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Terms and Conditions of Carriage

2015/2016 Edition

TILT TRAYS TERMS AND CONDITIONS OF CARRIAGE

1. DEFINITIONS AND INTERPRETATIONS

1.1 In these terms and conditions, unless specified to the contrary, the following words and phrases have the meanings given to them:

Access means Access Group Australia Pty Ltd (ACN 096 170 071) or any of its related bodies corporate (as that term is defined in the *Corporations Act 2001* (Cth)).

Carrier means Tilt Trays Australia Pty Ltd (ABN 70 101 325 301).

Claim includes any claim, demand, remedy, suit, injury, damage, loss, cost, liability, action, proceeding, right of action or claim for compensation.

Consignor means the Customer.

Contract means the agreement made between Tilt Trays and the Customer, consisting of these terms and conditions, the relevant purchase order and any invoice for the carriage of the Goods.

Customer means the consignor and anyone acting on behalf of the consignor entering into the contract of carriage with the Carrier.

Force Majeure means any event or circumstance which is beyond the reasonable control of Tilt Trays including, without limitation, any Act of God, strike, lockout or other labour dispute, war, riot or civil commotion, breakdown of machinery or facilities necessary for the transportation or delivery of the Goods to the Place of Delivery.

Goods means the goods provided to Tilt Trays for consignment.

Place of Delivery means the place where the Goods are to be delivered by Tilt Trays, as specified in the relevant purchase order relating to the carriage of the Goods (or as otherwise agreed in writing by both Tilt Trays and the Customer).

Place of Receipt means the place where the Customer delivers the Goods to Tilt Trays.

Sub-Contractor means any person, firm, company or other entity Tilt Trays uses for the carriage of any part of the Goods (including operators of railways such as the Commonwealth of Australian and any State or Territory of Australia) and any person who is or becomes a servant, agent, employee or sub-contractor of any such person, firm, company or other entity.

Tilt Trays means the Tilt Trays Australia Pty Ltd (ABN 70 101 325 301) providing the carriage service to the Customer.

Interpretation

1.2 In the interpretation of these terms and conditions, the following provisions apply unless the context otherwise requires:

1.1.1 words importing the singular include the plural and vice versa;

1.1.2 words importing any gender includes both genders;

1.1.3 a reference to any matter or thing includes the whole and each part of it separately;

1.1.4 where a word or expression is given a particular meaning, other parts of speech and grammatical forms of that word or expression have a corresponding meaning;

1.1.5 a reference to a natural person includes a company or other corporate body and vice versa;

1.1.6 a reference to any legislation, regulation, code or local law includes any modification, re-enactment or substitution of it;

1.1.7 the obligations imposed by these terms and conditions on or in favour of a party who is a natural person extends to his heirs, executors, administrators and assigns;

1.1.8 the obligations imposed by these terms and conditions on or in favour of a party which is a company or other corporate body includes its successors and assigns;

1.1.9 use of the word "including" is to be read and construed without limitation; and

1.1.10 where the Customer comprises of two or more persons they are bound jointly and severally by the Contract.

2. COVERAGE

2.1 These conditions of carriage cover the whole of, or any part of, the operations provided from time to time by the Customer, including but not limited to the carriage, storage, loading, un-loading, packing, un-packing, freight forwarding, customs clearance or de-consolidation of any goods on behalf of the Consignor.

3. TILT TRAYS IS NOT A COMMON CARRIER

3.1 Tilt Trays is not a Common Carrier and is not liable as such.

3.2 Tilt Trays reserves the right to refuse the carriage of Goods of any person or corporation and the carriage or transport of any class of goods is at Tilt Trays absolute discretion.

3.3 All Goods are carried, stored and other services are performed by Tilt Trays subject only to the terms stated in:

- 3.3.1 the relevant purchase order agreed by Tilt Trays for the carriage of the Goods;
- 3.3.2 these terms and conditions; and
- 3.3.3 any other conditions given by Tilt Trays to the Customer.

3.4 If there is any ambiguity, discrepancy, conflict or inconsistency in or between the documents that constitute the Contract, the order of precedence (with the documents higher in the list taking precedence over those lower in the list) in clause 3.3 will apply.

4. TILT TRAYS MAY SUBCONTRACT

- 4.1 Tilt Trays may, in its absolute discretion, subcontract the carriage (or part of it) of the Goods (or part of them), as well as any other service provided by Tilt Trays. The Customer ratifies any such arrangement.
- 4.2 All sub-contractors shall be entitled to the full benefit of these terms and conditions to the same extent as Tilt Trays.

5. TILT TRAYS' CHARGES

- 5.1 Any quote which is issued by Tilt Trays is valid for 30 days from the date of issue.
- 5.2 The Customer must pay all fees, charges and costs that become due and payable under this Contract within 30 days of the invoice date.
- 5.3 In addition to the costs stated in the Contract, the Customer must pay to Tilt Trays such reasonable additional expenses relating to the carriage of the Goods which are incurred in the performance of this Contract, including (without limitation):
 - 5.3.1 additional charges imposed by Tilt Trays if Tilt Trays' costs increase as a result of legislative changes or requirements (including due to a Road Safety Remuneration Order being made or varied under the *Road Safety Remuneration Act 2012* (Cth)),
 - 5.3.2 fees and charges imposed by any authority in connection with the carriage of the Goods;
 - 5.3.3 all GST, customs duties, government taxes, import/export permits and documentation fees levied or pertaining to carriage of the Goods; and
 - 5.3.4 any other charges not mentioned in this Contract that are levied upon Tilt Trays by any authority having jurisdiction over the carriage of the Goods.
- 5.4 All prices quoted on the purchase order for the carriage of the Goods are GST-exclusive and net of all taxes (whether in Australia or otherwise), unless otherwise expressly stated. Tilt Trays will provide a tax invoice to the Customer where applicable.
- 5.5 The Customer indemnifies Tilt Trays to the extent it becomes liable for payment, or has paid, any charges, costs, taxes and fees and is unable to recover it from the relevant authority.
- 5.6 The Customer acknowledges that Tilt Trays may impose a charge for accepting payments by credit card in the amount of 1.5% of the total charges that would otherwise apply.
- 5.7 Tilt Trays charges shall be considered earned as soon as the Goods are loaded and dispatched from the Place of Receipt.
- 5.8 Notwithstanding any special instruction that charges are to be paid by the consignee or third party, the Customer remains liable and shall pay Tilt Trays if the consignee or third party fail to pay within seven (7) days of the date that payment is due to Tilt Trays.

6. LATE PAYMENT AND DISPUTES

- 6.1 Invoices sent to the Customer's email address by Tilt Trays will be deemed to have been received by the Customer on the date that the email is sent.
- 6.2 The Customer may not dispute an invoice or any part of it unless the dispute is brought to the attention of Tilt Trays in writing within 30 days of the date of the invoice.
- 6.3 If Tilt Trays is not paid by the payment due date, the Customer agrees that a late payment fee of 4% per month of the unpaid amount, compounding monthly, may be imposed by Tilt Trays.
- 6.4 The Customer indemnifies Tilt Trays against all fees, costs and expenses (including legal fees on a full indemnity basis) incurred or expended by Tilt Trays as a result of any delay in payment or the need to take action to recover moneys due.

7. SET-OFF AND APPLICATION OF FUNDS

- 7.1 Tilt Trays may set-off against any credit owed to the Customer any amount owing by the Customer to Tilt Trays. The Customer must not withhold or make any deduction from any payment by way of set-off.
- 7.2 The Customer acknowledges and agrees that any payment made by the Customer pursuant to this Contract may be applied by Tilt Trays to such outstanding moneys due to Tilt Trays, as Tilt Trays determines in its sole discretion and notwithstanding any direction given by the Customer at the time of payment.

8. CREDIT ACCOMMODATION

- 8.1 Tilt Trays may review any credit accommodation granted by Tilt Trays to the Customer at any time and withdraw the credit accommodation for any reason, or no reason, in its absolute discretion.
- 8.2 Should credit accommodation be withdrawn, a statement may be issued by Tilt Trays at that time requiring payment within seven (7) days of any amount due or owing.

9. LOADING AND UNLOADING OF GOODS

- 9.1 Labour and machinery to load and unload the Goods shall be the responsibility of the Customer, unless otherwise expressly agreed.
- 9.2 Tilt Trays may charge the Customer for time in loading or unloading the Goods, other than for delays due to the fault of Tilt Trays. The time runs from when Tilt Trays reports for loading or unloading.
- 9.3 The Customer will ensure the safe loading, securing and transporting of all Equipment in accordance with all laws and best industry practice for goods in the nature of the Goods.
- 9.4 The Customer must observe any safety directions advised by Tilt Trays relating to the loading and unloading of the Goods.

10. GENERAL LIEN

- 10.1 Tilt Trays has a lien over all the Customer's goods in the possession of Tilt Trays.
- 10.2 If the Customer fails to pay any amount due to Tilt Trays, Tilt Trays may detain and sell all or any of those goods and out of monies arising from the sale retain all monies and charges payable to Tilt Trays.
- 10.3 The Customer shall be entitled to any surplus moneys arising from such sale and any goods remaining.
- 10.4 This clause shall not prejudice or affect the charges due or payable in respect of services rendered.

11. ROUTE AND DEVIATION

- 11.1 Carriage commences when the Goods are delivered to Tilt Trays at the Place of Receipt and carriage ceases when the Goods are delivered to the Place of Delivery.
- 11.2 Carriage will be suspended when:
- 11.2.1 the Goods are held by Tilt Trays at some place other than the destination at the request or the convenience of the Customer or because the Customer refuses or is unable to take delivery at the destination;
 - 11.2.2 the Goods are detained by any statutory authority; or
 - 11.2.3 there is an event of Force Majeure preventing or delaying the performance of any of Tilt Trays' obligations under this Contract.
- 11.3 Should carriage be suspended, carriage shall resume when Tilt Trays resumes transport of the Goods.
- 11.4 Tilt Trays may at its discretion at any time, without notice to the Customer:
- 11.4.1 use any means of transport or storage;
 - 11.4.2 proceed by any route from the Place of Receipt whether or not the route is the nearest or most direct or customary route;
 - 11.4.3 proceed to, stay at or store the Goods at any place;
 - 11.4.4 comply with any order, directions or recommendations as to loading, unloading, departure, routes, places of call, stoppages, destination, arrival, discharge, delivery or discharge given by any government or authority.
- 11.5 Any action taken by Tilt Trays under clause 11.4 and any delay resulting therefrom shall be deemed to be included within the contractual route and shall not be a deviation.
- 11.6 The Customer shall take delivery of the Goods as soon as Tilt Trays is ready to deliver them.
- 11.7 If the Customer fails to take delivery of the Goods in accordance with clause 11.6 Tilt Trays may, without notice, unload the Goods and store them in the open or undercover and with or without refrigeration. Such storage shall constitute delivery and all liability of Tilt Trays in respect of the Goods shall cease.

12. INSURANCE

- 12.1 The customer acknowledges that obtaining adequate insurance is the responsibility of the Customer and if they fail or choose not to do so it is at their risk.

- 12.2 The customer must ensure the Goods are insured (including transit insurance, and insurance for third party property damage, injury or death) with a reputable insurer for an amount that a reasonable owner in respect of the Goods would consider prudent (but not less than \$20,000,000 in respect of liability for third party property damage, injury or death), or such higher amount as Tilt Trays may reasonably require from time to time given the nature of the Goods.
- 12.3 The customer and its insurers agree to waive all rights of subrogation against Tilt Trays. The customer shall obtain a waiver of subrogation in favour of Tilt Trays and indemnities from its insurers in relation to the transport of the Good under this Contract. The customer shall indemnify Tilt Trays from any action brought by its insurers for failure to obtain such waivers.
- 12.4 Insurance of the Goods or risks arising from the transport of the Goods will not be effected by Tilt Trays for the benefit of the Customer.

13. DANGEROUS OR ILLEGAL GOODS

- 13.1 The Customer (including through its agents) shall not tender for carriage and the Customer warrants that it has not so tendered, any illegal or stolen Goods.
- 13.2 The Customer is responsible for ensuring these Dangerous Goods are packed in accordance with best industry practice for their carriage and storage in accordance with all applicable laws.
- 13.3 The Customer shall be solely liable for and indemnifies and agrees to keep Tilt Trays indemnified against all loss, damage and injury arising due to the Goods being Dangerous Goods, or illegal or stolen Goods, whatever the cause of the loss, damage and injury and irrespective of whether Tilt Trays knew or ought to have known that the Goods were Dangerous Goods, or illegal or stolen Goods.

14. INDEMNITIES AND LIMITATIONS OF LIABILITY

- 14.1 The Goods shall at all times be at the risk of the Customer and Tilt Trays shall not be liable in tort (including negligence), contract (including a fundamental breach of contract), bailment, contravention of any statute or breach of statutory duty or otherwise for any loss of or damage to or failure to deliver or delay in delivery howsoever caused.
- 14.2 To the maximum extent permitted by law, Tilt Trays shall not be responsible for, and the Customer releases Tilt Trays from, and indemnifies Tilt Trays against, liability for loss, damage and injury to any person or property (including the Goods) in connection with the Contract, however occurring and however caused.
- 14.3 Without limiting the generality of clause 14.1 the Customer agrees that Tilt Trays shall not be liable for any loss or damage:
- 14.3.1 arising from the deterioration of the Goods, misdelivery, delays or failure to deliver the Goods either in transit or in storage for any reason whatsoever (including the negligence or fault of Tilt Trays);
 - 14.3.2 that are indirect or consequential such as, without limitation, loss of profit or anticipated profit, loss of data, loss of use, damage to goodwill and losses due to delays;
 - 14.3.3 that is concealed or caused by inherent vice or nature of the Goods (including chilled, frozen, refrigerated or perishable goods) either in way of transit or in storage howsoever caused (including the negligence or fault of Tilt Trays); and
 - 14.3.4 arising from a failure to perform any obligation under this Contract where such failure is due to any event of Force Majeure.
- 14.4 To the extent that Tilt Trays' liability is not excluded or limited under clause 14.1 and 14.3, Tilt Trays' liability under this Contract (however arising, including from a breach of this Contract or from Tilt Trays' negligence or tort) is limited at the option of Tilt Trays to:
- 14.4.1 the price paid or payable by the Customer to Tilt Trays pursuant to this Contract; or
 - 14.4.2 performing the services the subject of this Contract again.

15. CUSTOMER TO PROVIDE ACCURATE INFORMATION TO TILT TRAYS

- 15.1 The Customer warrants that the information provided to Tilt Trays to enable it to perform the services under this Contract is accurate. The customer must endeavour to provide this information in writing. This information includes but is not limited to the nature, size and description of the Goods, the location of the Goods, accessibility by Tilt Trays to any site where the Goods are located and the time for specified by the Customer for collection of the Goods by Tilt Trays.
- 15.2 Where any information provided to Tilt Trays by the Customer is incomplete and/or inaccurate and leads to Tilt Trays being unable to or delayed in providing the services under this Contract, the Customer agrees that it will be liable for any time and/or costs to Tilt Trays for Tilt Trays carrying out/attempting to carry out the services under this Contract.

16. CUSTOMER'S WARRANTIES, ACKNOWLEDGEMENTS AND INDEMNITIES

- 16.1 The Customer warrants to Tilt Trays that:
- 16.1.1 the Goods are fit for carriage;
 - 16.1.2 the person delivering or consigning any goods to Tilt Trays is fully authorised to do so and to sign this Contract on behalf of the Customer; and

16.1.3 it has the authority of all persons owning or interested in the Goods to agree to this Contract on their behalf.

16.2 The Customer acknowledges and agrees that:

16.2.1 no representations have been made by any employee or agent of Tilt Trays to the Customer; and

16.2.2 Tilt Trays reserves the right to inspect and unpack the Goods and shall not be liable for any loss or damage to the Goods caused by or arising directly or indirectly out of such inspection or unpacking.

16.2.3 The method or methods of undertaking the services under this Contract shall be at the sole discretion of Tilt Trays and the Customer hereby authorises Tilt Trays to adopt any method or methods other than any method which may have been instructed or agreed.

16.3 The Customer shall indemnify Tilt Trays against:

16.3.1 all Claims arising as a direct or indirect result of the Customer incorrectly describing the Goods;

16.3.2 any loss or damage which may be suffered by Tilt Trays as a result of any breach by the Customer of the warranties and acknowledgements in clauses 16.1 and 16.2;

16.3.3 all loss and damage to any property of any person arising from Tilt Trays or its sub-contractors loading and unloading the Goods; and

16.3.4 any loss or damage to Tilt Trays' container or other equipment which occurs due to the nature or condition of the Goods.

16.4 For the purposes of this clause "loss" expressly includes:

16.4.1 consequential loss; and

16.4.2 any fine, levy, charge or other monetary imposition for which Tilt Trays may become liable as an incident to the carriage and resultant from any breach by the Customer of this Contract.

17. TERMINATION

17.1 Tilt Trays may terminate this Contract immediately by notice to the Customer:

17.1.1 if the Customer breaches any term of this Contract; or

17.1.2 if the Customer becomes bankrupt or insolvent, executes a personal insolvency agreement, enters into liquidation, comes under external administration, goes into receivership or ceases to carry on business.

17.2 The rights of termination in clause 17.1 are in addition to any other rights under this Contract and do not exclude any right or remedy under law or equity and the terms of this Contract.

18. SECURITY

18.1 Tilt Trays may at any time request that the Customer provide a bank guarantee, security bond, corporate guarantee, personal guarantee or such other security as Tilt Trays deems necessary to secure the Customer's obligations in this Contract, on such terms and conditions and for such amount as Tilt Trays considers reasonable (in its sole discretion).

18.2 If the Customer complies with all the covenants, terms and conditions in this Contract, Tilt Trays must return to the Customer any bank guarantee or security bond at the expiry of one (1) month after all payments due pursuant to this Contract have been paid.

18.3 As security for the obligations and liabilities of the Customer in connection with this Contract, the Customer hereby charges for the due and punctual payment and performance of those obligations and liabilities, all of its legal and equitable interest (both present and future) of whatsoever nature held in any way in any real property.

18.4 Without limiting the generality of the charge in this clause, the Customer agrees, on request by Tilt Trays, to execute any documents and do all things necessary required by Tilt Trays to register a mortgage security or caveat over any real property in which the Customer has an interest (whether legal, equitable, present or future).

18.5 The Customer will indemnify Tilt Trays on an indemnity basis against all costs and expenses incurred by Tilt Trays in connection with the preparation and registration of any mortgage documents or caveats.

19. MISCELLANEOUS

Assignment

19.1 The Customer must not assign or otherwise deal with this Contract, or any rights under this Contract, without the prior written consent of Company.

19.2 Tilt Trays may, in its absolute discretion, assign this Contract to any third party without Customer's consent and will notify the Customer if it elects to do so.

Variations

- 19.3 Tilt Trays may at any time vary this Contract, including these terms and conditions of carriage, by giving the Customer 14 days' written notice of its intention to do so.
- 19.4 If the Customer is materially prejudiced by the variation, it may terminate the Contract by giving written notice to Tilt Trays.

Enquiries

- 19.5 The Customer irrevocably authorises Tilt Trays to make such enquiries as it deems necessary to investigate the credit worthiness of the Customer, any officers of the Customer and guarantors from credit reporting agencies.

Governing Law and Jurisdiction

- 19.6 This Contract is governed by the law of Western Australia. The parties submit to the non-exclusive jurisdiction of the Western Australian courts and courts of appeal.

Entire Agreement

- 19.7 This Contract comprises the entire agreement between the parties. No terms and conditions of the Customer apply to the carriage of Goods unless expressly agreed to in writing by Tilt Trays.

Severability

- 19.8 Each provision of this Contract is individually severable. If any provision is or becomes illegal, unenforceable or invalid in any jurisdiction, it is to be treated as being severed from this Contract in the relevant jurisdiction, but the rest of this Contract will not be affected.

Previous Editions

- 19.9 This edition of the terms and conditions of carriage replaces and supersedes all of Tilt Trays' previously issued terms and conditions of carriage.