

Credit Account Application



To be completed by the applicant –

Please complete all sections and read the Terms and Conditions on the following page.

Date:			
Trading Name			
Legal Name			
ABN Number:	Requested Credit	\$	
	Limit		
Phone	Fax:		
Mobile:	eMail		
Billing Address	Street Address:		
State:	State		
Post Code	Post Code		
Date Established:			
Accounts Contact	Freight Contact		
Position:	Position:		
Phone:	Phone:		

DETAILS OF OWNER (If Sole Trader) PARTNERS (If Partnership) OR DIRECTORS (If Company)

Full Name:		Full Name:	
Home Address:		Home Address:	
Home Phone		Home Phone	

Trade References

Business 1		Business 2	
A/C No:		A/C No:	
Phone:		Phone:	
Fax:		Fax:	

I certify that the above information is true and correct and that I am authorised to make this application for credit. I have read and understand the TERMS AND CONDITIONS (overleaf or attached) of Capel Transport which form part of, and are intended to be read in conjunction with this Credit Account Application and agree to be bound by these conditions. ***I agree that if I am a director or a shareholder (owning at least 15% of the shares) of the Client I shall be personally liable for the performance of the Client's obligations under this contract.***

Signed - Capel

Transport

Name

Position

Witness

Signature

Name:

Date:

Signed –

Client

Name

Position

Witness

Signature

Name:

Date:

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Capel Transport – Terms & Conditions of Cartage

Definitions

1.1 "Capel Transport" shall mean The Trustee for Capel Transport Solutions (ABN 34 474 407 512) Transport and its successors and assigns or any person acting on behalf of and with the authority of Capel Transport .

1.2 "Sub-Contractor" shall mean and include:

(a) ports, railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or

(b) any other person or entity with whom Capel Transport may arrange for the carriage or storage of any Goods the subject of the contract; or

(c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).

1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.

1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of Capel Transport's Services.

1.5 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Client on a principal debtor basis.

1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of Capel Transport's Services, or for storage by Capel Transport.

1.7 "Services" shall mean all services supplied by Capel Transport to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by Capel Transport to the Client and includes any advice or recommendations.

1.8 "Equipment" shall mean all Equipment including any accessories supplied on hire by Capel Transport to the Client (and where the context so permits shall include any supply of services). The Equipment shall be as described on the invoices, quotation, authority to hire, or any other work authorisation form provided by Capel Transport to the Client.

1.9 "Price" shall mean the cost of the Services as agreed between Capel Transport and the Client subject to clause 3 of this contract.

2. The Commonwealth Trade Practices Act 1974 and Fair Trading Acts

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

2.2 Liability of Capel Transport arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as determined by Capel Transport:

(a) the supplying of the Services again; or

(b) the payment of the cost of having the Services supplied again; or

(c) where the Client is a consumer as defined in the Trade Practices Act 1974 then the client shall also be entitled to a refund.

3. Acceptance

3.1 Any instructions received by Capel Transport from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.

3.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of Capel Transport.

3.3 These terms and conditions are to be read in conjunction with Capel Transport's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by Capel Transport to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

3.4 The Client shall give Capel Transport not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by Capel Transport as a result of the Client's failure to comply with this clause.

4. Price And Payment

4.1 At Capel Transport's sole discretion the Price shall be either;

(a) as indicated on invoices provided by Capel Transport to the Client in respect of Services supplied; or

(b) Capel Transport's current price at the date of delivery of the Goods according to Capel Transport's current Price list; or

(c) Capel Transport's quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon Capel Transport provided that the Client shall accept in writing Capel Transport's quotation within thirty (30) days.

4.2 Capel Transport may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to Capel Transport beyond the reasonable control of Capel Transport (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs, or due to unforeseen circumstances, including accessibility and other service dependencies).

4.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weight, or re-value or re-measure or require the Goods to be re-weighted, or re-valued or re-measured and charge proportional additional freight accordingly.

4.4 At Capel Transport's sole discretion payment for approved Client's shall be due fourteen (14), twenty-one (21) or thirty (30) days following the date of the invoice.

4.5 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.

4.6 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and Capel Transport.

4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

5. Capel Transport Not Common Carrier

5.1 Capel Transport is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by Capel Transport subject only to these conditions and Capel Transport reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

6. Client-Packed Containers

6.1 If a container has not been stowed by or on behalf of Capel Transport Capel Transport shall not be liable for loss of or damage to the Goods caused by:

(a) the manner in which the container has been stowed; or

(b) the unsuitability of the Goods for carriage or storage in containers; or

(c) the unsuitability or defective condition of the container.

7. Nomination Of Sub-Contractor

7.1 The Client hereby authorises Capel Transport (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such SubContractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Capel Transport. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Capel Transport shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

8. Capel Transport's Servants or Agents

8.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of Capel Transport which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify Capel Transport and any such servant or agent against all consequences thereof.

9. Method Of Transport

9.1 If the Client instructs Capel Transport to use a particular method of carriage whether by road, rail, sea or air Capel Transport will give priority to the method designated but if that method cannot conveniently be adopted by Capel Transport the Client shall be deemed to authorise Capel Transport to carry or have the Goods carried by another method or methods.

10. Route Deviation

10.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Capel Transport be deemed reasonable or necessary in the circumstances.

11. Charges Earned

11.1 Capel Transport's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.

12. Demurrage

12.1 The Client will be and shall remain responsible to Capel Transport for all its proper charges incurred for any reason. A charge may be made by Capel Transport in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of Capel Transport. Such permissible delay period shall commence upon Capel Transport reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

13. Dangerous Goods

13.1 Unless otherwise agreed in advance in writing with Capel Transport the Client Or his authorised agent shall not tender for carriage or for storage any Explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies Capel Transport for all loss or damage whatsoever caused by any Dangerous Goods.

14. Consignment Note

14.1 It is agreed that the person delivering any Goods to Capel Transport for carriage or forwarding is authorised to sign the consignment note for the Client.

15. Client's Responsibility

15.1 The Client expressly warrants to Capel Transport that the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this contract of cartage and/or storage and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.

16. Delivery

16.1 Capel Transport is authorised to deliver the Goods at the address given to Capel Transport by the Client for that purpose and it is expressly agreed that Capel Transport shall be taken to have delivered the Goods in accordance with this contract if at that address Capel Transport obtains from any person a receipt or a signed delivery docket for the Goods.

16.2 Capel Transport may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.

16.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.

16.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

16.5 The failure of Capel Transport to deliver shall not entitle either party to treat this contract as repudiated.

17. Loss Or Damage

17.1 Subject to any statutory provisions imposing liability, except for instances of negligence, in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

(a) Capel Transport shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of Capel Transport or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and

(b) the Client will indemnify Capel Transport against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by Capel Transport in connection with the Goods, except those caused through negligence of Capel Transport or their contractors.

18. Insurance

18.1 The Client acknowledges that:

(a) the Goods are carried and stored at the Client's sole risk and not at the risk of Capel Transport; and

(b) Capel Transport is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and

(c) under no circumstances will Capel Transport be under any liability with respect to the arranging of any such insurance and no claim will be made against Capel Transport for failure to arrange or ensure that the Goods are insured adequately or at all.

19. Default & Consequences Of Default

19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month [and at Capel Transport's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

19.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by Capel Transport.

19.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify Capel Transport from and against all costs and disbursements incurred by Capel Transport in pursuing the debt including legal costs on a solicitor and own client basis and Capel Transport's collection agency costs.

19.4 Without prejudice to any other remedies Capel Transport may have, if at any time the Client is in breach of any obligation (including those relating to payment), Capel Transport may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. Capel Transport will not be liable to the Client for any loss or damage the Client suffers because Capel Transport exercised its rights under this clause.

19.5 If any account remains overdue after one (1) day then an amount of the greater of \$10.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

19.6 Without prejudice to Capel Transport's other remedies at law Capel Transport shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Capel Transport shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to Capel Transport becomes overdue, or in Capel Transport's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

20. Security And Charge

20.1 Despite anything to the contrary contained herein or any other rights which Capel Transport may have howsoever:

(a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to Capel Transport or Capel Transport's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that Capel Transport (or Capel Transport's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.

(b) should Capel Transport elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify Capel

Transport from and against all Capel Transport's costs and disbursements including legal costs on a solicitor and own client basis.

(c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Capel Transport or Capel Transport's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause

20.1.

21. Privacy Act 1988

21.1 The Client and/or the Guarantor/s agree for Capel Transport to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by Capel Transport.

21.2 The Client and/or the Guarantor/s agree that Capel Transport may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

(a) to assess an application by Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the credit worthiness of Client and/or Guarantor/s.

21.3 The Client consents to Capel Transport being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

21.4 The Client agrees that personal credit information provided may be used and retained by Capel Transport for the following purposes and for other purposes as shall be agreed between the Client and Capel Transport or required by law from time to time:

(a) provision of Services; and/or

(b) marketing of Services by Capel Transport, its agents or distributors in relation to the Services; and/or

(c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or

(d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by Client; and/or

(e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.

21.5 Capel Transport may give information about the Client to a credit reporting agency for the following purposes:

(a) to obtain a consumer credit report about the Client; and/or

(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

22. Cancellation

22.1 Capel Transport may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice Capel Transport shall repay to the Client any sums paid in respect of the Price. Capel Transport shall not be liable for any loss or damage whatever arising from such cancellation.

22.2 In the event that the Client cancels delivery of Goods the Client shall be liable for any loss incurred by Capel Transport (including, but not limited to, any loss of profits) up to the time of cancellation.

23. Equipment Hire

23.1 The Equipment shall at all times remain the property of Capel Transport and is returnable on demand by Capel Transport. In the event that the Equipment is not returned to Capel Transport in the condition in which it was delivered Capel Transport retains the right to charge the Price of repair or replacement of the Equipment.

23.2 The Client shall;

(a) keep the Equipment in their own possession and control and shall not assign the benefit of the Equipment nor be entitled to lien over the Equipment.

(b) not alter or make any additions to the Equipment including but without limitation altering, make any additions to, defacing or erasing any identifying mark, plate or number on or in the Equipment or in any other manner interfere with the Equipment.

(c) keep the Equipment, complete with all parts and accessories, clean and in good order as delivered, and shall comply with any maintenance schedule as advised by Capel Transport to the Client.

23.3 The Client accepts full responsibility for the safekeeping of the Equipment and the Client agrees to insure, or self insure, Capel Transport's interest in the Equipment and agrees to indemnify Capel Transport against physical loss or damage including, but not limited to, the perils of accident, fire, theft and burglary and all other usual risks and will effect adequate Public Liability Insurance covering any loss, damage or injury to property or persons arising out of the use of the Equipment. Further the Client will not use the Equipment nor permit it to be used in such a manner as would permit an insurer to decline any claim.

24. General

24.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.

24.3 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by Capel Transport.

24.4 Capel Transport reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which Capel Transport notifies the Client of such change.

24.5 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

24.6 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.

24.7 The failure by Capel Transport to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Capel Transport's right to subsequently enforce that provision.