

## AUTOTRANS SERVICE CONDITIONS

### 1. Definitions

In these conditions :

"AUTOTRANS" means AUTOTRANS EXPRESS (AUST) PTY LTD ABN 21 080 635 365 and its related bodies corporate within the meaning of that expression in Section 9 of the Corporations Act 2001 (Cth) carrying on business in its own name and under any business name and its officers, servants, agents and Sub-Contractors;

"Customer" means the Person on the front of the Transport Contract or on AUTOTRANS documentation or the Person contracting with AUTOTRANS under these conditions;

"Goods" mean the vehicle, boat, caravan, trailer or motorcycle accepted from the Customer with any container or packaging supplied by or for the Customer;

"Charges" mean AUTOTRANS' quoted charges for Services calculated under its rates schedule or other agreed rates, the charges in 6 and any tax including a goods and services tax ("GST") levied directly on a transaction or supply under these conditions;

"Person" includes any person, firm, corporation, governmental authority or state or federal government;

"Sub-Contractor" means:

- (a) any Person AUTOTRANS arranges to provide Services for the Goods; or
- (b) any Person who is a servant, agent, employee or sub-contractor of AUTOTRANS or any person in (a);

"Services" means the services set out in the Transport Contract and agreed by AUTOTRANS for transport of the Goods, together with a licence to use related information technology systems/processes and software developed by AUTOTRANS and used by AUTOTRANS for those services; and

"Transport Contract" means the agreement that these conditions are annexed to or form part.

### 2. Agreement

- 2.1 AUTOTRANS has agreed to provide the Services to the Customer for the Charges and on these conditions.
- 2.2 AUTOTRANS is not a common carrier and does not accept any liability as a common carrier and may refuse to perform Services for the Goods for any Person or to offer the AUTOTRANS extra warranty in 7 for any Person or Goods.

2.3 In providing the Services, AUTOTRANS relies on the details supplied to it but AUTOTRANS cannot verify and does not admit their accuracy or completeness and, if applicable, a signature by AUTOTRANS is only an acknowledgment for the number of Goods received.

2.4 AUTOTRANS will deliver Goods to other than the delivery address only by special arrangement and provided suitable delivery facilities are available at all hours.

2.5 The Services begin when AUTOTRANS or its agent receives the Goods for transport and continue until delivery of the Goods at the delivery address, or, if the Goods are to be collected from AUTOTRANS, the expiry of 2 working days from delivery of the Goods to the agreed AUTOTRANS depot.

### 3. Customer's Obligations

3.1 The Customer must:

- (a) not tender for Services any volatile or explosive Goods or Goods which are or may become dangerous, inflammable or offensive (including radioactive materials) or which are or may become liable to damage any person or property without first presenting to AUTOTRANS a full written description disclosing the nature of those Goods; and
- (b) make the Goods conform to the AUTOTRANS' requirements and pay any expense AUTOTRANS has to pay if the Customer fails to do so.

### 4. Customer's Warranties

4.1 The Customer warrants :

- (a) it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail and the International Maritime Dangerous Goods Code) about the notification, classification, description, labelling, transport and packaging of the Goods and that, given their nature, the Goods are packed in a proper way to withstand the ordinary risks of the Services;
- (b) the Person delivering the Goods to AUTOTRANS for the Services may sign the Transport Contract;

- (c) it is either the owner or the authorised agent of the owner of the Goods and has full power and authority to deal with the Goods and it accepts these conditions for itself and the intended recipient as well as for any other Person for whom the Customer is acting; and
- (d) subject to any application of the extra warranty in 7 and these conditions, neither it nor any other Person will make an allegation or claim against AUTOTRANS or any other person about the Services.

## 5. AUTOTRANS' Rights

### 5.1 Generally:

- (a) If in AUTOTRANS' opinion the Goods are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, AUTOTRANS may at any time and at the Customer's cost destroy, dispose of, abandon or render them harmless without compensation to the Customer, any intended recipient of the Goods or third party and without prejudice to AUTOTRANS' right to payment of the Charges;
- (b) If the Customer instructs AUTOTRANS to use a particular method of providing the Services AUTOTRANS will give priority to that method but at its absolute discretion AUTOTRANS may provide the Services by another method without notice to the Customer;
- (c) If any identifying document or mark is lost, damaged, destroyed or defaced AUTOTRANS may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership or destination;
- (d) AUTOTRANS may carry, store, redirect, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Goods with others and as principal or agent may arrange for the Services to be provided by any Sub-Contractor on any terms ; and
- (e) AUTOTRANS may, if applicable, lease, hire or use any container or rail wagon in which or on which the Goods may be placed or packed and subject to the terms of any bill of lading, hire lease agreement, equipment hand-over agreement, interchange receipt or other contract for transport whether by sea, rail or road and give any receipt for any container or rail wagon.

### 5.2 For transport of the Goods:

- (a) AUTOTRANS may deliver the Goods at the delivery address given to AUTOTRANS by the Customer or any other address directed by the intended recipient of the Goods who pays for redirection and AUTOTRANS will be taken to have delivered the Goods if at either address AUTOTRANS obtains from any Person an acknowledgement of delivery;

- (b) If the address is unattended or the intended recipient does not take delivery of the Goods, AUTOTRANS may:
  - (1) deposit the Goods at the delivery address;
  - (2) store the Goods; or
  - (3) at the Customer's cost return the Goods to the Customer;
 and any of these actions will constitute delivery of the Goods.
- (c) If AUTOTRANS believes it is necessary or desirable, AUTOTRANS may deviate from the usual route or method of transport.

## 6. Charges

### 6.1

- The Customer must or, if a Person other than the Customer is nominated on the front or on AUTOTRANS documentation, then that Person must:
- (a) unless otherwise agreed, pay AUTOTRANS the Charges in Australian dollars within 7 days of the date of AUTOTRANS' invoice;
  - (b) pay the Charges by weight or measurement as AUTOTRANS selects; and
  - (c) if the Goods are at any time re-weighed or re-measured, pay any proportional additional Charges and, if required by AUTOTRANS, an additional charge of \$10.50 per item;
  - (d) pay AUTOTRANS' expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise, or warehouse authority or other Person;
  - (e) if any of the Goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) which AUTOTRANS becomes liable to pay or pays;
  - (f) supply or pay for labour or machinery or both to load, unload, maintain or protect the Goods;
  - (g) if AUTOTRANS requires, pay an additional charge at industry rates if a Person is not present at the delivery address during normal trading hours or the time agreed or if there is any delay outside AUTOTRANS' control in loading or unloading greater than 30 minutes;
  - (h) pay the cost, expense or loss to AUTOTRANS of destruction or disposal of the Goods under 5.1(a), storage or return of the Goods under 5.2(b), of opening or inspecting under 5.1(c) and of advertising and sale under 8.2(b);
  - (i) compensate AUTOTRANS for any cost, expense or loss to AUTOTRANS' property or any Person caused by the Goods, the Customer, any recipient of the Goods or any Person acting for the Customer or any recipient;
  - (j) if any Charges are not paid on the date for payment, pay interest on the unpaid Charges at a rate 4% higher than the prevailing rate under the Penalty Interest Rates Act 1983 (Vic) and

- pay any charge or amount owing to AUTOTRANS under any other contract;
- (k) if a copy of a Transport Contract or any part is required, pay AUTOTRANS a charge of \$5.00; and
  - (l) pay AUTOTRANS any costs not recouped out of the proceeds of sale of the Goods under 8.2.
- 6.2 If a Person other than the Customer is nominated to pay the Charges and doesn't pay the Charges as required under these conditions, the Customer must pay the Charges and a transfer charge of \$10.00 immediately on AUTOTRANS' demand.
- 6.3 The Charges are earned when the Goods are provided for transport whether they are delivered or not, and whether damaged or otherwise.
- 6.4 Unless otherwise required by law, AUTOTRANS will not refund any payment of the Charges under any circumstances.
- 6.5 Unless specifically stated to include GST, the Charges are exclusive of GST.

## **7. AUTOTRANS Extra Warranty**

- 7.1 Subject to the following paragraphs of this condition, if AUTOTRANS extra warranty applies and the Goods are lost or damaged during the Services, AUTOTRANS warrants that it will repair the damage or pay the Customer, or the Person nominated by the Customer the cost of repair of the Goods or the value of the Goods lost.
- 7.2 AUTOTRANS extra warranty does not apply to damaged or non-working Goods.
- 7.3 AUTOTRANS extra warranty does not apply to any pre-existing damage, hail damage, mechanical or electrical damage, stone chipping to any part of the Goods including panels and glass, loss of personal property or effects from on or within the Goods, insect damage or bird droppings or any damage which in aggregate with all other damage to the Goods is in excess of the substantiated purchase price or fair market value of the Goods, whichever is the lesser, less the value of the damaged Goods.
- 7.4 AUTOTRANS extra warranty does not apply to loss or damage due to the movement of objects within the Goods, ordinary leakage, ordinary wear and tear, delay, inherent vice, war, terrorism, nuclear explosion, strikes, riots or civil commotion.
- 7.5 AUTOTRANS will not be liable for damage unless the damage is noted and signed for on the delivery receipt copy of the Condition Report.
- 7.6 AUTOTRANS will not be liable for damage to or loss of a Goods unless notice of the loss or damage is given in writing to AUTOTRANS within 2 days of the date of delivery if the Goods are damaged, or within 7 days of the anticipated date of delivery if the Goods are lost.
- 7.7 If AUTOTRANS receives a notice of loss or damage it may require substantiation of the loss or damages sought.

- 7.8 If AUTOTRANS is liable for loss of or damage to Goods for the substantiated purchase price or fair market value of the Goods, whichever is the lesser, then the value of the damaged Goods will be deducted from the amount otherwise payable by AUTOTRANS, and the Goods will remain the property of the owner before lodgement of the notice of loss or damage.
- 7.9 AUTOTRANS may after notice to the Customer withdraw its extra warranty for Goods absolutely or for particular Goods or movement.
- 7.10 Under this warranty AUTOTRANS will only pay damages for the direct loss or damage to Goods and will not pay any indirect or consequential loss or damage including loss of profits, business or anticipated savings or other economic loss even if AUTOTRANS knows they are possible or otherwise foreseeable.

## **8. Lien**

- 8.1 AUTOTRANS has a general lien on the Goods and on any other goods of the Customer for all Charges due or which become due on any account whether for the Services or any other goods or any other AUTOTRANS service.
- 8.2 If the Charges are not paid as required by 6.1(a) or the Customer or a Person does not take delivery or return of the Goods, AUTOTRANS may without notice and, in the case of dangerous Goods immediately:
- (a) store the Goods as AUTOTRANS thinks fit at the Customer's or the person nominated by the Customer's risk and expense, or
  - (b) open any container packaging and sell all or any of the Goods as AUTOTRANS thinks fit and apply the proceeds to discharge the lien and costs of sale.
- 8.3 AUTOTRANS may deduct or set-off from any monies due from AUTOTRANS to the Customer or the person nominated by the Customer under any contract, debts and monies due from the Customer to AUTOTRANS under these conditions or any contract.

## **9. Claims**

- 9.1 If AUTOTRANS is liable for damage to or loss of the Goods or any part of the Goods, a claim for the loss or damage may not be made unless notice of the claim is lodged in writing within 2 days of the date of delivery or, for non-delivery, within 7 days of the anticipated date of delivery.
- 9.2 The failure to lodge notice of a claim within a time under 9.1 is evidence of satisfactory performance by AUTOTRANS of its obligations under the Transport Contract.
- 9.3 Despite any other condition, AUTOTRANS will be discharged from all liability for loss of or damage to the Goods or the Services unless an action is brought within 6 months of completion of the Services or the anticipated date of completion of the Services.
- 9.4 Time is of the essence for all time periods in this condition and in 7.

## 10. Exclusions and Limitations

- 10.1. AUTOTRANS makes no express warranties except as set out in the Transport Contract or these conditions and the extra warranty in 7.
- 10.2. AUTOTRANS does not exclude or limit the application of any provision of any statute (including the Trade Practices Act 1974 (Cth)) if to do so would contravene that statute or cause any part of this condition to be void.
- 10.3. Subject to any application of the extra warranty in 7, the Goods will at all times be at the risk of the Customer and AUTOTRANS excludes:
- (a) from the Transport Contract all conditions, warranties and terms implied by statute, general law, international convention or custom, except any implied condition or warranty the exclusion of which would contravene any statute or cause this condition to be void ("Non-excludable Condition");
  - (b) all liability to the Customer or any Person in contract or bailment for direct or consequential or indirect damages arising out of or about, for any reason, intentional or unintentional, loss of or damage to or deterioration or contamination of the Goods, or any delay, non-delivery or failure, defect or deficiency of any kind in the Services; and
  - (c) all liability to the Customer or any Person in negligence or other non-contractual cause of action about which liability can be excluded for acts or omissions of AUTOTRANS arising out of or for the Transport Contract or caused by or resulting directly or indirectly from any loss of, damage to, or deterioration or contamination of the Goods, or any delay, non-delivery or failure, defect or deficiency of any kind in the Services, and for (b) and (c) even if:
    - (1) AUTOTRANS knew they were possible; or
    - (2) they were otherwise foreseeable,including without limitation lost profits, business or anticipated savings or economic loss and damage suffered because of claims by any third person, such as a customer of the Customer.
- 10.4. AUTOTRANS liability to the Customer for breach of:
- (a) the extra warranty in 7 is limited to its obligations under 7; and
  - (b) any express provision of this Transport Contract or any Non-excludable Condition (except a Non-excludable Condition referred to in 10.5) is limited at AUTOTRANS' option to any one of:
    - (1) supplying again the Services; or
    - (2) the payment of the cost of having the Services supplied again,in which the breach occurred.
- 10.5. If the Customer is a consumer as defined under the Trade Practices Act 1974 (Cth) AUTOTRANS does not exclude or limit its liability to the Customer for

breach of any Non-excludable Condition for services of a kind ordinarily acquired for personal, domestic or household use or consumption.

- 10.6. AUTOTRANS, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and Sub-Contractors so they are entitled to the full benefit of these conditions, including any exclusions or limitations of liability, to the same extent as AUTOTRANS.
- 10.7. Even if AUTOTRANS breaches any of these conditions, all the rights, immunities and limitations of liability in these conditions continue to have their full force and effect in all circumstances.
- 10.8. AUTOTRANS is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for any Person.

## 11. Customer Indemnities

- 11.1. The Customer indemnifies AUTOTRANS against the full amount of all expenses, penalties, fines, losses, damages, liabilities and costs (on a full indemnity basis) AUTOTRANS has to pay about a demand, action, arbitration or proceeding (including mediation, compromise out of court settlement or appeal) arising directly or indirectly out of any:
- (a) breach of the Transport Contract by the Customer, including without limitation, a breach in respect of which AUTOTRANS exercises a right to terminate the Transport Contract; or
  - (b) a claim by any Person for loss of or damage to any property, injury to or death of any person or economic loss caused by any act or omission of the Customer or its employees, contractors or agents.
- 11.2. If AUTOTRANS contracts in AUTOTRANS' name as principal or as agent for the Customer as referred to in 5.1(d), the Customer must indemnify AUTOTRANS against all claims and liabilities arising out of or about AUTOTRANS so contracting, to the maximum extent allowed by law.
- 11.3. There is no need for AUTOTRANS to suffer a loss referred to in 11.1 or 11.2 before requiring payment.

## 12. Law, Severability, Changes and Waiver

- 12.1. The law of Victoria governs these conditions and the parties submit to the exclusive jurisdiction of the courts of Victoria.
- 12.2. If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.
- 12.3. AUTOTRANS is not bound by any waiver, discharge or release of a condition or any agreement which changes these conditions unless it is in writing and signed for AUTOTRANS by an authorised officer.
- 12.4. If AUTOTRANS waives a breach of a condition the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.