

TERMS AND CONDITIONS

The parties agree to the following terms:

OUR DETAILS	
NAME	Morrows Logistics Pty Ltd as trustee for Morrows Unit Trust
ABN	61 829 569 947
ADDRESS	150-160 Bridge Road, Keysborough VIC 3173
PHONE	03 9767 2600
EMAIL	sales@morrowslogistics.com.au

I Services

I.1 Application of agreement

- (a) You may accept this agreement by doing either of the following:
 - (i) by confirming your agreement in writing (including by email), including when agreeing to our quote or completing any connote in respect of transportation services; or
 - (ii) signing the credit terms and conditions.
- (b) Once you accept this agreement, this agreement (as amended from time to time) will apply to all subsequent transportation services provided by us to you until we notify you in writing otherwise.

I.2 Provision of services

- (a) We will provide you with the transportation services in accordance with your reasonable delivery instructions.
- (b) We will only accept your delivery instructions and the provision of our transportation services in writing (including by email).

I.3 Refusal of services

- (a) We may refuse to provide our transportation services to you in our absolute discretion at any time prior to our acceptance of the particular transportation services in accordance with this agreement.
- (b) We may close your account with us at any time by giving you seven calendar days prior written notice. Any outstanding balance of our fees and charges becomes immediately due and payable by you upon closure of your account.

I.4 Collection

- (a) If you request us to collect your goods, we will charge you an additional fee in accordance with clause 4.1(b) to collect the goods from the collection location unless:
 - (i) there are at least four pallets of goods; or
 - (ii) the goods weigh at least 4,000 kilograms.
- (b) We will use our reasonable endeavours to collect the goods between 12 pm (noon) and 3 pm from the collection location. You must have the goods available between these times for collection.
- (c) Any acknowledgement that we provide you that we have collected the goods is only an acknowledgement of the amount of items collected by us. Where the goods are on pallets or within containers, it is only an acknowledgement of the number of containers or pallets collected, and not the number of items contained therein.
- (d) You authorise us to list you as the consignor in any relevant documentation, including any connote.

1.5 Subcontracting

We may subcontract or delegate any of our transportation services to be provided in connection with this agreement to a third-party provider if required for our operational convenience.

1.6 Special requirements

- (a) Unless expressly agreed by us in writing, we will not provide temperature or humidity-controlled transportation services for the goods.
- (b) If you provide us with goods which require temperature or humidity-controlled conditions without us first consenting in writing to transport such goods in temperature or humidity-controlled conditions, the transport of those goods will be at your sole risk.
- (c) Any transportation services to a residential address or farm address will incur an additional fee in accordance with clause 4.

2 Delivery

2.1 Delivery instructions

- (a) You must provide all delivery instructions for transportation services in writing by email or fax and by completing our then current 'Freight Order Manifest'. Any 'Freight Order Manifest' must generally be received before 12:00 pm on a business day.
- (b) Any delivery instructions for transportation services to be provided the next day must be received by us before 11:59 pm (i.e. midnight) on the day before. For example, any delivery instructions for transportation services on Tuesday must be received by us before 11:59 pm on Monday.
- (c) You acknowledge that we rely upon the accuracy and completeness of your delivery instructions, and that we cannot and will not independently verify this information in any way.

2.2 Delivery time

- (a) We will use our reasonable efforts to:
 - (i) deliver the goods the next day if the transportation services are requested for the next day under the delivery instructions; and
 - (ii) accommodate morning and afternoon delivery requests. We cannot guarantee that morning and afternoon delivery requests can be fulfilled or accommodated.
- (b) Any delivery instructions for a specific delivery time (including morning and afternoon delivery requests) will incur an additional fee in accordance with clause 4.
- (c) You acknowledge that the order of any deliveries will be in our discretion, and in accordance with our then current 'Set Day Zone Route' allocations.
- (d) If we use a third-party provider to provide the transportation services, you acknowledge that:
 - (i) the delivery time is based on the third-party provider's service times; and
 - (ii) the amount of days to deliver the goods to the delivery address does not include the collection day, or any weekend or public holiday days.

2.3 Delivery address and evidence

- (a) You authorise us to deliver the goods to the delivery address. A form of written acceptance of delivery at the delivery address (such as a connote or proof of delivery):
 - (i) is an acknowledgement of delivery of the goods; and
 - (ii) is final and conclusive evidence that our transportation services have been fully provided to you.
- (b) You may authorise us to leave the goods unattended at the delivery address. In this case:
 - (i) any evidence of delivery of the goods at the delivery address constitutes final and conclusive evidence that our transportation services have been fully provided to you;
 - (ii) you are solely responsible if the goods are damaged, lost, stolen, disposed of or defaced in any way; and

- (iii) you agree not to make any claim (including for payment), demand or initiate proceedings in connection with the due and proper provision of our transportation services relating to that delivery.
- (c) If the delivery address is unattended at the time we attend and / or arrive at the delivery address to deliver the goods, and you have not authorised us to leave the goods unattended at the delivery address, we may (in our absolute discretion):
 - (i) deliver the goods to our business premises for storage. We will charge for any storage in accordance with clause 4;
 - (ii) deliver the goods to the original collection location. We will charge for any additional transportation service in accordance with clause 4; or
 - (iii) attempt to make a second delivery at the delivery address. We will charge for any additional transportation service in accordance with clause 4.
- (d) If the delivery address is insufficiently or incorrectly described in your delivery instructions, we may charge you an additional fee in accordance with clause 4.

2.4 Delivery of large items

If the goods include machinery, commercial appliances, domestic appliances, plant and equipment, or any other heavy item, we will:

- (a) deliver the goods to the loading dock at the delivery address. If no loading dock is available at the delivery address, we will deliver the goods to a suitable area (determined in our discretion) at or around the delivery address; and
- (b) not assist with the installation of the goods, or with moving the goods to the installation point on the delivery address.

2.5 Proof of deliveries

- (a) It is our policy to return all proof of deliveries to you. Unless requested by you or the recipient at the delivery address, you acknowledge that we do not keep copies of any proof of deliveries.
- (b) We will charge you an additional fee in accordance with clause 4 if you or the recipient at the delivery address requests us to hold or retain a proof of delivery.
- (c) If we are holding or retaining any proof of deliveries for you (or in connection with any transportation services provided to you), and you (or we) subsequently close your account with us, we will not release the proof of deliveries until all of our fees and charges have been paid by you.

3 Miscellaneous

3.1 Cancellation of orders

If you cancel any transportation services when we have possession of the goods (including after we have collected the goods from the collection address):

- (a) we will charge you an additional fee in accordance with clause 4; and
- (b) if we must return the goods to you (including at the collection address), we will charge you our standard delivery charge under clause 4.1(a).

3.2 Dangerous goods

- (a) You must notify us in writing if our transportation services include any goods which may be considered:
 - (i) dangerous, inflammable, hazardous, noxious, illegal, stolen, explosive, corrosive, environmentally harmful, perishable, live animals or organisms and vermin or pests;
 - (ii) drugs, drug paraphernalia or any type of illicit substance; or
 - (iii) likely to cause a risk to the property, health or safety of any persons.

- (b) If at any time during the transportation services, we identify that you have not provided prior written notice to us of any dangerous goods, we may (in our absolute discretion):
 - (i) without having to pay compensation to you or any third party:
 - (A) destroy those goods at your sole cost; or
 - (B) abandon or dispose of those goods; or
 - (ii) charge you a reasonable additional fee to be determined by us in our absolute discretion.
- (c) If you have provided prior written notice that the goods include dangerous goods, we may:
 - (i) return the goods to the collection address even after accepting possession of the goods; or
 - (ii) take all reasonable measures to reduce the health and safety risk to any of our employees or contractors as required by law.

3.3 Identifying goods

If any identifying documentation of the goods is lost, damaged or defaced, we may open any document, wrapping, packaging or container required by us to identify the goods, or to determine the destination of the particular goods as per your delivery instructions.

3.4 Pallets

- (a) We are not liable or responsible for the exchange, transfer or de-hire of any pallets used in connection with our transportation services. It is your sole responsibility to organise exchange, transfer or de-hire of any pallets with the relevant party directly. For the avoidance of doubt, this clause 3.4(a) includes 'Chep' pallets and 'Locsam' pallets.
- (b) If we need to store any pallet for a period of more than 48 hours due to you or the recipient at the delivery address requesting a hold or delay on our transportation services (including a discrepancy on freight), we will charge you for holding that pallet in accordance with clause 4.
- (c) If the good are stored on a pallet and this pallet is required to be broken down at the delivery address, we will charge you an additional fee in accordance with clause 4.
- (d) We may lease, hire or use any container, pallet or wagon in which or on which the goods may be placed or packed.

3.5 Assistance

You must promptly provide upon request all reasonable assistance, information and documentation to us in connection with the transportation services, including any information or documentation required for us to comply with our obligations at law.

3.6 Insurance

- (a) You must maintain (at your sole cost) insurance in respect of the goods for the total replacement value of the particular goods.
- (b) We may provide insurance in respect of the goods if we expressly consent to do so in writing. We may charge you an additional fee for such insurance in our absolute discretion.

4 Our fees

4.1 Fees and charges

- (a) We will charge you for each occasion that we provide you with our transportation services by either of the following methods:
 - (i) our standard delivery charges (based on origin and destination) which we will notify to you from time to time in writing; or
 - (ii) by weighing the goods and charging you in accordance our weight-based charges which we will notify to you from time to time in writing. If we are charging you weight-based charges, the weight of any pallet or container is included in the weight of the goods. We will notify you in writing if we will charge you on the bases of weight-based charges.

- (b) If one of the items described in the table below occurs or arises, we may charge you the corresponding additional fee(s) and charge(s) per occasion in our absolute discretion.

ITEM DESCRIPTION	ADDITIONAL CHARGE
If you request us to: <ul style="list-style-type: none"> • collect the goods from a collection address; or • collect goods for return or to be on forwarded. 	The corresponding charges are as follows: <ul style="list-style-type: none"> • we will notify the amount of this charge to you from time to time in writing (for example, our rates schedule); or • our standard delivery fee under clause 4.1(a) (charged based on origin and destination).
If you request a specific delivery time, or a morning or afternoon delivery time, for our transportation services.	A surcharge equivalent to the relevant driver's hourly rate.
The fuel surcharge applies to all of our transportation services. The fuel surcharge varies periodically.	Charged as a percentage of the freight charges incurred during an invoicing period. We will notify the amount of this percentage to you from time to time in writing (for example, our rates schedule).
If we are required or requested to store any goods for you in connection with our transportation services.	Charged in accordance with our current storage charges. We will notify the amount of these charges to you from time to time in writing.
We will charge a hand unload fee if: <ul style="list-style-type: none"> • a pallet is required to be broken down at the delivery address; or • a forklift is not available at the delivery address. 	We will notify the amount of this charge to you from time to time in writing (for example, our rates schedule).
If you request for a tailgate service as part of the transportation services.	We will notify the amount of this charge to you from time to time in writing (for example, our rates schedule).
If the delivery address for the transportation services is a residential address or farm address.	We will notify the amount of this charge to you from time to time in writing (for example, our rates schedule).
If we attempt delivery of our transportation services to an address which is insufficiently or incorrectly described in your delivery instructions.	We will notify the amount of this charge to you from time to time in writing (for example, our rates schedule).
If we need to store any pallet for a period of more than 48 hours in accordance with clause 3.4(b).	\$3.50 per day.
If you or the recipient of the goods at the delivery address requests us to hold any proof of delivery.	\$5.00 per week.
If you have cancelled our transportation services: <ul style="list-style-type: none"> • after we have collected the goods but before the goods are loaded for delivery; or • when the goods are on route to the delivery address. 	The corresponding charges are as follows: <ul style="list-style-type: none"> • \$35.00; or • our standard delivery fee under clause 4.1(a).

- (c) All fees and charges in connection with the transportation services and / or this agreement are exclusive of GST. You must pay in addition to our fees and charges the amount of any applicable GST.
- (d) We may review the fees and charges contemplated in this agreement from time to time. We will provide you with prior written notice of any changes to our fees and charges.

4.2 Invoicing and payment

- (a) We will invoice our fees and charges in connection with our transportation services on a weekly basis.
- (b) You must pay each of our invoices within the payment terms on the invoice.
- (c) We will not recognise any application for credit in respect of an invoice which is made seven calendar days after the invoice is provided to you. The terms of any credit or credit application must be in accordance with the terms of our credit terms and conditions.
- (d) We will provide you with all invoices and accounts in connection with this agreement in electronic format (for example, by email).

4.3 Failure to pay

If you fail to pay any of our invoices by its due date, we may:

- (a) charge you interest on any overdue amount from the due date until the date of payment in full. Interest will accrue daily and be calculated at the prime commercial lending rate charged by the Bank of Melbourne plus 2%;
- (b) charge an additional administrative fee determined by us in our absolute discretion; and / or
- (c) refuse to deliver any goods until all overdue amounts have been paid in full.

5 Lien

- (a) We claim a general or particular lien over the goods for all our fees and charges in connection with the transportation services and / or this agreement.
- (b) If any overdue amounts remain unpaid for 30 calendar days after their due date, then we may in our absolute discretion and without notice to you sell the goods by public auction or private contract deducting all expenses of detaining and selling the goods, and applying the net sale proceeds towards overdue amounts payable to us by you.
- (c) We may set-off or deduct from any payment due to you any amount you owe us.

6 Warranties

You represent and warrant that:

- (a) you have fully and accurately described the goods, including the nature, weight and measurements of the goods;
- (b) you are either the owner or the authorised agent of the owner of the goods and you accept this agreement on behalf of yourself and / or the recipient of the goods (or for any other person for whom you are acting on behalf of);
- (c) the goods have been packed to withstand the ordinary risks associated with our transportation services, having regard to the nature of the goods and any packaging or container in which the goods are packed (if relevant);
- (d) you have provided all necessary instructions and information in relation to the handling, care and control of the goods. For the avoidance of doubt, this includes any care instructions regarding the packaging of the goods; and
- (e) you have complied with all requirements of any applicable law (including any law in relation to dangerous goods) relating to the nature, condition, packaging, handling, labelling, storage and carriage of the goods.

7 Limitation of liabilities

7.1 General limitations

- (a) You agree that the use of our transportation services is at your risk. You acknowledge that:
 - (i) to the full extent permitted by law, our liability for breach of any term of this agreement, or implied into this agreement by any law (including the Australian Consumer Law), is excluded;

- (ii) we make no representations nor warranties in respect of the accuracy of the contents, condition, weight or the quality of the goods or its packaging;
 - (iii) we are not a 'consignee' nor a 'consignor' under the *Road Safety Act 1986* (Vic), nor a common carrier under common law; and
 - (iv) any responsibility we have in connection with the goods is discharged upon acceptance of delivery of the goods at the delivery address (include a connote or proof of delivery).
- (b) We expressly provide no warranties in relation to our transportation services. Under no circumstances are we liable or responsible to you or any other person for any loss, damages, costs, expenses or other claims (including incidental damages, consequential damages and loss of profits), as a result of, directly or indirectly, the timeliness of deliveries, failure of performance, error, damage or loss of the goods, or any omission or defect in relation to our transportation services.
- (c) The Australian Consumer Law may give you certain guarantees. Where liability for breach of any such guarantee can be limited, our liability arising from any breach of those guarantees is limited to the total cost of our fees for the particular transportation services.

7.2 Indemnity

You must indemnify us immediately upon demand from and against any loss, cost, damage, expense, claim, demand or liability arising directly or indirectly from or in connection with any claim by the recipient of the goods at the delivery address in respect of:

- (a) the goods in connection with the quality, condition or repair of the goods which is not directly attributable to our conduct; and
- (b) the goods which relates to the period after the goods have been delivered to the delivery address.

8 Disputes

- (a) The parties must settle any dispute in connection with this agreement by mediation. Such mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within seven days of receiving any party's notice of dispute, by a person appointed by the Chair of Resolution Institute, (ACN 008 651 232, Level 2, 13-15 Bridge Street, Sydney NSW 2000) or the Chair's designated representative.
- (b) The parties agree that:
 - (i) the Resolution Institute mediation rules will apply to the mediation; and
 - (ii) the parties must submit the dispute to mediation prior to the initiation of any action or proceeding, other than for interlocutory relief (including, but not limited to, for specific performance) against any other party in order to protect or preserve its rights under this agreement.
- (c) The terms of this clause 8 will not apply to a dispute in relation to our fees and charges as set out in clause 4.

9 General conditions

- (a) The laws of the state of Victoria govern this agreement. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts in the state of Victoria.
- (b) Notices under this agreement must be in writing and may be served by email, post or personally. A notice is regarded as being given:
 - (i) if by email, the date which is marked on the sender's copy of the email;
 - (ii) if by post within Australia, three business days from and including the date of postage; or
 - (iii) if delivered in person, when delivered to the addressee.
- (c) We may assign and / or novate our rights and obligations under this agreement at any time without your prior consent. You may not assign and / or novate your rights and obligations under this agreement without our prior written consent.

- (d) Except for any other contract entered into between the parties, this agreement contains the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to that subject matter is replaced by this agreement and has no further effect.
- (e) A provision of this agreement, or right, power or remedy created under it, may not be varied except as agreed in writing by all parties.
- (f) Any provision of this agreement which is unenforceable or partly unenforceable is, where possible, to be severed to the extent necessary to make this agreement enforceable, unless this would materially change the intended effect of this agreement.

10 Definitions

In this agreement, the following meanings are given to the definitions set out below:

- (a) **Australian Consumer Law** means Schedule 2 of the *Competition and Consumer Act 2010* (Cth);
- (b) **collection location** means the address outlined by you in the delivery instructions for collection of the goods;
- (c) **dangerous goods** means any goods of the type contemplated in clause 3.2(a);
- (d) **delivery address** means the address outlined by you in the delivery instructions for delivery of the goods;
- (e) **delivery instructions** means any delivery instructions provided by you in accordance with clause 2.1;
- (f) **goods** means the goods, items and chattels provided by you in connection with our transportation services;
- (g) **GST** means the goods and services tax. For the avoidance of doubt, GST has the meaning given to that term in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (h) **transportation services** means any individual transportation services provided by us to you in connection with this agreement;
- (i) **we / our / us** means the business set out in the table above titled 'our details'; and
- (j) **you** means the person or entity the subject of this agreement.