

Emmerson Transport Limited

Terms of Trade



1. Definitions

- 1.1. *ETL* means all and any of Emmerson Transport Limited, their related companies, servants, agents and subcontractors.
- 1.2. *Customer* means the person acquiring Services from ETL and includes the shipper, consignee, receiver, owner or bailor of the Goods.
- 1.3. *Goods* means the whole or any part of the things tendered by the Customer to ETL for Services under this contract.
- 1.4. *PPSA* means the Personal Property Securities Act 1999.
- 1.5. *Regulations* means all laws and other requirements relating to the nature, condition and packaging of the Goods, and any requirement of any harbour, dock, airport, railway, shipping, customs, warehouse or other place or authority.
- 1.6. *Services* means all services supplied by ETL to the Customer (whether gratuitously or not) and includes but is not limited to any advice or information, carriage, storage, lifting, packing, warehousing, handling, installation, removal, assembly, erection or insurance of the Goods, and arranging provision of these Services by a third party.
- 1.7. *Unit* of Goods has the meaning in section 247 of the Contract and Commercial Law Act 2017.

2. Contract

- 2.1. All Services provided by ETL to the Customer are provided pursuant to these terms of trade, which may not be varied except in writing signed by ETL.
- 2.2. These terms of trade constitute a contract for carriage on declared terms.

3. Customer's obligations for Goods

- 3.1. The Customer shall comply with all Regulations relating to the Goods, assist ETL to comply with all Regulations, and pay the expenses and charges incurred by ETL to comply with Regulations.
- 3.2. The Customer shall not tender any dangerous Goods for carriage or storage without giving prior notice to ETL with a full description thereof. If ETL considers on reasonable grounds that any Goods are dangerous, ETL may refuse to carry or store the Goods and may destroy, abandon or render harmless such Goods without compensation to the Customer, and without prejudice to ETL's right to freight and charges.
- 3.3. The Customer warrants that all information provided by the Customer to ETL in relation to the Goods is accurate and adequate for ETL to perform the Services, and it is entitled to have the Goods transported and/or stored by ETL.

4. Method and route of transportation

- 4.1. Pending forwarding and delivery, the Goods may be held at any place at the sole discretion of ETL at the Customer's expense.
- 4.2. ETL may in its discretion use any means of transport or storage whatsoever; transfer the Goods from one conveyance to another including transshipment; unpack and remove Goods which have been stowed into a container and forward the same in a container or otherwise; proceed by any route; load or unload the Goods at any place and store the Goods at any such place; comply with any orders, directions or recommendations given by any government or authority or any person or body acting or purporting to act as or on behalf of such government or authority.

5. Delivery

- 5.1. ETL shall deliver the Goods to the place specified by the Customer.
- 5.2. If the Customer or receiver fails to take delivery of the Goods, ETL may unstow, store or dispose of the Goods at ETL's discretion at the sole risk and cost of the Customer.

6. Freight and charges

- 6.1. ETL may charge reasonable freight and other charges for the provision of the Services. This clause is subject to any written schedule of charges agreed between ETL and the Customer.
- 6.2. ETL may increase its freight and other charges to include any increases in fuel taxes, Road User Charges, and any other government charges, levies or taxes affecting the carriage or storage of Goods or any other aspect of the Services.
- 6.3. ETL may apply a Fuel Adjustment Factor (FAF) to the schedule of rates agreed with the Customer. The FAF may increase or decrease depending on movements in fuel prices charged to ETL by its fuel suppliers.
- 6.4. The Customer shall pay the freight and charges in full 30 days from the date of the invoice issued by ETL. This clause is subject to any written schedule of payment terms agreed between ETL and the Customer.
- 6.5. If the Customer fails to pay in accordance with clause 6.3:
 - (a) ETL may terminate the Customer's credit immediately;
 - (b) the Customer shall pay interest on the overdue amount at the rate of 24% per annum calculated daily;
 - (c) the Customer shall pay all costs and expenses, including debt collection charges and

commission, and legal fees on a solicitor-client basis, incurred by ETL in recovering any overdue amount.

7. Limitation of ETL's liability

- 7.1. Except as provided in clause 7.3, risk in the Goods shall remain with the Customer at all times during the performance of the Services, and it shall be the Customer's sole responsibility and cost to arrange insurance cover for the Goods.
- 7.2. Except as provided in clause 7.3, ETL has no liability (whether in contract, tort or otherwise) for loss of or damage to the Goods, consequential losses howsoever arising, or delay in delivery of the Goods.
- 7.3. ETL's maximum liability for loss of or damage to the Goods caused intentionally by ETL is limited to \$2,000.00 for each Unit of Goods lost or damaged, and ETL shall have no liability for consequential losses arising therefrom.
- 7.4. If ETL pays for any loss or damage to the Goods, ETL shall have the right to take possession and ownership of the Goods.
- 7.5. If the Services are being acquired by the Customer for business purposes, the Consumer Guarantees Act 1993 shall not apply.

8. Customer's indemnity

- 8.1. The Customer indemnifies ETL for any loss, damage or charges caused by the Customer's breach of this contract.

9. Subcontracting

- 9.1. ETL may in its discretion subcontract the whole or part of the Services to a subcontractor, and the terms of this contract shall apply as between the Customer and the subcontractor as if the subcontractor were ETL.

10. Claims

- 10.1. Upon the Customer signing ETL's Proof of Delivery document, the Customer accepts the Goods have been delivered in good and undamaged condition, unless the damage is specified by the Customer on the Proof of Delivery document.
- 10.2. Any claim by the Customer in connection with the Services must be notified in writing to ETL within 7 days after the Goods are delivered or should have been delivered by ETL.
- 10.3. The Customer may not commence any claim or proceeding in any court or tribunal against ETL unless the Customer has given notification in accordance with clause 10.1, and the claim or proceeding is commenced within 12 months after the Goods are delivered or should have been delivered by ETL.

11. Force majeure

- 11.1. Neither party shall be liable for any failure or delay in the performance of its obligations under this

agreement for any period where such failure or delay is due to causes beyond its control including but not limited to acts of God, war, pandemic, strikes or labour disputes, embargoes, government orders or actions or other similar event.

12. Storage services

- 12.1. If the Services provided include storage of the Goods, the following terms shall apply, in addition to the terms in clauses 1 to 11.
- 12.2. The Company may store the Goods at the location, and move the Goods to different storage locations, as the Company thinks expedient. The Company may charge for the relocating of Goods.
- 12.3. The Company may store the Goods in the manner it thinks expedient, and shall have no liability in respect of the manner of storage.
- 12.4. The Customer warrants that the Goods are safe to be held and stored by the Company, and the Goods shall not contaminate or otherwise damage the storage premises or other goods in the premises. The Customer shall indemnify the Company for any breach of this warranty.
- 12.5. In relation to Goods stored by the Company, the Customer grants to the Company a security interest in the Goods under the PPSA to secure the payment of all amounts, liabilities and obligations owed by the Customer to the Company, whether or not in relation to the Goods being stored.
- 12.6. The Company may require the payment of its charges in connection with the Goods and any other amounts owed by the Customer to the Company before the Company releases or delivers the Goods.
- 12.7. The Customer agrees that sections 108, 109, 111(1), 112, 114(1)(a), 120(1), 122, 133, 134, 116, 120(2), 121, 125, 126, 127, 129, 131, and 128 of the PPSA shall not apply.

**Please [click here](#) to view the Personal Property Securities Act 1999.*