

AgRisk Road Carriage Terms and Conditions – As at June 2017

1. Evidence of contract and precedence

1.1 Contract

These terms and conditions will form part of any contract of carriage between AgRisk and the Carrier (**Contract**) and which comprises of the following documents:

- (a) the Market Check Commodity Movement Order and/or Freight Confirmation.
- (b) any special conditions (if any) agreed in writing between the parties; and
- (c) these Road Carrier Terms & Conditions.

1.2 Precedence

If there is any conflict between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in the order set out in clause 1.1.

1.3 Exclusion of Carrier's Conditions

If the Carrier provides, refers to or otherwise uses terms and conditions other than those included in the Contract, such terms and conditions will not form part of, or be incorporated into, the Contract.

1.4 Agency

The Carrier acknowledges that AgRisk may contract as agent for a Grower or Seller.

1.5 Sub-Contracting and Brokerage

- (a) AgRisk acknowledges that the Carrier may subcontract some or all of the carriage and/or act as a freight broker. Where a subcontractor is employed by the Carrier to undertake services under this Contract, the Carrier must ensure that the subcontractor is likewise bound by these terms and conditions.
- (b) Notwithstanding any sub-contract, the contracting Carrier remains responsible for provision of the services for any breach of this contract and the Carrier's obligations under the Contract are not lessened or otherwise affected by the Carrier engaging a sub-contractor to perform any or all or any of the Carrier's obligations under the Contract. This will include circumstances where the Carrier is acting as a freight broker and engages a sub-carrier to perform services under the Contract. It will be the sole responsibility of the Carrier to ensure any subcontractor is likewise bound by these terms and conditions including any Chain of Responsibility (CoR) compliance pursuant to clause 2.5 of these terms and conditions.
- (c) The carrier warrants that any subcontractor it engages possesses all necessary policies that comply with all Road Safety Laws including CoR laws.
- (d) The carrier warrants that any subcontractor it engages has been notified that it is bound by these terms and conditions.

- (e) The carrier must keep a list of their approved transport sub-contractors and maintain relevant records including all relevant CoR policies held by the subcontractor.
- (f) The Carrier must not engage any person whom AgRisk has notified the Carrier in writing, in AgRisk's absolute discretion, as being unacceptable to AgRisk.

2. Carrier's obligations

2.1 Due care and skill

The Carrier must perform the Services with due care and skill and in accordance with generally accepted road transport industry standards and CoR laws.

2.2 Non-exclusive

The Carrier acknowledges and agrees that:

- (a) AgRisk may issue a quotation request to other Carriers in relation to the Services; and
- (b) AgRisk is not required to disclose to the Carrier the identity of any other carriers or the details of any quotation received from any other carriers in relation to the Services.

2.3 Quotation

- (a) From time to time AgRisk may issue a quotation request either verbally or in writing to the Carrier.
- (b) The Carrier may respond to a quotation request by providing AgRisk with a quotation, which must include the following:
 - (i) the price for the performance of the Services set out in the quotation request (excluding GST); and
 - (ii) any other information requested in the quotation request.
- (c) The Carrier must provide AgRisk with a quotation within the period stated in the quotation request, or if no period is stated in the quotation request, within 24 hours from the time at which the Carrier receives the quotation request.
- (d) The Carrier must not provide AgRisk with a Quotation if the Carrier is unable to perform the Services set out in a quotation request in accordance with all relevant road safety and CoR laws.
- (e) If the Carrier considers that it is unable to perform the Services set out in a quotation request in accordance with the Road Safety and CoR laws, the Carrier must provide AgRisk with written notice of any proposed variations to the quotation request which the Carrier considers are necessary to ensure the Services can be performed in accordance with the road safety and CoR laws.
- (f) On receipt of a quotation from the Carrier, AgRisk may, in its sole discretion, accept the quotation by issuing a Commodity Movement Order to the Carrier. AgRisk is under no obligation to accept a quotation or providing reasons for rejecting a quotation.

2.4 General obligations

Without limiting clause 2.1, in performing the Services the Carrier must, and must ensure that its Personnel:

- (a) use best efforts not to interfere with any activities of AgRisk, or the activities of any other person, on a Site;
- (b) comply with all applicable speed limits while on a Site;
- (c) enter onto and use a Site solely for the purpose of performing the Services;
- (d) exercise due care and skill in respect of the transport and handling of the Products; take all necessary precautions to prevent loss or damage to the Products during such transport and otherwise while the Products are in the possession, or under the control, of the Carrier or its Personnel; and
- (e) comply with:
 - (i) all applicable Laws and industrial awards and agreements;
 - (ii) any Policies of AgRisk or an Operator applicable to the performance of the Services; and
 - (iii) all reasonable directions and orders given by any Personnel of AgRisk or an Operator.

2.5 Chain of Responsibility compliance

- (a) For the purposes of this clause and the Contract, '**CoR laws**' means the *Heavy Vehicle National Law and Regulations, Road Traffic (Administration) Act 2008* (WA) and *Road Traffic (Vehicles) Act 2012* (WA) and any other similar laws in any State/Territory (or any replacement or modification thereof).
- (b) The Carrier must at all times during the provision of the Services and any Transportation Services comply with the terms of the AgRisk Chain of Responsibility Compliance Policy as in force from time to time. The Carrier acknowledges having received, read and understood a copy of the AgRisk Chain of Responsibility Compliance Policy.
- (c) The Carrier must at all times take all reasonable steps to prevent any contravention of the CoR laws.
- (d) Without limiting any other provision of the Agreement, in the provision of any the Services under this Agreement and the negotiation or performance of any Transportation Services, the Carrier must take all reasonable steps to:
 - (i) accurately and safely weigh or measure the heavy vehicle or its load, or to safely restrain the load in the heavy vehicle;
 - (ii) provide and obtain sufficient and reliable evidence from which the weight or measurement of the heavy vehicle or its load might be calculated;
 - (iii) manage, reduce or eliminate a potential contravention of CoR laws arising from the location of the heavy vehicle, or from the location of the load in the heavy vehicle, or from the location of goods in the load;

- (iv) manage, reduce or eliminate a potential contravention of CoR laws arising from weather and climatic conditions, or from potential weather and climatic conditions, affecting or potentially affecting the weight or measurement of the load;
 - (v) exercise supervision or control over others involved in activities which may lead to a contravention of CoR laws;
 - (vi) include CoR laws compliance assurance conditions in relevant commercial arrangements with other responsible persons for heavy vehicles;
 - (vii) provide information, instruction, training and supervision to employees to enable compliance with CoR laws;
 - (viii) maintain equipment and work systems to enable compliance with CoR laws; and
 - (ix) address and remedy similar CoR laws compliance problems that may have happened in the past.
- (e) Without limiting any other provision of the Agreement, in the provision of any Services under this Agreement and the negotiation or performance of any Transportation Services, in relation to the speed and fatigue management obligations under the CoR laws, the Carrier must take all reasonable steps to:
- (i) prevent, eliminate or minimise the likelihood of a potential contravention of the CoR laws;
 - (ii) eliminate or minimise the likelihood of risks to public safety arising from a potential contravention of the CoR laws;
 - (iii) manage, minimise or eliminate risks to public safety arising from a potential contravention of the CoR laws;
 - (iv) identify and assess the aspects of the activities of the Carrier and its Personnel that may lead to a contravention of the CoR laws by any driver;
 - (v) for each aspect identified and assessed under clause 2.5(e)(iv)), identify and assess:
 - (A) the risk of the aspect leading to a relevant contravention; and
 - (B) if there is a substantial risk of the aspect leading to a relevant contravention, the measures the Carrier may take to eliminate the risk or, if it is not reasonably possible to eliminate the risk, to minimise the risk;
 - (vi) carry out the identification and assessment mentioned in clauses 2.5(e)(iv) and (v) at least annually and after any event that indicates the way the activities the subject of the identification and assessment are being carried out have led, or may lead, to a relevant contravention;
 - (vii) take the measures identified and assessed under paragraph 2.5(e)(v)(B);

- (viii) for each action mentioned in any of paragraphs 2.5(e)(iv) to (vii) taken by the Carrier:
 - (A) keep a record of the action for at least 3 years after taking it; or
 - (B) if 3 years have not passed since taking the action, keep a record of the action since taking it.
- (f) The Carrier must at its own cost consult, cooperate and coordinate with any Carrier engaged to provide any Transportation Services in relation to compliance with the CoR laws.
- (g) The Carrier will, In relation to the performance of any Transportation Services provided by or on behalf of the Carrier, notify AgRisk of any:
 - (i) Warning, cautions or 'near misses';
 - (ii) request for information or production of documents;
 - (iii) infringement notice;
 - (iv) fine; or
 - (v) commencement of prosecution proceedings,by any State or Territory road safety authority or authorised officer in respect of any breach or suspected breach of any CoR law in respect of any such Transportation Services. The Carrier further undertakes to provide AgRisk with a copy of any such warning, request, notice, fine or proceedings and any response or submissions made by or on behalf of the Carrier within 14 days of receiving or making the same.
- (h) In the event of any breach or suspected breach of the CoR laws by any of the Carrier or its Personnel in relation to any Transportation Services facilitated under this Agreement, AgRisk will be entitled to, in its sole and absolute discretion:
 - (i) report any breach or suspected breach of the CoR laws to any relevant authority, including disclosing any or all documentary materials in relation to the circumstances of any such breach or suspected breach; and/or
 - (ii) issue the Carrier with a 'show cause' notice requiring the Carrier to explain to the reasonable satisfaction of AgRisk within fourteen days of the date of the notice:
 - (A) the circumstances of the breach or suspected breach or any near miss;
 - (B) any steps taken to respond to the breach or suspected breach; and
 - (C) any steps taken to prevent any other breach similar to the breach or suspected breach from occurring.
- (i) In addition to any other rights or entitlements of AgRisk under and despite anything to the contrary contained in any other provision of this Agreement, in the event of any breach or suspected breach of the CoR laws by any of the Carrier or its Personnel in relation to any Transportation Services facilitated under this Agreement or any failure of the Carrier to respond to the reasonable satisfaction of AgRisk to any 'show cause' notice, AgRisk will be entitled, in its sole and absolute discretion:

- (i) suspend Carrier's access to the Services until such time as the breach is remedied to the satisfaction of AgRisk; and
- (ii) terminate this Agreement with immediate effect by giving notice in writing to the Carrier.

2.6 Fatigue Management

The carrier must ensure there are:

- (a) Procedures that allow drivers to utilise amenities or take rest and still maintain queuing positions.
- (b) Appropriate amenities available on site or in close proximity that allow drivers access to satisfactory food, water and shelter. Larger sites that operate on a 24/7 basis should allow driver access to toilets, change rooms, drinking water and appropriate shelter on site.
- (c) Clear documented systems and procedures that recognise and assist managing driver safety fatigue. This is particularly important where throughput times are longer than 2 hours from the time of joining queues to final discharge of the load.

The Driver must adhere to Heavy Vehicle National Law where applicable or state based legislation and Harvest Management Schemes (where applicable).

2.7 Inductions and training

The Carrier must ensure that its Personnel successfully complete any inductions or other training which are required by AgRisk or an Operator in connection with the performance of the Services at a Site.

2.8 Licences

The Carrier must:

- (a) ensure that the Carrier's Personnel:
 - (i) hold all Licences, including a current driver's licence for the operation of the Vehicle type under their control; and
 - (ii) are adequately trained and are competent to carry out their duties and perform their functions in relation to the provision of the Services in an efficient, effective, safe and environmentally conscious manner;
- (b) provide copies of all Licences (including all conditions attaching to them) to AgRisk as and when requested by AgRisk;
- (c) advise AgRisk immediately in writing if there is any change in any condition attaching to any of the Licences; and
- (d) take all necessary action to prevent, and advise AgRisk immediately if the Carrier become aware of any breach of any of the Licences (and the consequences of any such breach) or any cancellation, forfeiture, expiry or withdrawal of any of the Licences.

2.9 Vehicle drivers

Without limiting clause 2.7, the Carrier must ensure that each driver of the Vehicles:

- (a) holds at all times a current driver's licence appropriately endorsed in respect of the Vehicles and is qualified to provide the Services;
- (b) wears high visibility vests, safety boots and such other personal protective equipment as required for the Site and other items as required by Law;
- (c) while performing the Services, does not drive the relevant Vehicles while under the influence of alcohol or under the influence of any non-prescribed drugs or any prescribed drugs labelled as having an effect on driving or which the driver has been advised will have an effect on driving;
- (d) conforms to reasonable standards of behaviour, conduct and hygiene; and
- (e) strictly observes and performs the provisions of the Contract.

2.10 Inspection of Vehicles and Equipment

- (a) AgRisk, and/or the Site Operator may at any time inspect any or all of the Vehicles and Equipment and may refuse to accept the Services where, in the reasonable opinion of AgRisk or the Operator, there are circumstances which may preclude the safe handling or transportation of the Products or expose persons or property to the risk of injury, damage or breach of any Law or standard.
- (b) If AgRisk and/or the Site Operator refuse to accept the Services because of concerns relating to the Vehicles or the Equipment, the Carrier must supply an alternate Vehicle or Equipment suitable for the provision of the Services without delay.

2.11 Reporting obligations

The Carrier must advise AgRisk immediately:

- (a) of any inability to perform the Services or delay in performance of the Services;
- (b) of any accident involving, or caused by, the Carrier or its Personnel during the performance of the Services; and
- (c) of any complaints made by a AgRisk Customer or an Operator in respect of the Services.

2.12 Progress reports

The Carrier must provide AgRisk with regular progress reports in the manner required by AgRisk from time to time.

2.13 Records

The Carrier must retain all Records and provide AgRisk with copies of the Records on request in a format acceptable to AgRisk in its sole discretion. The following includes some records that must be kept;

- (a) All loads carried by vehicles (e.g. collection/delivery tickets, load sheets etc)

- (b) All cleaning operations
- (c) Inventory of all vehicles and trailers
- (d) List of approved Subcontractors
- (e) Audit records of sub-contractors
- (f) Staff training/instruction/Qualifications
- (g) Insurance documents
- (h) Operator's licence – if applicable
- (i) Container weight declaration – if applicable
- (j) Complaints
- (k) Others as documented in these Terms and Conditions and associated Policy documents

2.14 Audit

The Carrier must provide AgRisk with any information or documents reasonably required by AgRisk to audit the Carrier's compliance with the Road Safety Laws. At the time of returning a signed agreement to AgRisk, the Carrier undertakes to provide copies of any/all:

- CoR Policy;
- Mass, dimension or load restraint policy;
- Speed management policy;
- Fatigue management policy; and
- Maintenance management policy,

in place in respect of its business.

The carrier undertakes to notify AgRisk in writing immediately in the event that it or any person in its employ or for whom it is responsible is issued with any warning, request for information or production of documents, notice or fine in respect of any breach of any mass, dimension, load restraint, fatigue, speed or maintenance requirement in respect of any goods or services it provides to or on behalf of AgRisk. The carrier undertakes to provide AgRisk with a copy of any such warning, request, notice or fine and any response or submissions made by it in relation to the same.

3. Title and risk

3.1 Title and risk

- (a) The Carrier acknowledges and agrees that it will have no ownership of, or property, right, title or interest in, the Products while the Products are under the Carrier's possession or control and that the Carrier and the Carrier's Personnel hold all

Products as a mere bailee and on behalf of AgRisk and or the grower/seller (if applicable).

- (b) The Carrier acknowledges and agrees that risk in the Products will pass to the Carrier when the Products are loaded onto the Carrier's Vehicle at a Loading Point and will remain with the Carrier until the Products are unloaded from the Carrier's Vehicle at the Unloading Point identified in the Commodity Movement Order or Freight Confirmation.

4. Loading and unloading

4.1 Loading

- (a) The Carrier must assist the Operator of the relevant Loading Point to load the Vehicles at the Loading Point by placing the Vehicle at the designated loading area as directed by the Operator's Personnel.
- (b) The Carrier must use its best endeavours, in conjunction with the Operator, to ensure:
 - (i) the loading of the Vehicles is commenced and completed within the Loading Period; and
 - (ii) the Vehicles are loaded safely and in accordance with all Laws and the Policies of AgRisk (if any) and the Operator.

4.2 Unloading

- (a) The Carrier must assist the Operator of the relevant Unloading Point to unload the Vehicles at the Unloading Point by placing the Vehicle at the designated unloading area as directed by the Operator's Personnel.
- (b) The Carrier must use its best endeavours, in conjunction with the Operator, to ensure:
 - (i) the unloading of the Vehicles is commenced and completed within the Unloading Period; and
 - (ii) the Vehicles are unloaded safely and in accordance with all Laws and the Policies of AgRisk (if any) and the Operator.

4.3 Loading and unloading times

The Carrier must contact the relevant Operator to arrange a specific loading or unloading time.

4.4 General co-operation

The Carrier and its Personnel must co-operate with and follow the reasonable directions of:

- (a) the Operator of the Loading Point;
- (b) the Operator of the Unloading Point, and
- (c) AgRisk,

and their respective Personnel, during loading and unloading of the Vehicles.

4.5 Load requirements

- (a) The Carrier must use reasonable endeavours to assist the Operator to load each Vehicle to the Load Limit.
- (b) A Vehicle will be deemed to be fully loaded if:
 - (i) the Operator's Personnel determines the Vehicle to be fully loaded; and
 - (ii) the Vehicle has been loaded to the Load Limit; or
 - (iii) the Vehicle has been loaded with the last quantity of the Product subject to the Commodity Movement Order or Freight Confirmation.
- (c) If AgRisk, the Operator or the Carrier determines that a Vehicle has been loaded in excess of the Load Limit, the Carrier must, before the Vehicle leaves the Site and in cooperation with the Operator, remove as much of the Product as is required to ensure the Load Limit is not exceeded.

4.6 Weighing

- (a) The Carrier must cooperate with AgRisk and the Operator to ensure that each Vehicle load is weighed at the Loading Point and the Unloading Point and that the Net Loading Weight and the Net Unloading Weight are recorded.
- (b) Subject to clause 4.6(c), unless AgRisk has agreed in writing to pay based on the Net Loading Weight, AgRisk will pay the Carrier for transport of the Net Unloading Weight of Product.
- (c) AgRisk will not pay for the transport of any Product which has been transported in excess of the Load Limit.
- (d) The Carrier must notify AgRisk immediately if the Lost Quantity for a Journey exceeds 0.5% of the Net Loading Weight.
- (e) If:
 - (i) the Lost Quantity for a Journey exceeds 1% of the Net Loading Weight; or
 - (ii) AgRisk gives the Carrier written notice, based on reasonable grounds, within 14 days after completion of the relevant Commodity Movement Order or Freight Confirmation that it considers the Carrier responsible for the loss of the Product during a Journey,the Carrier must, subject to clause 4.6(f), compensate AgRisk for the Lost Quantity.
- (f) The Carrier is not liable to compensate AgRisk for any quantity of Product which the Carrier is able to prove, to the reasonable satisfaction of AgRisk, has been lost or is otherwise unable to be accounted for, without any fault of the Carrier or the Carrier's Personnel.

5. Payment

5.1 Vehicle and Equipment outgoings

The Carrier must pay all expenses and outgoings incurred in connection with using and operating its Vehicles and Equipment.

5.2 Invoicing

- (a) The Carrier must provide AgRisk with a correct invoice in an agreed format for the Services on completion of each Commodity Movement Order.
- (b) Subject to clause 5.3, AgRisk agrees to pay the Carrier the amount set out on a correct invoice within 30 days of receipt of that invoice.

5.3 Withholding of payments

If there is a genuine dispute regarding payment of any amounts due to the Carrier under the Contract:

- (a) the parties must use reasonable endeavours to resolve the dispute as soon as possible as per the Dispute Resolution clause contained in these terms and conditions;
- (b) AgRisk may withhold all or part of the disputed amount until the dispute is resolved; and
- (c) AgRisk must pay to the Carrier any amounts which are not in dispute.

6. GST

6.1 ABN

Each party must have an ABN and be registered for GST.

6.2 Reimbursement

If GST becomes payable by a party (the **Supplier**) in relation to any supply that it makes to the other party (the **Recipient**) under or in connection with the Contract (**Supply**), the parties agree that an additional amount will be payable by the Recipient equal to the amount of GST payable by the Supplier in relation to that supply and the additional amount is, subject to having received a tax invoice from the Supplier, payable at the same time as the GST exclusive consideration is payable or to be provided.

6.3 Invoices

All invoices rendered by the parties under the Contract must comply with all GST Laws and must be sufficient to enable the other party to claim any input tax credits which may be available to it.

6.4 Adjustment event

If the GST payable in relation to a taxable supply made under or in connection with the Contract varies from the additional amount paid or payable by the Recipient under clause 6.2, so that:

- (a) a further amount of GST is payable in relation to that Supply; or
 - (b) a refund or credit of GST is obtained in relation to the Supply,
- then the Supplier will:
- (c) provide a corresponding refund or credit to; or
 - (d) be entitled to receive the amount of that variation from,
- the Recipient.

6.5 Deemed payment

Any payment, credit or refund under clause 6.4 is taken to be a payment, credit or refund of the additional amount payable under clause 6.2.

6.6 Notice

If an adjustment event occurs in relation to a Supply made under or in connection with the Contract, the Supplier must issue an adjustment note to the Recipient in relation to that Supply within 14 days after becoming aware of the adjustment.

7. Liability

7.1 Sites

- (a) The Carrier acknowledges that if the Carrier enters a Site, the Carrier does so at its own risk.
- (b) The Carrier must ensure that its Personnel are aware that if they enter a Site, they do so at their own risk.

7.2 The Carrier's liability

To the fullest extent permitted by Law, the Carrier will be liable for:

- (a) subject to clause 7.3, any loss of, damage to, or deterioration of, the Products after delivery to the Carrier and while the Products are in its possession or under its control to the extent caused or contributed to by the negligence of the Carrier or its Personnel;
- (b) any spillage or contamination of the Products after delivery to the Carrier and while the Products are in its possession or under its control to the extent caused or contributed to by the negligence of the Carrier or its Personnel;
- (c) any loss or damage arising out of, or in connection with, any personal injury, illness or death to any person or damage to any property or any other loss or damage of any kind whatsoever caused or contributed to by:
 - (i) the performance of the Services or the use of the Vehicles or the Equipment by the Carrier or its Personnel; or
 - (ii) the entry onto, and any activities undertaken on and in, a Site by the Carrier or its Personnel; or

- (d) any penalty imposed for breach of an applicable Law in connection with the performance of the Services or the use of the Vehicles or the Equipment by the Carrier or its Personnel.

7.3 Limitation

The Carrier's liability for the value of Product lost during a Journey must be determined in accordance with clauses 4.6(e).

7.4 Indemnities

The Carrier indemnifies AgRisk and must keep AgRisk indemnified to the fullest extent permitted by Law from and against any liability or any loss or damage of any kind whatsoever, arising directly from or in connection with:

- (a) any breach of any of the terms or conditions of the Contract by the Carrier or the Carrier's Personnel;
- (b) the illness, injury or death of any of the Carrier's Personnel in connection with the Contract;
- (c) any negligent or wilful act or omission by the Carrier or any of its Personnel in connection with the Contract;
- (d) any claim by any person in respect of loss of, damage to, or deterioration of, the Products to the extent caused or contributed to by the negligence of the Carrier or its Personnel;
- (e) any claim made against AgRisk by any of the Carrier's Personnel in respect of any loss, damage or injury suffered or incurred whilst at a Loading or Unloading Point; or
- (f) any claim, demand or liability arising from or in connection with any of the matters referred to in clause 7.2.

7.5 Extension to AgRisk Personnel

Every exemption, limitation, defence, immunity or other benefit contained in the Contract to which AgRisk is entitled will also be held by AgRisk for the benefit of, and will extend to protect, each of its Personnel.

7.6 Continuing obligation

Each indemnity in this clause 7.3 is a continuing obligation, separate and independent from the other obligations of the Carrier, and survives the expiration or earlier termination of the Contract.

7.7 Enforcement

It is not necessary for AgRisk to incur expense or make payment before enforcing a right of indemnity conferred by the Contract.

7.8 Clean-up costs

- (a) The Carrier must, at its own cost, clean up and dispose of any Products or other substances which escape from a Vehicle during the performance of the Services.

- (b) If the Carrier fails to comply with its obligations under clause 7.8(a), the Carrier must pay all reasonable clean-up costs incurred by AgRisk or other parties.

8. Insurance

8.1 General obligation

- (a) Before commencing performance of the Services, the Carrier must take out the insurances policies required by this clause 8 (Insurance Policies).
- (b) The Carrier must maintain the Insurance Policies during the performance of the Services, at its own expense and with reputable insurers.
- (c) The Carrier must ensure that the Insurance Policies are maintained in such amounts as a reasonable and prudent person engaged in the provision of services similar to the Services would take out and maintain.

8.2 No obligation on AgRisk to insure

The Carrier acknowledges and agrees that AgRisk is not responsible for taking out or maintaining any insurance cover in respect of the Services.

8.3 Specific Insurance Policies

Without limiting clause 8.1, the Insurance Policies to be taken out and maintained by the Carrier must include:

- (a) third party/public liability insurance with a limit of liability of not less than \$20,000,000.00 (to be reviewed annually) for any one occurrence and unlimited in the aggregate in respect of all accidents occurring during each period of insurance;
- (b) comprehensive vehicles and equipment insurance covering the Carrier's Vehicles and Equipment with a limit of liability for third party property damage of not less than \$20,000,000.00 (to be reviewed annually) for any one occurrence and unlimited in the aggregate in respect of all accidents occurring during each period of insurance;
- (c) workers compensation insurance covering legal liability to the Carrier's Personnel by virtue of any Law relating to workers compensation or employer's liability insurance (Workers Compensation Insurance);
- (d) compulsory motor vehicle third party liability insurance in respect of the Carrier's Vehicles (including any item of plant or equipment which is used in the performance of the Services and is licensed as a motor vehicle or which is required to be so licensed in accordance with the requirements of any Law or under the Contract) in accordance with all Laws (Compulsory Motor Vehicle Insurance) and relating to such insurance and the Carrier must, in addition to complying with the requirements set out in the Contract, comply with all statutory requirements concerning the arrangement of Public Liability Insurance in respect of the ownership, possession, operations or the use of motor vehicles.
- (e) transit insurance covering all Products being transported by the Carrier in accordance with the terms of the Contract against "all risks of loss of, or damage to" the Products occurring during any stage of the performance of the Services,

including for the duration of loading, whilst standing and/or in transit and unloading of the Product.

8.4 Evidence

The Carrier must provide AgRisk with copies of each of the Insurance Policies referred to in clause 8.3 upon request.

9. Assignment

9.1 Assignment

The Carrier must not assign its rights and obligations under the Contract without the prior written consent of AgRisk which consent must not be unreasonably withheld.

10. Confidentiality

10.1 Obligation of confidentiality

Without the prior written consent of AgRisk, the Carrier must not, and must ensure that its Personnel do not, disclose to any person any confidential information of, or relating to, AgRisk or the Contract.

For the purposes of this clause, confidential information includes all material, non-public information, written or oral, disclosed, directly or indirectly, through any means of communication or observation by the disclosing party or any of its affiliates or representatives to or for the benefit of the receiving party.

10.2 Survival

This clause 10 survives the completion of the Contract.

11. Dispute resolution

11.1 Commencing proceedings

A party may not commence any proceedings relating to a dispute arising from or in connection with the Contract unless a party has used reasonable endeavours to resolve the dispute except where a party seeks urgent interlocutory relief.

Any dispute arising out of this agreement, including the existence of this agreement and any question of law arising in connection therewith, shall be referred to arbitration in accordance with the Dispute Resolution Rules of Grain Trade Australia (GTA) in force at the date of the referral to arbitration, and of which both parties hereto shall be deemed to be cognisant. Neither Party hereto, nor any persons claiming under either of them, shall bring any action or other legal proceedings against the other of them in respect of any such dispute until such dispute shall first have been heard and determined by the arbitration in accordance with the Dispute Resolution Rules of GTA, and it is hereby expressly agreed and declared that the obtaining of an Award from the arbitrators shall be a condition precedent to the right of either party hereto or of any person claiming under either of them to bring any action or other legal proceedings against the other of them in respect of any such dispute.

12. General

12.1 Notices

All notices, demands, consents or other communications given or made under the Contract must be in writing and given by personal service, pre-paid postage, facsimile transmission or email at the address of a party set out in the Commodity Movement Order.

12.2 Further assurances

Each party must promptly execute all documents and do all other things reasonably necessary or desirable to give effect to the arrangements recorded in the Contract.

12.3 Variation

A provision of the Contract can only be varied by a later written document executed by or on behalf of both parties.

12.4 Severability

- (a) A word or provision must be read down or removed if the Contract is void, voidable or unenforceable if it is not read down or removed and the provision is capable of being read down or removed without the rest of the Contract becoming void, voidable or unenforceable.
- (b) The remainder of this agreement has full effect even if clause 12.4(a) applies.

12.5 Waiver

- (a) A right or remedy created by the Contract cannot be waived except in writing signed by the party entitled to that right.
- (b) Delay by a party in exercising a right or remedy does not constitute a waiver of that right or remedy, nor does a waiver (either wholly or in part) by a party of a right operate as a subsequent waiver of the same right or of any other right of that party.

12.6 Governing law and jurisdiction

- (a) This contract is governed by the laws applicable in New South Wales.
- (b) The parties submit to the non-exclusive jurisdiction of the courts of New South Wales and any courts competent to hear appeals from those courts.

13. Definitions and interpretation

13.1 Definitions

In the Contract:

Approval means any certificate, licence, consent, permit, approval or other requirement of any Authority having jurisdiction in connection with the activities contemplated by this agreement;

Authority means any government, semi-governmental, statutory, administrative, fiscal or judicial body, department, commission, authority, tribunal, public or other person;

Business Day means a day on which banks are open for general banking business in New South Wales, excluding Saturdays and Sundays;

Carrier means the person named as the carrier in the Commodity Movement Order or otherwise engaged by AgRisk to carry out the Services under the Contract and may also include freight brokers who engage carriers to perform the services under the Contract;

AgRisk means AgRisk Management Pty Ltd AFSL 223688. In circumstances where AgRisk contracts as agent for a grower or seller, the reference to “AgRisk” will also be a reference to the specific grower or seller as identified in the CMO or Freight Confirmation

Code means the Grain Trade Australia and Livestock and Bulk Carrier Association - Bulk Freight of Goods Code of Practice;

Chain of Responsibility and **CoR** means the *Heavy Vehicle National Law and Regulations, Road Traffic (Administration) Act 2008 (WA)* and *Road Traffic (Vehicles) Act 2012 (WA)* and any other similar laws in any State/Territory (or any replacement or modification thereof);

Commodity Movement Order (CMO) or Freight Confirmation means an order for the provision of services issued by AgRisk to the Carrier as issued by AgRisk from time to time;

Contract is defined in clause 1;

Customer means a customer of AgRisk;

Equipment means any plant, equipment, tools or other property owned, rented or hired by the Carrier from time to time and used in the performance of the Services;

GCM (gross combination mass) means the maximum permitted sum of the GVM of a vehicle and all of its trailers:

- (a) specified by the manufacturer on an identification plate on the vehicle; or
- (b) if there is no manufacturer specification on an identification plate on the vehicle or the specification is not appropriate because the Vehicle has been modified, certified by the vehicle registration Authority;

GVM (gross vehicle mass) means, for a vehicle, the maximum loaded mass of the vehicle:

- (a) specified by the manufacturer on an identification plate on the vehicle; or
- (b) if there is no manufacturer specification on an identification plate on the vehicle or the specification is not appropriate because the vehicle has been modified, certified by the Vehicle Registration Authority;

Journey means a journey of a Vehicle carrying Products from a Loading Point to an Unloading Point;

Law means:

- (a) any law applicable including legislation, ordinances, regulations, by-laws and other subordinate legislation;
- (b) any Approval, including any condition or requirement under it; and

- (c) any fees and charges payable in connection with the things referred to in paragraphs (a) and (b);

Licences means all licences, qualifications, registrations, permits and other statutory requirements necessary for the performance of the Services;

Load Limit means a gross Vehicle weight of the GVM/GCM, whichever is lower;

Loading Period means the period during which the Products must be loaded into the Carrier's Vehicles, as set out in a Commodity Movement Order or otherwise notified to the Carrier by AgRisk;

Loading Point means the Site at which the Products must be loaded into the Carrier's Vehicles, as set out in a Commodity Movement Order or notified to the Carrier by AgRisk;

Lost Quantity means the amount (if any) by which the Net Loading Weight exceeds the Net Unloading Weight for a Journey;

Net Loading Weight means the net weight of Products loaded into a Vehicle at a Loading Point;

Net Unloading Weight means the net weight of Products unloaded from a Vehicle at an Unloading Point;

Operator means the operator of a Site, or if there is no operator, the owner of the Site;

Personnel means a party's representatives, employees, officers, agents, Carriers and subcontractors;

Policies means any policies, guidelines, standards, rules or procedures, as amended from time to time, regarding:

- (a) the handling or transportation of the Products;
- (b) safety, health and environment;
- (c) the use or operation of vehicles or equipment; or

provided or notified to the Carrier from time to time;

Products means any type of product required to be carried by AgRisk;

Records means accounts, correspondence, records, receipts and data of any kind which relate to the Services;

Road Safety Laws includes any Laws relating to road safety, road transport or heavy vehicle transport, including Laws (and the relevant Chain of Responsibility laws) relating to:

- (a) vehicle dimensions;
- (b) securing of loads;
- (c) illegal driving;
- (d) occupational health and safety;

- (e) speed limiting;
- (f) vehicle load limits;
- (g) vehicle weight or mass limits;
- (h) route restrictions;
- (i) fatigue management;
- (j) driving hours, or
- (k) vehicle maintenance;

Services mean collection and transport, of the Products by road transport from a Loading Point to an Unloading Point;

Site means any site which is used as a Loading Point or Unloading Point or any other site used in connection with the performance of the Services;

Unloading Period means the period during which the Products must be unloaded from the Carrier's Vehicles, as set out in a Commodity Movement Order or otherwise notified to the Carrier by AgRisk;

Unloading Point means the Site at which the Products must be unloaded from the Carrier's vehicles, as set out in a Commodity Movement Order or otherwise notified to the Carrier by AgRisk; and

Vehicle means a vehicle that is used by the Carrier in the performance of the Services.

13.2 Interpretation

In this the Contract, unless the context indicates a contrary intention:

(documents) a reference to the Contract or another document includes any document which varies, supplements, replaces, assigns or novates this agreement or that other document;

(headings) clause headings are inserted for convenience only and do not affect interpretation of the Contract;

(person) a reference to a person includes a natural person, corporation, statutory corporation, partnership, the Crown and any other organisation or legal entity and their personal representatives, successors, substitutes (including persons taking by novation) and permitted assigns;

(including) including and includes are not words of limitation, and a list of examples is not limited to those items or to items of a similar kind;

(corresponding meanings) a word that is derived from a defined word has a corresponding meaning;

(singular) the singular includes the plural and vice-versa;

(parts) a reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation;

(rules of construction) neither the Contract nor any part of it is to be construed against a party on the basis that the party or its lawyers were responsible for its drafting;

(legislation) a reference to any legislation or provision of legislation includes all amendments, consolidations or replacements and all regulations or instruments issued under it;

(time and date) a reference to a time or date in connection with the performance of an obligation by a party is a reference to the time and date in Sydney, Australia, even if the obligation is to be performed elsewhere; and

(replacement bodies) a reference to a body (including an institute, association or Authority) which ceases to exist or whose powers or functions are transferred to another body is a reference to the body which replaces it or which substantially succeeds to its power or functions.

(entire agreement) the Contract contains the entire agreement between the Carrier and AgRisk in relation to its subject matter and supersedes all prior communications, negotiations and discussions except to the extent that those communications, negotiations or discussions are expressly incorporated in the Contract.

Signing

The persons who sign this agreement warrant that they are duly authorised to execute this agreement on behalf of AgRisk and the Carrier, as applicable:

AgRisk

Carrier

Signature

Signature

Name.....

Name.....

Position.....

Position.....

Date.....

Date.....

AgRisk Management Pty Ltd (AgRisk) Chain of Responsibility ("CoR") Compliance Policy – As at June 2017

The CoR laws (Heavy Vehicle National Law and Regulations (or any replacement or modification thereof) encompass heavy vehicle mass, dimension and load restraint requirements and speeding, fatigue management and vehicle maintenance.

Compliance with the CoR laws is the responsibility of every party in the chain. These include, but are not limited to, consignors/consignees/receivers, schedulers, packers, loaders/unloaders, operators, exporters/importers, drivers, corporations, employers and directors.

General Policy statement

Compliance with the CoR laws is the responsibility of every party in the chain. AgRisk takes compliance with the CoR laws very seriously, requires its business partners to comply and will not condone, endorse or reward non-compliance. The parties we deal with are independently required by law also to comply with such laws. Working together, we can ensure mutual compliance and maximise heavy vehicle road safety.

All participants in the AgRisk supply chain are responsible for the safe and efficient handling and transportation of AgRisk products and supplies (including products that are brokered by AgRisk), in and out of AgRisk sites and to AgRisk's customers. AgRisk advocates the following:

It is the policy of AgRisk management to only utilise transport providers who have agreed (signed) the AgRisk Road Carriage Terms and Conditions (document available on request).

AgRisk COR Safety Framework

The COR Safety Framework is central to AgRisk's commitment to transport and handling safety. The COR Framework supports the health, safety and welfare of AgRisk team members, suppliers, customers and the community general public through adopting companywide:

- (d) training,
- (e) documentation and
- (f) standards,

supported by process auditing.

Any customer of AgRisk undertakes (upon request) to provide copies of any/all:

- (g) CoR Policy;
- (h) Mass, dimension or load restraint policy;
- (i) Speed management policy; and
- (j) Fatigue management policy,

In place in respect of their business.

AgRisk requires all customers and suppliers to undertake to notify AgRisk in writing immediately in the event that they or any person in their employ or for whom they are responsible are issued with any warning, request for information or production of documents, notice or fine in respect of any breach of any mass, dimension, load restraint, fatigue or speed requirement in respect of any goods or services they provide to or on behalf of AgRisk.

Supplier's and Client's Roles and Responsibilities

Our suppliers and clients are also required to adopt practices to comply with the CoR laws which include, but are not limited to and may vary depending on their role in the chain:

- ensuring the declared weights and container weight declarations on all consignments are correct, accurate and in accordance with any applicable laws;
- declaring any dangerous goods and ensuring the appropriate documentation is completed;
- checking that any loads do not exceed any applicable mass, dimension and load requirements;
- ensuring that their business practices and any request or instruction for road transport do not cause vehicle drivers to drive while fatigued, exceed the speed limits, exceed regulated driving hours or fail to comply with minimum rest requirements;
- checking the drivers for any physical signs of fatigue;
- ensuring compliance with the NTC *'Guidelines and performance standards for the safe carriage of loads on roads on road vehicles'* (the Load Restraint Guide) (and any replacement or modification thereof);
- being extra vigilant in situations where there are urgent deadlines in relation to transporting goods to ensure that customers do not influence or direct that drivers breach any applicable speed/fatigue laws; and
- ensure that goods are packaged appropriately for transportation.