

The Trustee for Double J Combined Carrying & Maintenance Services Trust T/A Double J Removals & Storage

Terms & Conditions

1. **Definitions**
1.1 "Double J" shall mean The Trustee for Double J Combined Carrying & Maintenance Services Trust T/A Double J Removals & Storage and its successors and assigns or any person acting on behalf of and with the authority of The Trustee for Double J Combined Carrying & Maintenance Services Trust T/A Double J Removals & Storage.
1.2 "Sub-Contractor" shall mean and include:
(a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
(b) any other person, firm or Double J with whom Double J 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 "Customer" shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers 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 Double J's Services.
1.5 "Guarantor" means that person (or persons), or entity who agrees herein to be liable for the debts of the Customer 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 Double J's Services, or for storage by Double J.
1.7 "Services" shall mean all services supplied by Double J to the Customer and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by Double J to the Customer and includes any advice or recommendations.
1.8 "Price" shall mean the cost of the Services as agreed between Double J and the Customer 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 Double J 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 Double J:
(a) the supplying of the Services again; or
(b) the payment of the cost of having the Services supplied again; or
(c) where the Customer 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 Double J from the Customer 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 Customer 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 Double J.
3.3 These terms and conditions are to be read in conjunction with Double J's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by Double J to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
3.4 The Customer shall give Double J not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice). The Customer shall be liable for any loss incurred by Double J as a result of the Customer's failure to comply with this clause.
4. **Price and Payment**
4.1 At Double J's sole discretion the Price shall be either:
(a) as indicated on invoices provided by Double J to the Customer in respect of Services supplied or
(b) Double J's quoted Price (subject to clause 4.2) which shall be binding upon Double J provided that the Customer shall accept in writing Double J's quotation within thirty (30) days.
4.2 Double J may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to Double J beyond the reasonable control of Double J (including, without limitation, delays, or increases in taxes or customs duties or insurance premiums or warehousing costs).
4.3 At Double J's sole discretion payment shall be due on completion of the Services.
4.4 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
4.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to five percent (5.0%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and Double J.
4.6 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. **Seller Not Common Carrier**
5.1 Double J 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 Double J subject only to these conditions and Double J 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. **Buyer-Packed Containers and Third Party Transport**
6.1 Double J shall, unless specifically instructed by the Customer, pre-pack the Goods to a standard which suits the specified distance the Goods are carted and this standard shall also be contingent on the mode of transport for the Goods.
6.2 If a container has not been stowed by (or on behalf of) Double J, Double J 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.
6.3 Similarly, Double J shall not be liable for damage to containers stowed by Double J that have been transported by the Customer or any other third party.
7. **Nomination of Sub-Contractor**
7.1 The Customer hereby authorises Double J (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 Customer upon delivery of the said Goods to such Sub-Contractor, who shall hereupon be entitled to the full benefit of these terms and conditions to the same extent as Double J. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Double J shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
8. **Route Deviation**
8.1 The Customer shall be deemed to authorise any deviation from the scheduled route or manner of carriage of Goods that may in the absolute discretion of Double J be deemed reasonable or necessary in the circumstances. Any additional charges arising from such deviation shall be charged to the Customer.
9. **Charges Earned**
9.1 Double J's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Customer's premises.
10. **Demurrage**
10.1 The Customer will be and shall remain responsible to Double J for all its proper charges incurred for any reason. A charge may be made by Double J in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of Double J. Such permissible delay period shall commence upon Double J reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.
11. **Dangerous Goods**
11.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Customer shall not deliver to Double J, or cause Double J to deal with or handle, Dangerous Goods.
- 11.2 If the Customer is in breach of Clause 11.1:
(a) the Customer, and any person delivering the Goods to Double J, or causing Double J to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified Double J against all loss, damages, claims and costs (howsoever arising) incurred by Double J in connection therewith; and
(b) the Goods may be destroyed or otherwise dealt with as determined by Double J in its absolute discretion at the expense of the Customer (or by any other person in whose custody they may be at the relevant time also at the expense of the Customer), and neither Double J nor any such other person shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the Goods.
- 11.3 If Double J agrees to accept Dangerous Goods and then during the provision of the Services Double J, it's Sub-Contractors (or any other suitable qualified person or authority) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, then the provisions of clauses 11.2(a) & 11.2(b) shall apply.
12. **Consignment Note**
12.1 It is agreed that the person delivering any Goods to Double J for carriage or forwarding is authorised to sign the consignment note for the Customer.
13. **Buyer's Responsibilities**
13.1 The Customer expressly warrants to Double J that the Customer 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 carriage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting.
13.2 The Customer must, prior to the commencement of the removal or storage, give Double J written notice of any Goods which are of a fragile or brittle nature and which are not readily apparent as such, or which comprise jewellery, precious objects, works of art, collections of items or precision equipment in any case having a value in excess of one thousand dollars (\$1,000.00).
13.3 The Customer or the Customer's representative must be present at all times during the loading and unloading of the Goods. Where the Customer expressly requests Double J to leave Goods outside Double J's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk.
13.4 The Customer will indemnify Double J 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 Double J in connection with the Goods.
14. **Delivery**
14.1 Double J is authorised to deliver the Goods at the address given to Double J by the Customer for that purpose and it is expressly agreed that Double J shall be taken to have delivered the Goods in accordance with this contract if at that address Double J obtains from any person a receipt or a signed delivery docket for the Goods.
14.2 Double J 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.
14.3 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
14.4 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
14.5 The failure of Double J to deliver shall not entitle either party to treat this contract as repudiated.
15. **Loss or Damage**
15.1 The Customer shall inspect the Goods on delivery and shall within forty-eight (48) hours of delivery (time being of the essence) notify Double J of any alleged damage to the Goods. The Customer shall afford Double J an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are damaged in any way. Damaged Goods must be left as they are found with no further unpacking of the container in which the Goods are located. If the Customer shall fail to comply with these provisions the Goods shall be presumed to be free from any damage.
15.2 Where Double J accepts responsibility for the damaged Goods, Double J's liability is limited to the repair of the Goods. Double J may, at its sole discretion, compensate the Customer for any damage to the Goods by paying the Customer the value (prior to the damage occurring) of the Goods in question. In the event Double J and Customer cannot agree on the amount of compensation, it shall be assessed by an independent valuer.
15.3 Where the damaged Goods are part of a set, pair, suite or collection, repair or compensation of the Goods shall extend only to the proportionate part of the set, pair, suite or collection, regardless of any special value the damaged portion may have as part of the set, pair, suite or collection.
15.4 Double J shall thereafter in no circumstances be liable for:
(a) damaged Goods that have:
(i) either not been pre-packed or carted (or both) by Double J;
(ii) repaired by the Customer or third party not authorised by Double J.
(b) identified risk Goods: where an existing condition or circumstances of the Goods, or a particular direction or instruction contravenes Double J's normal workmanship standards so that damage to the Goods may be unavoidable; or
(c) unknown risk Goods: where damage arises from conditions or are due to hidden or unidentifiable difficulties beyond the reasonable control of Double J (including, but not limited to, an existing defect or fault to either the Goods or property that is not immediately obvious); or
(d) unavoidable risk Goods: where moving Goods (including, but not limited to, pot plants, chipboard, Ikea furniture, stone or marble Goods, or fish tanks) can cause unavoidable damage due to the nature of the Goods;
(e) electrical Goods: internal damage to electrical Goods where no external damage has been caused by Double J.
15.5 Double J shall not be obligated to consider any claim for damaged Goods where:
(a) the Goods in question are of a chilled, frozen, refrigerated, perishable or dangerous nature; or
(b) any and all payment due to Double J by the Customer has been withheld for any reason or is not paid by clear funds.
15.6 Double J shall not be responsible or liable for any other loss whatsoever (including, but not limited to, consequential loss of value) suffered by the Customer as a result of the damage to, or repair of, the Goods.
15.7 Where damage to the Goods relates to, or arises from, the collision or overturning of Double J's vehicle, or any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of China Bear, the Customer shall be compensated only within the ambit of the insurance amount received by Double J.
16. **Insurance**
16.1 The Customer acknowledges that:
(a) the Goods are carried and stored at the Customer's sole risk and not at the risk of Double J; and
(b) Double J is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
(c) under no circumstances will Double J be under any liability with respect to the arranging of any such insurance and no claim will be made against Double J for failure to arrange or ensure that the Goods are insured adequately or at all.
17. **Conditions of Storage**
17.1 Double J will prepare an inventory of Goods received for storage and will ask the Customer to sign that inventory. The Customer will be provided with a copy of the inventory. If the Customer signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from Double J, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Customer ask for the contents to be listed, in which case Double J will be entitled to make a reasonable additional charge.
17.2 Double J is authorised to remove the goods from one warehouse to another without cost to the Customer. Double J will notify the Customer of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
17.3 The Customer is entitled upon giving Double J reasonable notice to inspect the Goods in store but a reasonable charge may be made by Double J for this service.
17.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Customer may require the Goods to be removed from the store at any time on giving Double J not less than five (5) working days notice. If the Customer gives Double J less than the required notice Double J will still use their best endeavours to meet the Customer's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 17.5 The Customer agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from Double J to do so. In default, Double J may after fourteen (14) days of that notice to the Customer SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Customer to Double J.
18. **Default and Consequences of Default**
18.1 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 Double J's sole discretion such interest shall compound monthly at such a rate) after as well as before any payment.
18.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by Double J.
18.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify Double J from and against all costs and disbursements incurred by Double J in pursuing the debt including legal costs on a solicitor and own client basis and Double J's collection agency costs.
18.4 Without prejudice to any other remedies Double J may have, if at any time the Customer is in breach of any obligation (including those relating to payment), Double J may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. Double J will not be liable to the Customer for any loss or damage the Customer suffers because Double J exercised its rights under this clause.
18.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
18.6 Without prejudice to Double J's other remedies at law Double J shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Double J shall, whether or not due for payment, become immediately payable in the event that:
(a) any money payable to Double J becomes overdue, or in Double J's opinion the Customer will be unable to meet its payments as they fall due; or
(b) the Customer 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 Customer or any asset of the Customer.
19. **Unpaid Seller's Rights to Dispose of Goods**
19.1 Double J shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of Double J for all sums payable by the Customer to Double J, and Double J shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. Double J shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
20. **Security and Charge**
20.1 Despite anything to the contrary contained herein or any other rights which Double J may have howsoever:
(a) where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer 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 Double J or Double J's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Customer and/or the Guarantor acknowledge and agree that Double J (or Double J'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 Double J elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify Double J from and against all Double J's costs and disbursements including legal costs on a solicitor and own client basis.
(c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint Double J or Double J's nominee as the Customer'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 Customer and/or the Guarantor/s agree to Double J to obtain from a credit reporting agency a credit report containing personal credit information about the Customer and Guarantor's relation to credit provided by Double J.
21.2 The Customer and/or the Guarantor/s agree that Double J may exchange information about the Customer and the Guarantor/s with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
(a) to assess an application by Customer; and/or
(b) to notify other credit providers of a default by the Customer; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
(d) to assess the credit worthiness of Customer and/or Guarantor's.
21.3 The Customer consents to Double J being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
21.4 The Customer agrees that personal credit information provided may be used and retained by Double J for the following purposes and for other purposes as shall be agreed between the Customer and Double J or required by law from time to time:
(a) provision of Services; and/or
(b) marketing of Services by Double J, its agents or distributors in relation to the Services; and/or
(c) analysing, verifying and/or checking the Customer'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 Customer; and/or
(e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
21.5 Double J may give information about the Customer to a credit reporting agency for the following purposes:
(a) to obtain a consumer credit report about the Customer; and/or
(b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
22. **Cancellation**
22.1 Double J 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 Customer. On giving such notice Double J shall repay to the Customer any sums paid in respect of the Price. Double J shall not be liable for any loss or damage whatever arising from such cancellation.
22.2 In the event that the Customer cancels delivery of Goods the Customer shall be liable for any loss incurred by Double J (including, but not limited to, any loss of profits) up to the time of cancellation.
23. **General**
23.1 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.
23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the local courts of Ryde.
23.3 The Customer shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Customer by Double J.
23.4 Double J 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 Double J notifies the Customer of such change.
23.5 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.
23.6 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
23.7 The failure by Double J to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Double J's right to subsequently enforce that provision.