



TERMS AND CONDITIONS

1. DEFINITIONS AND INTERPRETATION

1.1. In these conditions:

“Carriage” means the services undertaken by QR under this Contract and includes the transportation of the Goods.

“Charges” means the charges claimed by QR for the Carriage of the Goods as set out in the invoice delivered to the Sender and includes all other costs and charges incurred under this Contract.

“Contract” means these terms and conditions and the details shown on the Consignment Note.

“Consignment Note” means, as applicable, the document entitled “QR Consignment Note & Conditions of Transport” which contains these terms and conditions on its reverse side or the electronic consignment note sent to QR by the Sender under authorised QR electronic transmission.

“Dangerous Goods” has the meaning given to that term in the *Australian Dangerous Goods Code*.

“Goods” means the materials or items stated on the Consignment Note, and includes the contents of items stated as wagons, containers, packages, or similar.

“GST” has the meaning as defined in the *A New Tax System (Goods and Services Tax) Act 1999* and includes any other taxes, charges or imposts in the form of a goods and services or value added tax and all interest, penalties and fines for late payment of GST caused by any breach of this Contract by the Sender.

“Interest Rate” means the ruling Commonwealth Bank 90 day Bank Bill Rate applicable at the relevant time.

“QR” means QR Ltd (ACN 124 469 967), of Level 14, 305 Edward Street, Brisbane, Queensland.

“QR Vehicles” means locomotives, rollingstock, containers or any road vehicles used by QR to transport Goods.

“Regulated Waste” has the meaning given to that term in Schedule 7 of the *Environmental Protection Regulation 1998*.

“Sender” means:

(a) where the owner of the Goods, the owner, the sender, the receiver or the consignor; or

(b) otherwise, the owner’s agent or account name party specified on the Consignment Note, and the obligations of and warranties given by the Sender under this Contract apply to and bind the owner where they do not appropriately apply to or bind the agent or account name party personally.

“TPA” means the *Trade Practices Act 1974 (Cth)*.

“Trackable Waste” has the meaning given to that term in Schedule 1 of the *Environmental Protection (Waste Management) Regulation 2000*.

1.2 Where the Sender has entered into an Elcon software user agreement or an EDI user agreement with QR, these terms and conditions prevail where conflict occurs.

1.3 Where the Sender has entered into a rail haulage agreement with QR, the terms and conditions of that agreement govern the Carriage of the Goods; and where these terms and conditions conflict with the rail haulage agreement, the terms of that document prevail.

1.4 Where Clauses 1.2 and 1.3 do not apply, this Contract constitutes the entire understanding of the parties about the Carriage of the Goods; there are no other



understandings, agreements, warranties or representations (express or implied) which are intended to form part of this Contract.

2 COMMON CARRIER

QR is not a common carrier.

3 ACCEPTANCE, CARRIAGE AND DELIVERY OF GOODS

- 3.1 QR has no obligation to accept Goods for Carriage and where it does accept Goods, Carriage is on the terms set out in this Contract.
- 3.2 The Sender must pack, label and secure the Goods to comply with all laws, regulations, codes and standards which may be applicable during Carriage and so as to withstand the ordinary risks of Carriage having regard to their nature.
- 3.3 QR reserves the right to check weigh any container before accepting it for Carriage.
- 3.4 Upon acceptance of the Goods, QR, relying on the warranties given under Clause 3.5, agrees to undertake the Carriage of the Goods in consideration for the payment of the Charges by the Sender under Clause 10.
- 3.5 The Sender warrants that:
 - 3.5.1 the Goods are fit for Carriage;
 - 3.5.2 where the Goods are within a container, the container carries a current compliance plate as required under Australian Standard 3711, all doors and securing apparatus are properly closed or locked and the "gross mass" as stated on the Consignment Note (being the total weight of the container, the Goods and all packaging) is accurately stated and is in accordance with Australian Standard 3711;
 - 3.5.3 it has the authority of all persons owning or interested in the Goods to enter into this Contract;
 - 3.5.4 its delivery of the Goods and execution of the Consignment Note is acceptance of these conditions by all persons referred to in Clause 3.5.2
 - 3.5.5 it will, at its own risk, comply with all relevant statutes, regulations, ordinances and by-laws applicable under this Contract.
- 3.6 The Sender acknowledges that the warranties in Clause 3.5 are given on the execution of the hard copy or the transmission to QR of the electronic form of the Consignment Note (as applicable) and that those warranties remain valid and subsisting throughout the Carriage of the Goods.
- 3.7 The Goods are in transit even where Carriage is interrupted.
- 3.8 QR gives no warranty as to the time of the departure or arrival of QR Vehicles.
- 3.9 Carriage commences when the Goods are accepted by QR and ceases when the Goods are carried to the delivery address (road or station/siding/terminal) stated on the Consignment Note.
- 3.10 The Sender raises no objection to any deviation from a usual route or manner of Carriage where QR deems this necessary.
- 3.11 Subject to Clause 3.12, the Goods are delivered by QR when it:
 - 3.11.1 carries the Goods under the terms of this Contract to: and
 - 3.11.2 where specified, lifts the Goods from the QR Vehicle at
the address specified in the Consignment Note as the "To (Station/Terminal/Siding)", the Receiver's address or the "QR Road Delivery Address", as applicable.
- 3.12 The Sender acknowledges that QR's use requirements of the QR Vehicles regulates the ability of QR to retain loaded Goods at the delivery address pending collection by the Sender, and should immediate use of the QR Vehicles be required, QR may unload the Goods (at its own cost), at which time delivery is effected.



3.13 Where the Goods are within a container, QR may retain possession of the Goods despite that delivery has been effected, if QR reasonably believes that the vehicle of the Sender's collection agent does not comply with all relevant statutory requirements regulating the transport of containers.

3.14 Where QR exercises its rights under Clause 3.13, it holds the Goods on behalf of the Sender as bailee and may require the Sender to pay reasonable storage charges in relation to those Goods.

4 SUBCONTRACTING

4.1 QR may itself undertake the Carriage or it may subcontract the Carriage to a subcontractor.

4.2 Each subcontractor or agent engaged by QR is entitled to the benefit of these conditions, including all exclusions and limitations.

5 SENDER LOADING AND SECURING OBLIGATIONS

5.1 Where QR does not supply lifting facilities and the Sender undertakes the loading or unloading (or both) of the Goods onto or from QR Vehicles, the Sender's personnel for loading, securing, transporting and unloading of Goods must be trained, accredited and assessed competent by QR in areas relevant to their tasks under Standard *STD/0011/Workplace Health & Safety - Safety Training Accreditation*, QR Standard *STD0022/swk* for loading and securing or any other similar standard or safety protocol acceptable to QR.

5.2 The Sender must not tender Goods for Carriage which are loaded by its personnel in contravention of the obligation contained in Clause 5.1

5.3 In the event that Goods are loaded in contravention of Clause 5.1, despite that they may have been accepted, QR may reject them for Carriage, or where Carriage has commenced, may unload them at a convenient location and notify the Sender of the location of the unloaded Goods

6 DELAY IN LOADING OR UNLOADING

Any delay in loading or unloading which is not caused by QR and which results in a cost incurred by it is (at the option of QR) a cost to the Sender and when incurred constitutes part of the Charges.

7 UNCOLLECTED GOODS

Except where Clause 8.5 or Clause 3.13 applies, where:

7.1 Goods to be collected by the Sender are not collected for any reason; or

7.2 QR is unable to deliver the Goods and the Sender does not accept return delivery of them; or

7.3 Goods held under lien are not released because of non-payment by the Sender,

QR may:

7.4 unload the Goods and store them (in the open or under cover), at the risk and cost of the Sender; or

7.5 sell or dispose of the Goods on terms QR considers appropriate and apply any monies received from the sale or disposition towards the Charges and all other monies owed to QR by the Sender,

BUT where the Goods are not perishable, QR must give the Sender one month's written notice of its intention to sell or dispose, sent to the Sender's address noted on the Consignment Note.

8 DANGEROUS GOODS, REGULATED WASTE, TRACKABLE WASTE

8.1 If QR accepts Dangerous Goods, Regulated Waste or Trackable Waste for Carriage, those Goods must be accompanied by a full declaration by the Sender detailing their nature and contents and must be properly and safely packed in accordance with relevant statutory and other requirements.



- 8.2 QR carries Regulated Waste and Trackable Waste subject to the conditions of its Regulated Waste Transport Licence.
- 8.3 QR accepts Dangerous Goods subject to the provisions of the *Australian Dangerous Goods Code*, the *Australian Explosives Code* and the *Code of Practice of the Safe Transport of Radioactive Substances*.
- 8.4 Where Dangerous Goods or Regulated Waste or Trackable Waste are:
- 8.4.1 delivered to QR without QR's written consent; or
 - 8.4.2 not distinctly marked to indicate their nature and character; or
 - 8.4.3 liable to become dangerous, inflammable or damaging, in the reasonable opinion of QR,
- QR may destroy, dispose of, abandon, or render them harmless without compensation to the Sender and without prejudice to QR's right to be paid the Charges.
- 8.5 Where the Sender fails to collect Dangerous Goods within 12 hours of delivery by QR, the Sender acknowledges and accepts that QR will notify the appropriate authorities and comply with all directions consequent upon that notification, at the Sender's cost.

9 RIGHT TO INSPECT

Where any identifying document or mark is defaced or missing from the Goods, or where QR is of the reasonable opinion that the Goods are unsafe, dangerous or inappropriately packaged or contained, QR may open any document or wrapping, or container in which the Goods are placed to determine their nature, condition, ownership or destination.

10 CHARGES AND PAYMENT

- 10.1 The Charges are exclusive of GST and are earned on acceptance of the Goods by QR.
- 10.2 Subject to Clause 10.5 or as otherwise agreed, **the Sender must pay the Charges no later than 7 days after receipt of QR's invoice.**
- 10.3 Where the Sender does not pay the Charges by the due date, the Sender must pay interest on the unpaid Charges at the Interest Rate from the due date until the date payment is received by QR.
- 10.4 Interest accrues on the daily balances of the amount of the unpaid Charges and of interest already accrued.
- 10.5 Where the Sender nominates a third party at "Account Name" on the Consignment Note to pay the Charges, that third party is bound to pay the Charges as if it were the Sender and where it does not pay the Charges by the due date, the Sender must pay the Charges plus interest at the Interest Rate on demand by QR.

11 LIEN

QR has a lien on the Goods and any other goods of the Sender in the possession of QR, and on any documents relating to the Goods for any Charges or other money owing by the Sender to QR.

12 LIABILITY OF QR

- 12.1 The Goods are and remain at the sole risk of the Sender.
- 12.2 QR is not liable, nor will the Sender hold it or its employees liable in tort, contract or otherwise for any loss or damage (including consequential loss):
- 12.2.1 to the Goods during Carriage;
 - 12.2.2 to the Goods as a result of delay in or non-delivery of them; or
 - 12.2.3 as a result of anything done or not done by QR or any other breach of this Contract by QR.



13 LIMITATION ON QR'S LIABILITY

13.1 Where a condition is implied into this Contract under Section 74 of the TPA or by any other law, the liability of QR is limited to:

13.1.1 supplying the Carriage again; or

13.1.2 paying the cost of having the Carriage supplied again.

13.2 A claim by a Sender under Clause 13.1 for loss or damage is not enforceable against QR (and the Sender agrees not to hold QR liable in tort, contract or otherwise for such loss or damage) unless full written details are lodged with QR within 5 days of the date of delivery (where the Goods are damaged) or of the anticipated date of delivery (where the Goods are lost or otherwise not delivered).

14 INDEMNITY

Unless otherwise provided by law, the Sender, regardless of any negligence by QR, its servants, agents or subcontractors, releases and indemnifies QR and all persons claiming under it from and against all liabilities, claims, damages, losses, costs and expenses, (however they occur) which may accrue against or be suffered by QR arising out of or connected with the Carriage of the Goods, except where caused by the wilful misconduct of QR.

15 VARIATION AND WAIVER

15.1 None of the conditions of this Contract may be varied except in writing and signed by QR and the Sender.

15.2 Default or delay in the exercise of any rights under this Contract does not operate as a waiver of any other right, nor does a single or partial exercise of any right preclude any other or further exercise of that right.

16 SEVERANCE

If a provision of this Contract is or becomes unenforceable, that provision is severed and all other provisions remain effective as if the offending provision had not been part of this Contract.

17 CONDITIONS WHICH SURVIVE BREACH

All the rights, indemnities and limitations of liability in these terms and conditions continue to have full effect in all circumstances despite any breach of contract, or of these terms and conditions by QR.

18 GOVERNING LAW

The laws of Queensland govern this Contract.

19 COSTS AND STAMP DUTY

All legal costs incurred by the Sender in relation to this Contract and all stamp duty assessed on it are payable by the Sender.

20 GST

If any supply made under this Contract is subject to GST, the Sender must pay QR at the time of payment for the supply an amount sufficient to ensure that QR retains, after payment of GST, the amount that QR would have received had GST not been payable and upon receipt of payment, QR agrees to provide a tax invoice.