

TNT Australia Pty Limited

Terms of our Rate Agreement

RA 03/04

1. This Agreement is between you and us (TNT Australia Pty Limited ABN 41 000 495 269).
 - 1.1 This Agreement and our Standard Terms and Conditions of Contract, found on the back of our consignment notes, provide the terms on which we will supply services to you.
 - 1.2 We are not a common carrier. We may refuse to handle, transport or store goods for you for any reason whatsoever.
 - 1.3 These terms cannot be waived or varied.
 - 1.4 By goods we mean:
 - any goods accepted from you or on your behalf;
 - any other goods we pick up with those goods;
 - any packaging, pallets or containers we pick up with those goods.
 - 1.5 By services we mean all services supplied to you in any capacity, including, but not limited to, customs agent, forwarding agent, shipping agent, forwarder, storer, carrier, or bailee.
 - 1.6 We and any subcontractor may subcontract part or all of our obligations on any terms.
 - 1.7 You agree that:
 - our employees, agents and subcontractors and their employees, agents and subcontractors have the benefit of this Agreement (in particular clauses 4.2, 5.4 and 10) as if they were parties to it; and
 - we hold that benefit on trust for them and can, if requested by them, enforce it on their behalf
 - 1.8 For international goods you declare that you have prepared the goods in secure premises by reliable staff employed by you, and that the goods have been protected against unauthorised interference during preparation, storage and transport immediately prior to handover to us.
 2. If you are a consumer
 - 2.1 If you are a "consumer" as defined in the Trade Practices Act, this Agreement does not affect any rights you may have as a result of that Act.
 - 2.2 For international consignments this Agreement does not affect any rights you may have under the Convention for the Unification of Certain Laws Relating to International Carriage by Air (Warsaw Convention) and Carriage by Sea (Hague Rules) where it is compulsorily applicable to this Agreement.
 3. You must pay if no-one else does
 - 3.1 Our charges are based on the greater of the actual weight or volume of the goods. For the purposes of calculating weight we round up to the next whole kilogram.
 - 3.2 Our charges are earned as soon as we collect the goods from you, or from the address nominated by you.
 - 3.3 You must pay the charges relating to the transport of the goods (including extended warranty — see Clause 9).
 - 3.4 In addition to freight we will charge you for:
 - a) any additional expenses we incur as a result of any incorrect declaration by you of the weight, volume, description or packaging of the goods;
 - b) any customs duty, storage charges or other charges or expenses we incur in relation to the goods. You will also be liable to pay any separately levied customs charges.
 - 3.5 If any customs authority requires additional documents in order to confirm customs clearance then you will provide those additional documents at your expense.
 - 3.6 We are entitled to retain and be paid all commissions, allowances and remuneration paid including those customarily paid by or to customs agents, forwarding agents, shipping agents, forwarders, storers, carriers or bailees.
 - 3.7 The charges contained in this Agreement (including any separately levied customs charges) are exclusive of any Goods and Services Tax, value added consumption tax or other similar taxes. If any such tax is applicable to any of the services supplied under this Agreement, we may pass that tax on to you and you must pay the tax in addition to the charges and/or rates specified in this Agreement.
 4. Some of your promises
 - 4.1 Your promises are important because if they are incorrect we may, for example, be fined for unlawfully transporting the goods, or the goods may not be included under the extended warranty (e.g. valuables are excluded from the extended warranty).
 - 4.2 You promise us and the persons referred to in clause 1.7 that:
 - you alone own the goods, or if there are other owners you act as their agent and they agree to handling, transport and storage of the goods on the terms of this Agreement;
 - you have completed the Rate Agreement and consignment note accurately;
 - the goods are packaged to withstand handling, transport and storage;
 - you have complied with all laws in connection with the goods to ensure that they can be lawfully handled, transported and stored;
 - you will not sue any of the persons referred to in clause 1.7 for anything arising in connection with this Agreement or the handling, transport or storage of the goods;
 - you will indemnify us as soon as we receive any written notice of claim from any person other than you;
 - you will indemnify us and the persons referred to in clause 1.7, against any claim made against us or the persons in clause 1.7;
 - you will indemnify us for any loss or damage caused to any person, including property damage, as a result of your breach of this Agreement;
 - the particulars relating to goods (including the declared value for customs) as shown on the consignment note are correct and the goods are adequately labelled and addressed to enable effective delivery to be made without delay; It is agreed that the indemnities in this clause will operate irrespective of whether any loss or damage arises from a wilful, deliberate or unauthorised act or omission by us or by any of the persons referred to in clause 1.7.
 - 4.3 If you ask us to deliver goods which we regard as unacceptable, or which you have undervalued for customs purposes, we may contact you to determine whether you wish to continue with the delivery or return the goods to you. Any additional charges so incurred by us will be at your expense. If we cannot find you or you do not accept liability for the additional charges then we may dispose of the goods at our discretion.
 5. If goods are dangerous
 - 5.1 Goods are "dangerous" if those goods are specified as such by any of the IATA Dangerous Goods Regulations, the Australian Dangerous Goods Code, the ICAO TI, the IMDG Code or the ADR or if they might injure or damage people, property or the environment. They include goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.
 - 5.2 You promise to tell us if the goods are dangerous and agree to give us a full and accurate written description of them on the consignment note. International goods are subject to security inspections which may include the use of x-ray equipment.
 - 5.3 Whether or not you have told us that any goods are dangerous you agree that if we, or if any of the persons referred to in clause 1.7, consider on reasonable grounds that the goods may cause injury or damage we or any of them can, at your cost do anything appropriate, including disposing of or destroying them. We will not be liable to you for any loss or damage you may incur by reason of our actions under this clause.
 - 5.4 You will always bear all risk of loss of or damage to, or arising in connection with, dangerous goods (ie dangerous goods are excluded from the extended warranty).
 6. You give us authority to:
 - use any method for handling, storing or carrying the goods. We will give priority to any instructions given by you, but if such instructions cannot be followed, we will use another method.
 - deviate from the usual route of carriage or place of storage;
 - carry the goods by air, road, rail or sea. We will give priority to the service selected by you, but if that service is not available, we will use the next best service available;
 - claim a general or particular lien over the goods, and any documents relating to them, for outstanding payments relating to those goods or to other goods which have been, or are to be, handled, transported or stored on your behalf;
 - sell any goods held by us for outstanding payments by public auction or private sale without any further notice to you
 7. Delivery
 - 7.1 We will attempt to deliver to the address nominated by you. Delivery is deemed to be effected when we receive a signed receipt or delivery docket.
 - 7.2 If that address is unattended, delivery is deemed to have occurred and we may leave the goods at that address unattended.
 - 7.3 If the delivery address is unattended and we elect to re-deliver the goods to you, we will charge you for the costs of the re-delivery including any storage costs we may incur.
 - 7.4 We will not in any circumstances deliver goods to a post office box.
 8. Notify promptly if you have a claim
 - 8.1 If you believe we are liable to you, you must:
 - notify us immediately; and
 - send your written notice of claim to us within 14 days.If we do not receive a written notice from you within that time, we will have no liability to you. Notwithstanding your claim, you remain liable to pay our charges under this Agreement.
 - 8.2 We will have no liability to you, even if you give us a written notice within that time, if you do not commence legal proceedings against us within 6 months of the date of delivery.
 9. Extended Warranty
 - 9.1 You must elect whether or not you want Automatic Transit Warranty (ATW), by completing the appropriate section on the front of this Rate Agreement. If you elect to have ATW applied to the consignments of your goods an extended warranty charge will be levied on each consignment. The maximum value for ATW is \$1,000.
 - 9.2 For domestic freight you may however elect to have extended warranty on individual consignments with TNT Extended Warranty (TEW) by completing the "sum required" and "class" boxes on the consignment note. An additional TEW charge will be levied for this extended warranty. Details of these charges can be found on the reverse side of the consignment note.
 - 9.3 For international freight, Marine Extended Warranty (MEW) is available by completing the extended warranty box on the consignment note. The extended warranty value must be the same as the value declared for customs. An additional charge will be levied for this extended warranty. Exclusions apply to MEW. Details of charges and exclusions are available by contacting the nearest TNT office.
 - 9.4 If we have agreed to extend the warranty for carriage of the goods then we agree to deliver the goods to the location identified on the consignment note in the same condition that the goods were delivered to us and further agree that if the goods are not so delivered we will pay the value of the goods, or if the goods are damaged the reasonable cost of repair of the goods. Our liability to you is limited to the amount of the extended warranty shown on the front of the consignment note. The maximum value for which we will extend the TEW and MEW warranty is \$40,000.

The extended warranty is only for physical loss or damage. The extended warranty does not include failure to deliver the goods or damage to the goods caused by mechanical derangement or latent defect. We are not liable for any form of consequential loss.
 10. All other liability to you
 - 10.1 Services are supplied at your risk. You:
 - bear the risk of loss or damage to the goods, unless we have agreed to extend the warranty for carriage of the goods, in which case we are liable to pay you only up to the limit of the extended warranty; and
 - always bear all risk of loss or damage arising in connection with the goods.
 - 10.2 We and the persons referred to in clause 1.7 are not liable for any delay, loss, or damage arising from the supply of or failure to supply services (including but not limited to any loss of, deterioration in, mis-delivery of or failure to deliver, goods), for any reason whatsoever including breach of agreement, negligence, breach of duty as bailee, or our wilful act or default.
 - 10.3 We and the persons referred to in clause 1.7 have the benefit of these exclusions and limitations of liability even if any loss or damage arises for any reason whatsoever including breach of agreement, negligence, breach of duty as a bailee, or a wilful act or default.
 - 10.4 Clauses 10.1 to 10.3 also apply in respect of claims for consequential losses including loss of profits.
 11. Guarantee

Notwithstanding clause 10.2, if your service is guaranteed you will be entitled to claim a refund for the difference in the price of the service that you requested and the price of the service that we actually provided to you. You must lodge your claim within 7 days from the date of our invoice. This guarantee does not apply to Road Express.
 12. International carriage of goods by air

If the carriage involves international carriage of goods by air the Warsaw Convention may be applicable and the convention governs and in most cases limits the liability of the carrier in respect of loss, damage, or delay to cargo to 250 french gold francs per kilogram or 17 special drawing rights, unless a higher value is declared in advance by the shipper and a supplementary charge is paid.
Under Australian law the liability limit of 250 gold francs per kilogram is 17 special drawing rights.
The Warsaw Convention also limits the time in which you must notify us of any claim. If you have a claim you must report it to us in accordance with clause 8.1.
 13. Governing Law & Jurisdiction

This Agreement is governed by the laws of New South Wales. Each party irrevocably submits to the non-exclusive jurisdiction of the Courts of New South Wales.
 14. Privacy

You agree that TNT may use your personal information for its legitimate functions, including promotions. We will not disclose your personal information except as required to perform our functions or if required to do so by any other Commonwealth, state or territory law. We will only use third party information relating to the receiver for the purpose of delivering a particular consignment. Third party information will then be stored as part of our record keeping process.
 15. Glossary of Acronyms

In this Agreement —
IATA means the International Air Transport Association.
ICAO means the International Civil Aviation Organisation.
TI means Technical Instructions for the Safe Transport of Dangerous Goods.
IMDG Code means the International Maritime Organisation Dangerous Goods Code.
ADR means Accord Europe en relatif au transport international des marchandises dangereuses par route.
- ### SPECIAL CONDITIONS
- A. ACCEPTANCE

Our rating system is computerised and special rates will be applied only to the specific zone/port quoted. Special rates will also be applied only when charged to the account or accounts nominated by you. Unless requested by you and confirmed in writing the special rates will only apply when originally charged on your account as detailed in the quotation. A separate order must be raised for subsidiary companies and other addresses.
 - B. TERMS

We reserve the right to cancel these special rates and recharge our services as per our current rate schedules where unauthorised extended payment terms are taken.
 - C. GENERAL
 - The special rate concession is automatically withdrawn if there is no trading during a period of 13 weeks.
 - These rates are subject to renegotiation or withdrawal if your average net weekly trading varies.
 - All rates quoted are subject to adjustment on 14 days written notice.
 - All premium options and extended warranty charges will be as per the prevailing tariff or negotiated rate agreement.