

TERMS AND CONDITIONS OF CONTRACT OF CARRIAGE

1. The Company G.M. (MELBOURNE) HOLDINGS PTY LTD (ABN 92 005 905 046) trading as Golden Messenger carries on business acting as an agent for both Senders and Carriers of goods and providing communication, management, accounting and marketing services. This document sets out the terms and conditions of the contract between the Sender and the Company and the Sender and the Carrier.
2. In this Agreement unless the contrary intention appears:-
"Carrier" means the Company and the carriers for whom the Company acts as agent. "Carrier Agreement" means any written agreement under which the Company as agent agrees to endeavour to secure orders for the carriage of goods by a Carrier. "Company" means G.M. (MELBOURNE) HOLDINGS PTY LTD (ABN 92 005 905 048), or such other body corporate as may from time to time trade under the names of Golden Messenger, its successors and assigns. "Goods" includes, but is not limited to documents. "Melbourne Metropolitan Area" means the area designated on the Melbourne Metropolitan Area Grid Map prepared from time to time and used by the Company. "Persons" and words importing persons include bodies corporate. "Sender" means the person who requests the Company to arrange the carriage of the goods. "Service" means the transportation of goods. Where a party comprises two or more Persons the agreement shall bind them jointly and severally. Words importing the singular shall include the plural and vice versa. Words importing the masculine shall include all genders. Reference to any legislation shall include any modification or re-enactment of that legislation and the parties shall include their successors and assigns.
3. The Carrier is not a common carrier and accepts no liability as such.
4. The Carrier reserves the right in its sole discretion to refuse the carriage of Goods without giving explanation for such refusal.
5. Responsibility for packaging, insuring and accounting for the Goods before, during and after transit rests solely with the Sender.
6. Except as is otherwise provided by this Agreement and as required by law the Carrier shall not be liable for any loss or damage whether direct or consequential (including but without limitation, loss or damage due to misdelivery, failure to or delay in delivery, deterioration of goods and loss or damage due to the negligence of the Carrier, its servants or agents) in any way arising out of or in connection with this Agreement. However, if notwithstanding this provision, the Carrier is found to be liable for such loss or damage it is agreed that the extent of the Carrier's liability (to the fullest extent permitted by law) shall be limited, at the option of the Carrier to either:
 - (a) provision of the Service again;
 - (b) a refund of any charge made for the Service; or
 - (c) payment of damages equal to an amount no greater than five times the charge made for the provision of the Service.
7. The Carrier shall determine the method and route of transport and method of handling and storage of the Goods.
8. The Carrier shall be deemed to have delivered the Goods to the address given by the Carrier if:
 - (a) at the address, he obtains from any person a receipt or a signed delivery docket, run sheet or consignment note for the Goods; or
 - (b) there appearing to him to be no adult person in attendance at the address, he leaves the Goods at the address.
9. The Sender warrants that he is either the owner of the Goods or is authorised to enter into this Agreement and that any person who arranges delivery of the Goods on behalf of the Sender is authorised to enter into this Agreement and sign any document on behalf of the Sender.
10. The Sender shall comply with all laws relating to the packaging and transport of the Goods and upon delivery to the Carrier shall disclose to the Carrier the nature and fragility of the contents.
11. The Sender warrants that the Goods are not explosive, flammable or dangerous and shall indemnify and keep indemnified the Carrier against all loss, damage and liability arising as a consequence of a breach of this warranty.
12. The Carrier may, but is not required to, spend such sums as the Carrier may, in its sole discretion consider necessary to preserve or protect the Goods in the event of accident, delay or otherwise.
13. The charge fixed by the Carrier for the carriage of the Goods shall be paid when the Goods are loaded and despatched from the Sender's premises unless the carrier has agreed otherwise in which event the Carrier's terms for payment are as follows:
 - (a) payment of all of the charge shall be made and received within seven days of the statement date;
 - (b) statement shall be rendered by the Carrier fortnightly or at such other times as the Carrier may determine and a fee fixed by the Carrier from time to time, shall be paid by the Sender for that statement;
 - (c) upon written notification by the Carrier to the Sender that from a date specified in the notice the Carrier shall allow a credit of 10% or 3% for charges if payment of the charges is received by the Company as agent for the Carrier within 7 days or 28 days respectively of statement date provided that no amounts on the statement are overdue and payment of the Sender's current balance owed to the Company on behalf of a Carrier is made in full. The credit allowance will appear on the next statement sent to the Sender;
 - (d) Should the Sender fail to pay the Carrier's charges by the due date, the carrier may take such action as it considers appropriate to recover the amount owing including, but not limited to, the following:
 - (i) The Carrier shall have a general lien upon the Goods or such part of them as are in its possession under this Agreement for all monies payable to it by the Sender.
 - (ii) Upon giving the Sender not less than one week's notice in writing (or if the Sender cannot be located upon publishing such notice in a relevant newspaper) the Carrier is entitled to open and sell any part of the Goods by public auction and after deduction of all costs of sale apply the residue in payment or reduction of the outstanding charges. Any surplus then remaining shall be paid to the Sender.
 - (iii) The Carrier may enter upon any premises occupied by the Sender, seize such goods and assets as may be owned by the Sender having an approximate resale value sufficient to meet the unpaid charges, give the Sender at least seven days notice in writing of its intention to sell those goods and assets by public auction and upon the expiration of that period may sell the goods and assets by public auction and after deducting from the proceeds the costs of seizure and sale and the unpaid charges pay any residue to the Sender. The Sender agrees that such action may be taken by the Carrier or the Company as his agent, that the Carrier shall not be liable to any action for trespass and that if forced entry to the premises is necessary shall not be liable to any action for damages or to other proceedings and shall indemnify and keep indemnified the Carrier against any liability arising from such seizure and sale.
All costs and expenses incurred by the Carrier as a consequence of the Sender's failure to pay the charges by the due date, including legal costs on a solicitor/client basis are payable by the Sender.
If the Carrier assigns the debt owing by the Sender the Sender shall pay the debt to the assignee as requested by the Carrier.
14. The Carrier reserves the right to vary its trading terms by giving written notice of the variation to the Sender. The Carrier reserves the right to vary its charges at any time.
15. Save for a Sender's first purchase of the Carrier's charge vouchers, all vouchers of the Carrier are non-refundable and non-transferrable. First purchase vouchers may only be returned for credit providing they are returned and received prior to the expiration of fourteen days of original order. Vouchers are valid for use only for a period of three months from date of issue to Sender and shall not be used to credit the Sender's account with the Carrier.
16. Any claim by the Sender that the Goods were damaged while under the control of the Carrier shall be made in writing to the Company within 48 hours of the time of delivery of the Goods any other claim shall be made in writing to the Company within 14 days of the date of delivery of the Goods. If no such claim is made within that time the Sender shall be deemed to have forever waived and foregone any such claim and to have admitted indebtedness to the Carrier for the full amount in the relevant statement. Under no circumstances, however, shall any complaint affect or diminish the obligation of the Sender to pay the amount charged by the due date although such payment shall be held by the Carrier on trust until resolution of that complaint.
17. The Sender covenants and agrees with the Company as follows:
 - (a) The Sender acknowledges that the Company has a contract with the Carrier which prohibits the Carrier and his employees carrying Goods for the sender for one year after the expiration or termination of the Company's contract with that Carrier and the Sender warrants that it will not cause or seek to cause the Carrier or its employees to breach to the terms of that contract with the Company.
 - (b) The Sender shall not during the term of this Agreement (whether fixed or otherwise) and during the period of six months after the expiration of this Agreement enter into any arrangement for the carriage of Goods in the Melbourne Metropolitan Area other than through the agency of the Company, with any person:
 - (i) who is a Carrier; or
 - (ii) who has provided services to the Sender as a Carrier within six months prior to the expiration or termination of his Carrier Agreement and who continues to be restrained by that Agreement; or
 - (iii) who was employed by the Company in a managerial, marketing/sales/customer relations or radio/telephone operating position or by the Carrier at any time during the six month period prior to the expiration or termination of this Agreement; or
 - (iv) who has performed the Service for the Sender at any time during the six-month period prior to the expiration or termination of this Agreement, unless prior to entering into any such arrangement, the Sender has given the Company not less than six-month notice in writing of its intention to do so.
18. The termination or expiration of this Agreement does not operate to terminate the provisions of clause 17, which remain in full force and effect and binding on the Sender.
19. The Sender and the Carrier agree that the Company is entitled to be provided with such information and reports from credit reporting agencies and elsewhere as it may request concerning the Sender's and Carrier's credit history and ability to pay present and future debts, in order that the Company may determine whether to provide and continue providing credit to the Sender and Carrier, and that this Agreement may be produced as evidence of that agreement by the Sender and the Carrier.
20. This Agreement contains the entire agreement and understanding of the parties relating to the matters referred to in this Agreement and there is no other understanding, agreement, warranty or representation whether express or implied binding on the parties.
21. The waiver by one party of a breach or default by the other party to any provision of this Agreement is not to be construed as a waiver of any subsequent breach of the same or other provisions.
22. In the event of any of the clauses or sub-clauses of this Agreement being held to be invalid or ineffective by any court for illegality or for any reason whatsoever, the Agreement shall be construed and shall be binding upon the parties as if the offending, illegal or invalid clause, sub-clause or condition had been deleted from the Agreement altogether.
23. This Agreement shall be governed by and construed in accordance with the law of the State of Victoria and the parties submit to the jurisdiction of the Victorian courts.
24. All notices or other communications under this Agreement shall be in writing and may be served personally, by pre-paid mail (in which case service shall be deemed to have taken place two days after posting) or by telex or by facsimile transmission (in which case service shall be deemed to be on the day following dispatch) to the addresses as disclosed in this Agreement.
25. Privacy Act: The Consignor agrees that Golden Messenger may make any inquiries it deems necessary to investigate the Consignor's creditworthiness including undertaking inquiries with financial institutions, credit reporting agencies, any personal credit and/or consumer credit information providers ("the Sources"). The Consignor authorises the Sources to disclose any information concerning its creditworthiness in their possession to Golden Messenger, pursuant to section 18E(1) of the Privacy Act. The Consignor agrees that Golden Messenger may disclose any information in its possession concerning the Consignor's creditworthiness to the Sources.