

## TERMS AND CONDITIONS OF CONTRACT.

1. In these conditions "The Carrier" shall mean ING TOWING carrying on business in its own name and under any business name and unless the contract otherwise requires as officers, servants, agents and subcontractors THE CARRIER IS NOT A COMMON CARRIER and will accept no liability as such. The carrier reserves the right to refuse the Carriage or transport of goods to any person, corporation, or company and the carriage and transport of and class of goods at its discretion. The Carrier subject to the following conditions accepts the goods.
2. All goods are carried, transported and/or stored and all services are provided by the carrier subject only to these terms and conditions.
3. (i) It is agreed that the person delivering the goods, supplies goods, gives direction as to the where about of the goods to the carrier is authorized to sign the documentation evidencing this contract for the consignor.  
(ii) The consignor warrants that in agreeing to the terms hereof it is, or has the authority of the person or persons, owing or having any interest in the goods or any part thereof.  
(iii) Without prejudice the generality of the foregoing the consignor undertakes to indemnify the carrier in respect of any liability whatsoever in respect of the goods to any person (other than the consignor) who claims to have, who has, or may hereafter have any interest in the goods or any part thereof.  
(iv) The carrier and any subcontractor shall be entitled to subcontract on any terms the whole or any part of the services.  
(v) The consignor undertakes that no claim or allegation shall be made whether by the consignor or any other person who is or may be interested in the goods against any person (other than the carrier) by whom (whether as subcontractor or principal employer, servant, agent or otherwise) the services or any part thereof are provided which imposes or attempts to impose upon such person any liability whatsoever in connection with the goods whether or not arising out of negligence on the part of such person and if such claim or allegation should nevertheless be made to indemnify the carrier and the person against whom such claim or allegation is made against the consequences thereof. Without prejudice to the foregoing and for the purpose of this clause the carrier 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 shall to this event be or be deemed to be parties to this contract.  
(vi) The consignor will arrange their own insurance of the goods/items if insurance is required for the carriage, cartage, transport, storage and the like of goods. Or will have in place adequate insurance prior to any actions by the carrier or instruction given to the carrier.
4. Every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defense and immunity or whatsoever nature applicable to the carrier or to which the carrier is entitled there under shall also be available and shall extend to protect
  - (a) All subcontractors
  - (b) Every servant or agent of the carrier or subcontractor
  - (c) Every other person (other than the carrier) by whom the services or any part thereof are provided and,
  - (d) all persons who are or may be vicariously liable for the acts or omissions of any person falling within (a), (b), or (c), hereof and for the purpose of this clause the carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefits of all such persons and each of them shall to the event be or be deemed to be parties to this contract.
5. (i) The carrier does have goods in transit insurance, however all claims and benefits from this insurance is at the sole discretion of the carrier.  
(ii) In any event subject only to sub clause (i) and to clause 24 hereof the goods are all the risk of the consignor and not the carrier and the carrier shall not be responsible in full or contract or otherwise to any loss or damage to or consequential matters arising from or deterioration of goods of this delivery or failure to deliver or delay in delivery of goods including chilled, frozen, refrigerated or perishable goods either in transit or in storage for any reason whatsoever including without limiting the foregoing the negligence or breach of contract or willful act or default of the carrier or others and this clause shall apply to all such loss of or damage to or deterioration of goods or wrongly delivery, or failure or delay in delivery of goods as aforesaid whether or not the same occurs in the course of performance by or on behalf of the carrier of the contract or events which are in the contemplation of the carrier and/or the consignor or in events which are foreseeable by them or in events which could constitute a fundamental breach of the contract or a breach of fundamental term thereof.
6. If the consignor expressly or impliedly instructs the carrier to use or it is expressly or impliedly agreed that the carrier shall use a particular method of handling or storing the goods or a particular method of cartage whether by road, rail, sea or air the carrier shall give priority to that method, but in any event the method or methods of handling, storing and/or for carriage adopted by the carrier shall remain at the sole discretion of the carrier and the consignor hereby authorizes the carrier to adopt any method or methods other than the method instructed or agreed.
7. The consignor hereby authorizes any deviation from the usual routine of carriage or place of storage of goods, which may in the absolute discretion of the carrier be deemed desirable or necessary in the circumstances.
8. (i) The carrier is authorized to deliver the goods at the address nominated to the carrier by the consignor for that purpose and without prejudice to the foregoing it is expressly agreed that the carrier shall be conclusively presumed to have delivered the goods in accordance with this contract if at that address, he obtains from any person a receipt or signed delivery docket for the goods.  
(ii) If the nominated place of delivery should be unattended or if any delivery cannot be effected by the carrier, the carrier may at its option deposit the goods at that place (which shall be conclusively presumed to be duly delivery hereunder) or store the goods and if the goods are stored by the carrier the consignor shall pay or indemnify the carrier for all costs and expenses in or about such storage in the event that the goods are stored by the carrier, the carrier shall be at liberty to re-deliver them to the consignor from the place of storage at the consignors expense.
9. Where goods are accepted for forwarding by rail, another transport business or storage facility, to an address in a town or to a place where the carrier has no receiving depot the goods shall be deemed duly delivered according to this contract if they are delivered to the nearest railhead, transport business or storage facility.
10. (i) The consignor shall not tender for carriage or storage of any volatile spirits or explosive goods which are or may become dangerous, inflammable or offensive (including radio-active materials) or which are or may become liable to damage any property whatsoever without presenting a full description disclosing the nature of such goods and in any event shall be liable for all loss and damage caused thereby and if in the opinion of the carriers 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 the carrier without compensation to the consignor and without prejudice to the carrier's right to any changes hereunder. All dangerous goods must be declared.  
(ii) The consignor warrants that it has complied with all laws and regulations relating to the nature, packaging, labeling, storage or carriage of the goods and that the goods are packed in a manner adequate to withstand the ordinary risks of storage and/or carriage having regard to their nature and hereby indemnifies the carrier for any liability whatsoever as a result of or arising out of the consignors failure to comply with each of these warranties.

11. It is agreed that the consignor shall be responsible for the conformity of any containers, packaging or pallets with any requirements of the consignee and for any expense incurred by the carrier arising from the failure to so conform. The consignor also agrees that if no visible tie down points or indicated tie down points on the goods being carried, the Carrier will use its best judgment for the restraint methods and tie down for the goods being carried and that the consignor will indemnify the Carrier of any wrong doing or of any possible damage caused by the restraints.
12. It is agreed that no servant or agent of the carrier or any other person has any power to waive or vary any of the terms hereof unless such waives or variations are in writing signed by an executive officer, owner or partner of the carrier.
13. The consignor shall be and remain responsible to the carrier for all its proper charges incurred for any reason. A charge may be made by the carrier in respect of any delay in excess of five minutes in loading or unloading occurring other than from the fault of the carrier.
14. The carrier's charges shall be deemed fully earned as soon as the goods are loaded and dispatched from the consignor's premises or accepted for storage and shall be payable and non-refundable in any event.
15. The carrier shall have a lien on the goods and any documents relating thereto and on any other goods of the consignor in the possession of the carrier or any documents relating thereto for all sums payable by the consignor to the carrier and for that purpose shall have the right to sell any such goods for public auction or private treaty without notice to the consignor.
16. If the carrier is liable for damage to or loss of the goods or any part thereof no claim in respect of such loss or damage may be made unless notice of the claim is lodged in writing at an office of the carrier in the state in which the delivery was or ought to have been effected within seven (7) days after delivery was effected or would in the ordinary course of business have been effected. If the Carrier has no registered office in the state of delivery, our head office in Queensland should receive any written claims.
17. Notwithstanding any other provision hereof other than the clause 18 hereof the carrier shall in any event be discharged from any liability whatsoever in the respect of the goods unless suit is brought within six (6) months from their delivery or from the date on which in the ordinary course of business delivery would have been effected.
18. Notwithstanding anything herein contained the carrier shall continue to be subject to any implied warranty provided by the Trade Practices Act 1974 (as amended) if and to the extent that the said Act is applicable to this contract and prevents the exclusion restriction or modification of any such warranty.
19. It is hereby agreed that if any provision or any part of any provision of this contract is unenforceable such unenforceability shall not affect any other part of such provision or any other provision hereof.
20. All goods received by the carrier for the carriage forwarding or storage are accepted subject to the condition that the carrier shall accept no responsibility for the collection of cash on delivery or any payments on behalf of the consignor or any other person. When goods are tendered by any person with instructions for the carrier to collect any such payments the carrier shall not be bound by such instructions notwithstanding that the carrier may accept the goods as tendered and perform other services of carriage, forwarding or storage in relation to those goods.
21. The consignor acknowledges that it is aware of and understands any applicable legislation to the disposal of uncollected goods and confirms that it's place of abode for the purpose of that legislation is that set out on the documentation evidencing this contract.
22. All the rights immunities and limitations of liability in the above terms shall continue to have their full force and effect in all circumstances and notwithstanding any breach of this contract or any of these terms and conditions thereof by the carrier or any person entitled to the benefit of such provisions.
23. If consignors, or its agents, signature is not able to be obtained due to no one at the location of the goods collected, it will be deemed that other previous terms and conditions signed on previous occasions will prevail and be adopted as a signed con-note as long as the terms and conditions have not significantly changed. This will also apply to goods received, if client is same as sender. If receiver is different from sender and we have been instructed to leave without signature, it will be deemed as delivered in good order and condition to the receiver.
24. Default clause. We reserve the right to charge any fees & charges including Interest (3% per month), Administration Fee/s, and to on charge any costs incurred by ING Towing or its agents with respect to collecting outstanding monies and for unpaid or late payment of account/s. This will also apply to cheques received that may be dishonored or rejected for whatever reason. This is also indicated on our standard invoice.
25. Privacy Act. If ING Towing considers it relevant to assessing my/our application for commercial or temporary credit (7 day account), I/we agree to ING Towing or its authorized agent, obtaining from a credit-reporting agency a credit report containing personal credit information about me/us in relation to commercial credit provided by ING Towing. I/we agree that ING Towing may give to and seek from any credit providers named in this con-note and any credit providers that may be named in a credit report issued by a credit reporting agency information about my/our credit arrangements. I/we understand that this information can include any information about my/our credit worthiness, credit standing, credit history or credit capacity that credit providers are allowed to receive or give to each other under the Privacy Act.
26. The consignor also will be bound to chain of responsibility laws that each state of Australia may have. In addition, driver fatigue laws will be adhered to and in no way will the consignor or the receiver ask, entice, offer money, goods or demand any truck driver to disregard any laws.
27. Motor vehicle disposal clause. Only applies to motor vehicles being disposed by the carrier and not transported. The consignor, sender states that they are the legal owner of the vehicle or goods prior to being relinquished or disposed and that the vehicle or goods is not registered and that the vehicle or goods is for disposal at the sole discretion by the Carrier. The owner relinquishes all rights to the motor vehicle or goods being disposed once the vehicle is (a) loaded onto a truck (2) removed from location as per the collected address on this con note (3) and upon this document being signed. All rights are relinquished to the Carrier. Should the person/s mentioned fraudulently or intentionally, mislead, supply stolen goods, or any thing out side their legal capacity with respect to the motor vehicle or goods being disposed, these persons will indemnify the carrier from any intentional wrong doing. The carrier will assist any law enforcement agency or investigations.