

DSE Transport Terms & Conditions



1. Definitions and Interpretation

1.1 In these Terms:

Carriage means and includes the whole of the operations and services undertaken by DSE in relation to the Goods, including but not limited to the collection, carriage, transportation, delivery and/or storage of the Goods, and the provision of any advice concerning the collection, carriage, transportation, delivery and/or storage of the Goods;

Charges means the amounts shown on the Rates Schedule and other agreed rates;

Confidential Information means in respect of a party, all trade secrets and knowhow, financial information and other commercially valuable information, whether oral, graphic, electronic, written or in any other form, that is not generally available to the public at the time of disclosure other than by reason of a breach of these Terms or that is in fact, or should reasonably be regarded as, confidential to the party to whom it belongs or relates;

Dangerous Goods has the same meaning as in Regulation 1.2.1.2.4 of the Australia Code of the Transport of Dangerous Goods by Road and Rail;

Delivery Location means the place nominated for the Goods to be delivered to;

DSE means DSE Transport Pty Ltd ACN 630 466 545, its related bodies corporate within the meaning of that expression in Section 9 of the *Corporations Act 2001* (Cth) carrying on business in their own names and under any business names and their officers, servants, agents and Subcontractors;

Goods means goods or any type or description whatsoever whether originally contracted for in the Order, substituted for or added to these Terms, together with any containers, packaging or pallets supplied by or on behalf of the Sender;

GST has the same meaning as in Section 195-1 of A New Tax System (Goods and Services) Act, 1999;

Order means an electronic order submitted by the Sender to DSE on a digital platform maintained by DSE to transport the Goods or via other means (including email, phone call, etc.), and includes particulars of the Goods for Carriage, the Sender, the Receiver, the Delivery Location and other information as DSE may require.

Rates Schedule means the list of rates for collection, carriage, transportation, delivery and storage of Goods charged by DSE to the Sender for Carriage as issued by DSE from time to time;

Receiver means the person to whom the Goods is delivered or addressed;

Re-delivery means a request from the Sender or the Receiver to DSE to unload the Goods at an address other than the Delivery Location in accordance with clause 7;

Sender means any party who has submitted an Order with DSE and is responsible to DSE for the Charge;

Subcontractor includes any person who pursuant to a contract of arrangement with any other person (whether or not DSE) performs or agrees to perform the Carriage or any part thereof;

Terms means these terms and condition of service.

1.2 Unless the context otherwise requires:

- (a) references to a party to these Terms includes the executors, administrators, successors and permitted assigns of that party;
- (b) references to any statute, ordinance or other law includes all regulations and other instruments thereunder and all consolidations, amendments, re-enactment's or replacements thereof;
- (c) words importing the singular include the plural and vice versa, words importing a gender include other genders and references to a person must be construed as references to an individual, firm, body corporate, association (whether incorporated or not), government and governmental, semi-governmental and local authority or agency;
- (d) where any word or phrase is given a defined meaning in these Terms, any other part of speech or other grammatical form in respect of such word or phrase has a corresponding meaning;
- (e) headings included in these Terms are for convenience only and must be disregarded in the construction of these Terms.

1.3 Inconsistency

- (a) These Terms must be read in conjunction with DSE invoices, Order, Rates Schedule and other documentation as provided by DSE to the Supplier from time to time.
- (b) If there is any inconsistency between these Terms and any terms and conditions printed on DSE invoices, Order, Rates Schedule and other documentation, these Terms will prevail to the extent of the inconsistency.

2. Acceptance

Any request by the Sender to use the service of DSE constitute acceptance of these Terms.

3. Negation of liability as a common carrier

DSE is not a common carrier and does not undertake the obligations or liability of a common carrier. DSE reserves the right to refuse the Carriage or transport of Goods for any person, corporation or company, and the Carriage or transport for any class of Goods, at its absolute discretion.

4. Sender's Obligation

4.1 The Sender must:

- (a) comply with all laws and regulations (the Australia Code of the Transport of Dangerous Goods by Road and Rail) relating to the nature, packaging, labelling, storage and carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of storage, transportation and carriage having regard to its nature;

- (b) ensure that any containers, packaging or pallets conform with any requirements of DSE; and
- (c) not tender for Carriage or storage any Goods which are or may become dangerous, inflammable or offensive, or Goods which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such Goods.

5. Sender Warranties and Indemnities

5.1 The Sender warrants that:

- (a) it has fully and adequately described the Goods, their nature, weight and measurements and complied with all applicable laws about notifications, classification, description, labelling, transport and packaging of the Goods;
- (b) any person who delivers the Goods to DSE for Carriage for or on behalf of the Sender is authorised to do so and to sign any Goods note for the Sender; and
- (c) the Sender has the authority of the person or persons owning or having any interest in the Goods.

5.2 If any person makes a claim or commences proceedings against DSE alleging an interest in any part of the Goods, then the Sender indemnifies DSE, its employees, Subcontractors and agents from and against all liability, injury, loss and damage suffered by DSE as a result arising from or in connection to a breach of the warranties or obligations as set out in clauses 4 and 5.

6. Right to Subcontract

6.1 DSE and any Subcontractors shall be entitled to subcontract the whole of or any part of the Carriage on such terms as it thinks fit.

7. Delivery of Goods

7.1 DSE is authorised to deliver the Goods at the Delivery Location given to DSE by the Sender or any other address directed by the Receiver (**Re-delivery Location**) and it is expressly agreed that DSE will be taken to have delivered the Goods, if at either address, DSE delivered the Goods.

7.2 If the Delivery Location or Re-delivery Location is unattended or if delivery cannot be effected by DSE (whether due to lack of equipment at the relevant location or otherwise), DSE may, in its absolute discretion:

- (a) deposit the Goods at either location and such action shall constitute valid delivery;
- (b) return the Goods to the Sender, or the pickup location and charge the Sender any costs incurred by DSE in the unsuccessful delivery attempt; or
- (c) store the Goods, in which case the Sender shall pay or indemnify DSE for all costs and expenses incurred in connection with such storage.

7.3 In the event that DSE stores the Goods under clause 7.2(c), DSE will re-deliver the Goods to the Receiver at a time mutually agreed between the parties. The Sender must pay any costs incurred by DSE in both the initial delivery, the re-delivery and storage fees.

- 7.4 Where the Goods are accepted for forwarding by rail to an address at a place where DSE has no receiving depot, the Goods will be deemed duly delivered when it is delivered to the nearest railhead.
- 7.5 If the Receiver requested (or its contactor) upon delivery to make a subsequent Re-delivery of the Goods, DSE may charge the Receiver or the Sender (in DSE absolute discretion) the relevant fee for the Re-Delivery as set out in the Rates Schedule.
- 7.6 DSE (or its Subcontractor) may refuse to make a delivery or Re-delivery for any reason, including (but not limited to) the following:
- (a) delivery (or re-delivery) documentation in a form satisfactory to DSE has not been completed and executed by the Receiver;
 - (b) the equipment required to unload the Goods is not available at the delivery or re-delivery location; or
 - (c) access to the premises at the delivery or re-delivery location is restricted in which case clause 7.2 will apply.
- 7.7 The Sender acknowledges that re-delivery or collection of stored Goods will only be affected where reasonable notice in writing has been given to DSE.

8. Handling of Goods

- 8.1 If the Sender expressly or implicitly instructs DSE to use, or it is expressly or implicitly agreed that DSE will use, a particular method of handling or storing the Goods or a particular method of Carriage, DSE will give priority to that method but if it cannot be conveniently adopted by DSE, the Sender authorises DSE to adopt another method of handling, storing and/or carrying the Goods at the discretion of DSE.
- 8.2 DSE may, in its absolute discretion, notwithstanding any prior instruction or agreement between the Sender and DSE, select the route of Carriage or place of storage of the Goods.
- 8.3 If any identifying document or mark is lost, damaged, destroyed or defaced:
- (a) DSE may open any document wrapping, package or other container to inspect the Goods in order to determine their nature, condition, ownership or destination;
 - (b) in the event of 8.3(a) occurring, it is undertaken on the strict basis that the Carrier accepts no liability for any loss, damage or injury of any kind whatsoever, however arising or incurred or occurring during any part of the Carriage. This disclaimer extends to include not only loss of or damage to itemized equipment itself but loss, damage, injury to any person, property or thing damaged during the Carriage and to include any loss consequently or otherwise arising from any loss, damage, injury aforesaid.

Where DSE considers the mode of Carriage or route quoted (if any) is not at the time the Goods are to be carried the most practical or feasible route or mode of Carriage to be used, DSE reserves the right to vary the same and charge any extra costs thereby incurred to the Sender.

9. Insurance

- 9.1 DSE has no obligation to, and does not, arrange insurance for the Goods or the Carriage of the Goods. Insurance for the Goods or the Carriage of the Goods is the responsibility of the Sender and at the Sender's cost.
- 9.2 If the Sender require DSE to arrange insurance cover for the Goods or the Carriage of the Goods in respect to an Order, DSE may arrange the required insurance for an additional fee which the Sender agrees to pay.
- 9.3 DSE may at its sole discretion require the Sender to arrange its own insurance cover for the Goods or the Carriage of the Goods, and include DSE as an insured party.
- 9.4 The Sender must provide twenty four (24) hours prior written notice to DSE on any occasion where the combined value of the Goods loaded on one vehicle exceed AUD\$250,000.
- 9.5 Should DSE become liable for any compensation which is to be met by a payout under an insurance cover, the Sender agrees to compensate DSE for any insurance excess paid.

10. Return of Pallets

The Sender is at all times responsible for the return of any pallets used in providing the Carriage of the Goods to the pallet owner or other nominated person as instructed by the pallet owner. The Sender may request DSE to collect and deliver any pallets as needed in writing and pay DSE any amount shown on the Rates Schedule. The Sender must not transfer any pallets to any account DSE may have with a pallet owner.

11. Extension of Exemptions to Subcontractors

Every exemption, limitation, condition and provision contained in these Terms and every right, exemption from liability, defence and immunity of whatsoever nature applicable to DSE to which DSE is entitled under these Terms shall also be available and shall extend to protect:-

- (a) all Subcontractors;
- (b) every servant or agent of DSE or of a Subcontractor;
- (c) every other person by whom the Carriage or any part thereof is performed or undertaken;
- (d) all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 11(a), (b) or (c) and for the purposes of this clause 11 DSE is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them.

12. Risk

- 12.1 The Goods will be collected, carried, transported, delivered and stored at the risk of the Sender.

13. Charges

- 13.1 All Charges as set out in the Rates Schedule are exclusive of GST and are correct at the time of entry into these Terms. DSE may at any time, in its absolute discretion, amend the Rates Schedule by giving 3 business days' written notice to the Sender.
- 13.2 A Fuel Levy may apply in addition to the Charges in accordance with the Fuel Levy Schedule. The Fuel Levy may be changed by DSE by giving at least 3 business days' notice of the amendment to the Sender.
- 13.3 Excessive Kilometre Charge may apply in addition to the Charges in accordance with the Rates Schedule.
- 13.4 A charge may be made to the Sender in respect of any delay in loading or unloading after a reasonable time in accordance with the Rates Schedule, unless such delay arises solely from the default of DSE. Labour and the use of mechanical equipment to load and unload the Goods shall be the responsibility and at the expense of the Sender.
- 13.5 Where an Order is cancelled within two (2) hours before the scheduled pick-up time or if the Goods are not available to be loaded at the scheduled pick-up time, an additional charge may apply to the Sender in accordance with the Rates Schedule.
- 13.6 The Charges shall be considered payable as soon as the Goods are loaded and dispatched from the pickup location or the Sender's premises or accepted for storage and the Sender will be and remain responsible to DSE for all its proper charges incurred for any reason.

14. Invoicing

- 14.1 If the Sender has an account with DSE then, subject to clause 14.3, DSE will invoice the Sender weekly and the Sender must pay DSE the full amount of each invoice in Australian dollars within 14 days of the date of the invoice or as otherwise agreed to in the Rates Schedule.
- 14.2 If the Sender defaults on the payment of any money payable under these Terms and the amount remain outstanding for a period of more than 7 days then DSE may do any one or more of the following:
- (a) suspend performance of its obligations under these Terms until the amount outstanding is paid in full; and
 - (b) charge interest on the amount outstanding at a rate of 0.05% per day, with such interest being payable on the written demand of DSE, this rate being a genuine estimate of damage suffered by DSE.
- 14.3 Provided that the Receiver holds a Sender account with DSE, the rates payable for any Goods where the associated Order is marked "Receiver to Pay" will be invoiced by DSE directly to the Receiver. If the Receiver does not pay the full amount of the relevant invoice by the due date, the Sender will be held liable for any unpaid amount, together with any reversal fees charged by DSE to the Sender in its absolute discretion.

15. Expenses

- 15.1 If DSE incurs any extraordinary expenses in connection with the Goods, the Sender must reimburse and indemnify DSE in respect of such expenses plus an additional 15% being an administration fee.
- 15.2 DSE reserves the right to weigh the Goods and pass on the cost to the Sender (for full and half load shipments).

16. Toll Roads

- 16.1 If there are tolls in connection to the Carriage of the Goods, the Sender agrees to pay the toll fees in accordance with the Rates Schedule and it will be added to the Charges.
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17. Carrier's Lien

- 17.1 DSE will have a lien on the Goods (and any documents relating to the Goods) and over any other goods of the Sender in the possession of DSE (and any documents relating to such goods) for an amount equal to all sums owing by the Sender to DSE.
- 17.2 If the Charges are not paid when due, DSE shall have the right to, in addition to any other rights it may have:
- (a) store the Goods as it thinks fit, and charge the Sender for such storage; and
 - (b) open any packaging and sell any part or all of the Goods as DSE thinks fit and apply the proceeds of sale to discharge the lien and costs of sale without notice to the Sender.
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18. Uncollected Goods

- 18.1 The Sender warrants that it is aware of and understands all applicable legislation relating to the disposal of uncollected goods.
- 18.2 The Sender's place of abode for the purpose of that legislation is the principal place of DSE.
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19. Nature of goods and packaging

- 19.1 DSE does not accept Carriage of the following Goods unless otherwise agreed in writing:
- (a) Dangerous Goods;
 - (b) jewelry & precious metals;
 - (c) cash & bonds;
 - (d) livestock; and
 - (e) explosives.
- 19.2 The Sender shall be liable for all loss and damage caused by the Goods being Dangerous Goods.
- 19.3 If in the opinion of DSE the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature the same may at any time be destroyed, disposed of, abandoned or rendered harmless by DSE without compensation to the Sender and without prejudice to DSE's right to any Charges.

20. Claim

- 20.1 Subject to any rights the Sender may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under these Terms:
- (a) all claims against DSE must be made in writing to the office of DSE in the State in which the Order is made within seventy-two (72) hours of delivery being effected or would in the ordinary course of business have been effected; and
 - (b) the failure to notify a claim within a time under 20.1(a) is evidence of satisfactory performance by DSE of its obligations.

21. Limitation of Liability

- 21.1 Subject to any rights the Sender may have under the Australian Consumer Law or other law which may not be lawfully excluded or modified under these Terms, all representation, warranty, condition or undertaking are excluded to the full extent permitted by law and DSE is not liable to the Sender or to any other person for:
- (a) any loss, damage, injury or liability of any kind caused by or resulting from any act or omission of DSE or any of its employees, agents or, Subcontractors; or
 - (b) any loss of profits or anticipated profits, economic loss, loss of business opportunity, or any special, incidental, indirect or other consequential loss or damage,
- even if notified of the possibility of that potential loss, damage, injury or liability and irrespective of whether it is due to negligence, breach of contract or any other cause.
- 21.2 If DSE is found to be liable to the Sender or any person acting for the Sender, DSE obligation's is limited to:
- (a) the cost of supplying the Carriage; or
 - (b) supplying the Carriage again.
- 21.3 Without limiting any other provision of this clause 21, if DSE in its sole discretion elects to pay any amount to DSE in respect of damaged Goods, then upon payment of that amount, title in the Goods will pass to DSE.
- 21.4 All the rights, immunities and limitations of liability in the terms and conditions shall continue to have full force and effect in all circumstances and notwithstanding any breach of contract or of any conditions hereof by DSE.

22. Variations to Terms

- 22.1 The conditions in these Terms may be changed by DSE from time to time by DSE giving notice of the amendment to the Sender. Notice is deemed given (whether or not actually received) when DSE does any of the following:
- (a) sends notice of the amendment to the Sender at any address (including an email address) supplied by the Sender;
 - (b) publishes the amended terms on its website at <http://www.DSEtrucks.com.au/Terms.html> or any other digital platform; or
 - (c) displays the amended terms at premises from which Supplier conducts its operations.
- 22.2 No variation of these Terms by the Sender is binding on DSE unless in writing signed by or on behalf of DSE.

23. Cubic conversion

DSE may, in its absolute discretion, choose to apply cubic conversion of 1m³ = 333kgs to any Goods.

24. Relationship of Parties

24.1 Unless these Terms expressly provide otherwise, nothing in these Terms may be construed as creating a relationship of partnership, of principal and agent or of trustee and beneficiary.

25. Disputes

- 25.1 If a dispute arises relating to these Terms or any Carriage of Goods (except in regard to payments due to DSE), the parties agree to negotiate to settle the dispute with the assistance of an independent expert agreed upon between DSE and the Sender. If DSE and the Sender cannot reach agreement upon the appointment of an independent expert, then either DSE or the Sender may request the President for the time being of the Law Society of New South Wales to appoint such an independent expert. The costs of the independent expert shall be borne equally between DSE and the Sender.
- 25.2 If DSE and the Sender are unable to resolve a dispute within 30 days of the appointment of the independent expert, then either DSE or the Sender may commence legal proceedings to resolve the dispute.
- 25.3 Nothing in this clause 26 shall prevent either DSE or the Sender from seeking urgent interlocutory relief from the courts.

26. Confidentiality

- 26.1 A party must not during or after the term of these Terms:
- (a) except in the proper course of performance of these Terms, disclose to any person without the previous consent in writing of the other party, the terms of this agreement or any Confidential Information of the other party; or
 - (b) use or attempt to use any Confidential Information of the other party in any manner which may cause injury or loss to the other party or in any manner other than that contemplated by these Terms.
- 26.2 The Sender must not disclose any information concerning the existence or contents of these Terms without the prior written consent of DSE unless:
- (a) the disclosure is required at law; or
 - (b) the disclosure is to a professional advisor of the Sender, upon the basis that the advisor must not further disclose that information without the prior written consent of DSE.

27. Terms

- 27.1 These Terms represent the whole contract between DSE and the Sender and no earlier agreement, understanding or representation, whether oral or in writing, in relation to any matter dealt with in these Terms will have any effect from the date of these Terms.
- 27.2 Each Order is not a separate contract but forms a part of these Terms between Supplier and the Sender, together with any credit application, guarantee, Rate Schedule and indemnity or other contractual documents.
- 27.3 Subject to law and whether or not the Sender has executed a copy of these Terms:
- (a) each offer or request made by the Sender to DSE for the supply of the Carriage of Goods shall be deemed to be made subject to the conditions in these Terms; and
 - (b) each supply of the Carriage of Goods by DSE to the Sender shall be deemed to be made in accordance with the conditions in these Terms, despite any contrary provision in any offer or request made by the Sender to DSE, or otherwise.

28. Governing Law and Jurisdiction

- 28.1 These Terms are governed by the laws in force in New South Wales and the parties submit to the exclusive jurisdiction of the courts of New South Wales in respect of all matters arising out of or relating to these Terms, their performance or subject matter.
- 28.2 In respect of the contracts made in Queensland these conditions shall be read subject to the *Carriage of Goods by Land (Carriers Liability) Act 1967* of that State but exempt where repugnant to the provisions of that Act shall continue to apply.

29. Waiver

These Terms may only be waived or varied if such waiver or variation is in writing signed by an authorised representative of DSE.

30. Invalidity

If the whole or any part of a provision of these Terms is void, unenforceable or illegal in a jurisdiction, it is severed for that jurisdiction. The remainder of these Terms shall have full force and effect and the validity or enforceability of that provision in any other jurisdiction is not affected.

31. Assignment

- 31.1 The Sender must not assign any of the rights of the Sender pursuant to these Terms without the prior written consent of DSE, which may be refused in the absolute discretion of DSE. Any consent by DSE will not release the Sender from any obligation of the Sender pursuant to these Terms.
- 31.2 DSE may assign all or any of the rights of DSE pursuant to these Terms.

32. No Agency

The Sender will not by virtue of these Terms be, or for any purpose be deemed to be, an agent of DSE.