms and every right, exemption from liability, defence and immunity of whatsoever nature applicable to DSE to which DSE is entitled under these Terms shall also be available and shall extend to protect:
- (b) all Subcontractors
- (c) every servant, employee or agent of DSE or of a Subcontractor;
- (d) every other person by whom the Carriage or any part thereof is performed or undertaken;
- (e) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 11(a), (b) or (c),

(each a **Benefiting Party**), and for the purposes of this clause 11 DSE is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of each Benefiting Party.

12. Risk

The Goods will be loaded, collected, carried, transported, unloaded, delivered and stored at the risk of the Sender.

13. Charges

- 13.1. The Sender must pay to DSE, in accordance with these Terms.
 - (a) all Charges for the Carriage of Goods; and
 - (b) such other amounts payable by the Sender to DSE under these Terms.
- 13.2. All Charges set out in the Rates Schedule are exclusive of GST and are correct at the time of entry into these Terms. DSE may at any time, in its absolute discretion, amend the Rates Schedule by giving 3 business days' written notice to the Sender. If the Sender does not agree to the amended Rates Schedule the Sender may cancel any Order which DSE has not yet fulfilled or commenced.
- 13.3. A fuel levy may apply in addition to the Charges in accordance with the Fuel Levy Schedule. The fuel levy may be changed by DSE by giving at least 3 business days' notice of the change to the Sender.
- 13.4. Additional costs and charges may apply for Carriage of Goods to areas outside of metropolitan areas, in accordance with the Rates Schedule.
- 13.5. DSE may charge the Sender an additional amount in respect of any delay in loading or unloading in accordance with the Rates Schedule, unless such delay arose solely from the default of DSE. Any labour or the use of mechanical equipment, or both, to load and unload the Goods shall be the responsibility of, and at the expense of, the Sender.
- 13.6. Where the Sender cancels an Order within two (2) hours before the scheduled pick-up time or if the Goods are not available to be loaded at the scheduled pick-up time,

DSE may charge the Sender the minimum hours in accordance with the Rates Schedule in the case of an hourly hire job, or 50% of the quoted job.

- 13.7. The Charges shall be considered payable as soon as the Goods are loaded and dispatched from the Sender's premises or accepted for storage (whichever occurs first) and the Sender will be and remain responsible to DSE for all its proper charges incurred for any reason.

14. Invoicing

- 14.1. If the Sender has an account with DSE then, DSE will invoice the Sender weekly and the Sender must pay DSE the full amount stated in each invoice in Australian dollars within 14 days of the date of the invoice, or as otherwise agreed between DSE and the Sender in the Rates Schedule.
- 14.2. If the Sender defaults on the payment of any money payable under these Terms and the amount remains outstanding for a period of more than 7 days, then DSE may do any one or more of the following:
- (a) suspend performance of the obligations of DSE under these Terms until the amount outstanding is paid in full;
 - (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, this rate being a genuine estimate of the damages suffered by DSE as a result of the payment default; and
 - (c) suspend the access of the Sender to the online portal of DSE.

15. Roads Tolls

- 15.1. If road tolls are incurred in connection with the Carriage of the Goods, the Sender agrees to reimburse DSE for an amount equivalent to those toll amounts with an additional 10 per cent fee, and such reimbursement amounts will be added to, and payable at the same time as, the Charges.

16. Carrier's Lien

- 16.1. DSE will have a lien on the Goods (and any documents relating to the Goods) and over any other goods of the Sender in the possession of DSE (and any documents relating to such goods) for an amount equal to all sums owing by the Sender to DSE.
- 16.2. If the Charges are not paid when due, DSE shall have the right to, in addition to any other rights DSE may have:
- (a) store the Goods as DSE thinks fit, and charge the Sender for such storage; and
 - (b) open any packaging and sell any part or all of the Goods as DSE thinks fit and apply the proceeds of sale to discharge the lien and costs of sale without notice to the Sender.

17. Uncollected Goods

- 17.1. The Sender warrants that it is aware of and understands all applicable legislation relating to the disposal of uncollected goods.

18. Nature of goods and packaging

- 18.1. DSE does not accept Carriage of the following Goods unless otherwise agreed in writing:
- (a) Dangerous Goods;
 - (b) jewelry & precious metals;
 - (c) cash & bonds;
 - (d) livestock; and
 - (e) explosives.
- 18.2. The Sender shall be liable for all loss and damage caused by Goods which are Dangerous Goods.
- 18.3. If, in the opinion of DSE, the Goods are or are likely to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, DSE may at any time destroy, dispose of, abandon or render harmless those Goods without compensation to the Sender and without prejudice to the rights of DSE to receive any payments from the Sender (including Charges) pursuant to these Terms.

19. Claim

- 19.1. Subject to any rights the Sender may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under these Terms:
- (a) all Claims against DSE must be made in writing to the office of DSE in the State in which the Order is made within seventy-two (72) hours of delivery being effected; and
 - (b) failure by the Sender to notify DSE of a Claim within the time referred to in clause 19.1(a) is evidence of satisfactory performance by DSE of the obligations of DSE under these Terms.

20. Limitation of Liability

- 20.1. Subject to any rights the Sender may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under these Terms, all representations, warranties, conditions and undertakings are excluded to the fullest extent permitted by law and DSE is not liable to the Sender or to any other person for either or both of the following, to the fullest extent permitted by law:
- (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 Subcontractors;
 - (b) any Consequential Loss,
- even if notified of the possibility of that potential loss, damage, injury or liability and irrespective of whether such loss, damage, injury or liability is due to negligence, breach of contract or any other cause.
- 20.2. Subject to any rights the Sender may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under these Terms, if DSE is found to be liable to the Sender or any person acting for the Sender, the liability of DSE is limited to:
- (a) the payment of the cost of having the Carriage supplied again; or
 - (b) supplying the Carriage again.

- 20.3. All the rights, immunities and limitations of liability in these Terms shall continue to have full force and effect in all circumstances and notwithstanding any breach of these Terms by DSE.

21. Driver Tracking

- 21.1. Driver tracking is available in limited circumstances only. The Sender acknowledges and agrees that:
- (a) driver tracking may not be available for a Carriage; and
 - (b) driver tracking may not be accurate.
- 21.2. The Sender must not make any Claim against DSE in respect of, or in connection with, any one or more of the matters set out in clause 21.1 or with respect to driver tracking generally.

22. Variations to Terms

- 22.1. These Terms may be changed by DSE from time to time by DSE giving notice of the amendment to the Sender. Notice is deemed given (whether or not actually received) when DSE does any of the following:
- (a) sends notice of the amendment to the Sender at any address (including an email address) supplied by the Sender;
 - (b) publishes the amended terms on its website or any other digital platform; or
 - (c) displays the amended terms at premises from which DSE conducts its operations.
- 22.2. No variation of these Terms proposed by the Sender is binding on DSE unless such variation is in writing and signed by or on behalf of DSE.

23. Cubic conversion

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

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.

25. Disputes

- 25.1. If a dispute arises relating to these Terms or any Carriage of Goods (except in regard to payments due to DSE), the parties agree to negotiate to settle the dispute with the assistance of an independent expert agreed upon between DSE and the Sender. If DSE and the Sender cannot reach agreement upon the appointment of an independent expert, then either DSE or the Sender may request the then current Chair (or the Chair's designated representative) of the Resolution Institute to appoint such an independent expert. The costs of the independent expert shall be borne equally between DSE and the Sender.
- 25.2. If DSE and the Sender are unable to resolve a dispute within 30 days of the appointment of the independent expert, then either DSE or the Sender may commence legal proceedings to resolve the dispute.

- 25.3. Nothing in this clause 26 shall prevent either DSE or the Sender from seeking urgent interlocutory relief from the courts.

26. Confidentiality

- 26.1. A party must not, during or after the term of these Terms, disclose to any person any Confidential Information of the other party except (and only to the extent required):
- (a) to give effect to or enforce these Terms;
 - (b) to obtain advice from, or make confidential disclosure to, accounting, financial, legal or other professional advisors or insurers;
 - (c) to its directors and managers;
 - (d) if required by law or legally binding order of any court, government, semi-government authority or judicial body; or
 - (e) with the prior written consent of the disclosing party.
- 26.2. Without limiting clause 26.1, a party must not, during or after the term of these Terms, use or attempt to use any Confidential Information of the other party in any manner which may cause injury or loss to the other party or in any manner other than that contemplated by these Terms.

27. Terms

- 27.1. These Terms constitute the whole contract between DSE and the Sender with respect to the subject matter of these Terms and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in these Terms will have any effect from the date of these Terms.
- 27.2. Each Order is not a separate contract but forms a part of these Terms between DSE and the Sender, together with any credit application, guarantee and indemnity or other contractual documents.
- 27.3. Subject to law and whether or not the Sender has executed a copy of these Terms:
- (a) each offer or request made by the Sender to DSE for the supply of the Carriage of Goods shall be deemed to be made subject to the conditions in these Terms; and
 - (b) each supply of the Carriage of Goods by DSE to the Sender shall be deemed to be made in accordance with the conditions in these Terms, despite any contrary provision in any offer or request made by the Sender to DSE, or otherwise.

28. 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 New South Wales in respect of all matters arising out of or relating to these Terms, their performance or subject matter.

29. Waiver

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

30. Invalidity

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms shall have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

31. Assignment

- 31.1. The Sender must not assign any of the rights of the Sender pursuant to these Terms without the prior written consent of DSE, which may be refused in the absolute discretion of DSE. Any consent by DSE will not release the Sender from any obligation of the Sender pursuant to these Terms.
- 31.2. DSE may assign all or any of the rights of DSE pursuant to these Terms.

32. No Agency

The Sender will not by virtue of these Terms be, or for any purpose be deemed to be, an agent of DSE.