
LITTLE RED TRUCKS - Terms and Conditions

A. Terms and Conditions for Removals

1. Definitions

In these conditions:

- 1.1 **"We"** means Little Red Trucks Moving Co Pty Ltd (ABN 84 961 913 375) and "Us" and "Our" have corresponding meanings;
- 1.2 **"You"** means the customer that has requested our Services which We have accepted and in doing so enters into this agreement for Services with Us and "Your" has a corresponding meaning;
- 1.4 **"Goods"** means all goods You agreed We move subject of the Services and including but not limited to packaging, boxes, pallets, containers or other devices/materials used to protect and/or carry the goods provided by You for the Services;
- 1.5 **"Services"** means the whole of the work to be undertaken or arranged by Us in connection with moving the Goods;
- 1.6 **"Subcontractor"** means any person other than one of Our employees who under any agreement or arrangement with Us (whether directly or indirectly) performs or agrees to perform the whole or any part of the Services.
- 1.7 Words in the singular include the plural, and words in one or more genders include all genders and words importing a person, include firm, corporation or other entity where appropriate.

2. We are not Common Carriers

WE ARE NOT COMMON CARRIERS AND ACCEPT NO LIABILITY AS SUCH. We reserve the right to refuse at our sole discretion to provide Services for any particular person and any goods or classes of goods.

3. Your Obligations and Warranties

3.1 Information supplied by You.

You warrant that any specific detail and information which You have provided to Us and on which We have reasonably relied in assessing any quotation or estimate of the resources necessary to carry out the work is accurate and sufficient to arrange and perform the Services.

- 3.2 **Owner or Authorised Agent.** You warrant that, in entering into this agreement, You are either the owner of the Goods, or the authorised agent of the owner entitled on its behalf to consign the goods upon and subject to the terms of this agreement.
- 3.3 **Presence at Loading/Unloading.** You will ensure that You or some person on your behalf is present when the Goods are loaded or unloaded.
- 3.4 **Adequacy of Packing/Suitability of Good for Services.** You warrant that the Goods are adequately packed (if packed by You and not Us) and suitable for the Services contracted. You warrant the accuracy of all markings and brandings of the Goods, descriptions, values and others particulars furnished to Us for the Services.
- 3.5 **Dangerous Goods.** You warrant that the Goods do not include any firearms or goods which are or may become of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature nor likely to encourage any vermin or pest unless You have disclosed to Us in writing the presence and nature of any such items prior to them being made available to Us for loading. We may refuse to remove such items. If We discover any article or substance of this nature after the Goods have been received by Us, We may take any reasonable action, including destruction or disposal, as We may think fit without incurring any liability to You.
- 3.6 **Repair/Replace Service.** At our sole discretion and without legal obligation, we may agree to repair or replace your Goods if damaged up to the value of \$500. Our legal liability in respect of our Services is set out in various subparagraphs of 7, 8 and 9 below which deal with Our responsibilities and liabilities to You.
- 3.7 **Fragile Goods and Valuable Items.** You will, prior to the commencement of the Services, give to Us written notice of any Goods which are of a fragile or brittle nature and which are not readily apparent as such, or which are unique and valuable such as jewellery, precious objects, works of art, money, financial instruments, collections of items or precision equipment in any case having a value in excess of \$2,000. If you do not, You warrant that You will not make a claim against us or hold Us responsible or liable in any way and will indemnify us for any loss, damage, expense and/or liability occurring as a result of the provision of Our Services in relation to such Goods.
- 3.8 **Goods Left Behind or Moved in Error.** You will ensure, to the best of Your ability, that all Goods to be removed are uplifted by Us and that none is taken, or left behind, in error.
- 3.9 **Plumbing and Electrical Work.** You acknowledge and warrant that You are contracting our Services to move the Goods and that We are not experienced plumbers or electricians. Should you request Us, or should we reasonably be required, to disconnect or reconnect any Goods or any items from or to any service for the purpose of Us performing the Services, You warrant that any loss and/or damage or other incident occurring as a result of such work is for Your account, responsibility and/or liability. You warrant that You will not make a claim against us or hold Us responsible or liable in any way and will indemnify us for any loss, damage, expense and/or liability occurring as a result of the provision of such work.

5. Delivery

- 5.1 We shall not be bound to deliver the Goods except to You, the owner if You are acting as agent for the owner or a person that has been authorised by You to receive the Goods. If We cannot deliver the Goods either because there is no authorised person there to receive them on Our arrival, or because We cannot gain access to the premises, or for any other reason beyond Our control, We will be entitled to deposit the Goods into a warehouse at your risk and expense and will be entitled to charge You for additional amounts in respect of the storage, further transport and related expenses and for the subsequent re-delivery of the Goods.

6. Fees, Charges and Payments

- 6.1 **Fees/Charges.** You shall pay our fees rendered and any charges reasonably incurred by Us in respect of arranging, undertaking or performing the Services including fees, charges, taxes or any other expenses levied by Our agents, Subcontractors or third parties. Such fees/charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from place of receipt, otherwise delivered by You to Us or Our Subcontractor or on receipt of Our Invoice whichever occurs first. Fees and charges shall be payable in accordance with the terms stated in Our invoice or if not stated, will be payable on delivery. All fees and charges are non-refundable.
- 6.2 **Default Charges.** If amounts are outstanding from You to Us for more than 30 days, We will be entitled to charge interest at the Commonwealth Bank maximum personal overdraft interest rate for amounts not exceeding \$100,000 from time to time, calculated on daily rates.
- 6.3 **Contractual Liens.** All Goods received by Us will be subject to a general lien for any moneys due by You to Us relating to any Services provided under this or any other agreement. Without prejudice to any other rights which We may have under this contract or otherwise at law, if any amounts have been outstanding for a period of 26 weeks, We may give 28 days' written notice to You of intention to sell, and if the outstanding amount is not paid within that period, We may SELL ALL OR ANY OF THE GOODS by public auction or online auction sale facility or, if that is not reasonably practicable, by private treaty and apply the net proceeds in or towards satisfaction of the amount due.

7. Loss or Damage — Private Removals and Storage

- 7.1 **Australian Consumer Law.** Except where the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, this agreement will be subject to the guarantees set out in sections 60, 61 and 62 of the Australian Consumer Law (as enacted as Schedule 2 of the Competition and Consumer Act 2010 ("CCA")) being, in particular, a guarantee that the Services will be rendered with due care and skill, and the following conditions of this clause 7 will apply.
- 7.2 **Exclusion of Liability.** We will not be liable for any loss or damage nor any delay which results from any cause beyond Our control. We will not be liable for Goods that have been added to the moving list without consulting US prior to the day the performance of the Services commence.
- 7.3 **Damage to Goods — Packaging.** If the Goods sustain damage by reason of defective or inadequate packing or unpacking, and the packing or unpacking (as the case may be) was not undertaken by Us or a Subcontractor, We will not be liable.
- 7.4 **Damage to Goods — Inherent Risk.** Certain goods (including electrical and mechanical appliances, computer equipment, scientific instruments and certain musical instruments) are inherently susceptible to suffer damage or disorder upon removal. Unless that damage or disorder results from the want of due care and skill on Our part, We will not be liable.
- 7.5 **Notification of Claims.** Any claim for loss or damage under this clause 7 is to be notified by You to Us on the App within 7 days after the date of delivery. We will have the best chance of locating any misplaced items, or ascertaining the cause of damage, if that notification is given to Us within 2 working days.
- 7.6 **Maximum Value of Goods.** In any claim for loss or damage under this clause 7, any estimate of the value of the Goods which You have provided to Us, whether for the purposes of insurance or otherwise, will be prima facie evidence that the total value of the Goods did not exceed that estimate at the time of loss or damage.
- 7.7 **Liability Limitations.** In all cases where liability cannot be excluded or limited by this agreement for breach of any condition or warranty in respect of the Services pursuant to statute or otherwise, Our liability is limited to providing supply of the Services again or the payment of the cost of having the Services supplied again.
- 7.8 **Consequential Loss.** Without limiting the generality of the foregoing, We shall in no circumstances be liable for loss or damage other than the Goods, including indirect or consequential loss or damage including but not limited to loss of market, loss of profits, loss of contracts howsoever caused, unless We actually knew that such loss or damage could be incurred.
- 7.9 **Indemnity.** You will indemnify Us in respect of any claim, loss, damage, cost, expense and/or liability incurred by Us as a result of Your breach of the terms, conditions or warranties of this agreement.
- 7.10 **Timebar.** Any right the parties may have against the other will be extinguished in relation to any claim where the party bringing the claim does not commence legal proceedings against the other within 12 months from the date of this contract.

8. Loss or Damage — Commercial Removals and Storage

- 8.1 **Application.** If the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, the following conditions of this clause 8 will apply.
- 8.2 **Notification of Claims.** Notice of Your claim against Us must be given by You to Us in writing within 7 days of the date of delivery or, in the case of loss, the date upon which the Goods would ordinarily have been delivered, failing which We will have no liability.
- 8.3 **Liability.** Subject to the terms and conditions of this agreement and mandatory applicable statute, convention or law, Our Services are supplied at Your risk and We are not liable for any loss or damage suffered by You or any other person, howsoever caused or arising from acts or omission of Us, Our employees, agents, Subcontractors or otherwise, whether:
(a) arising from an authorised or unauthorised act or contemplated or un contemplated act under this agreement;
(b) caused by a breach or fundamental breach of contract, breach of bailment, negligence, recklessness and/or any other cause whatsoever.
- 8.4 **Limitation of Liability.** In all cases where liability cannot be excluded or limited by this agreement for breach of any condition or warranty in respect of the Services pursuant to statute or otherwise, Our liability is limited to Us providing supply of the Services again or the payment of the cost of having the Services supplied again.
- 8.5 **Consequential Losses.** Without limiting the generality of the foregoing, We shall in no circumstances be liable for loss or damage other than the goods, including direct, indirect or consequential loss or damage arising from the Services including but not limited to loss of market, loss of profits, loss of contracts howsoever caused. Where the Goods lost or damaged are part of a pair, set, suite or collection of items, our liability shall extend only to the proportionate part lost or damaged of the

pair, set, suite or collection of items, regardless of any special value the damage or lost part may have to the pair, set, suite or collection of items.

- 8.6 **All Causes of Action.** The rights, immunities, defences and limits provided for in these conditions shall apply in any action against Us for loss or damage whether the action be founded in contract, bailment, tort, statute or otherwise notwithstanding any breach of any term or fundamental term of this agreement.
- 8.7 **Indemnity:** You will indemnify us in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by us howsoever caused or incurred in connection with the Services or as a result of Your breach of any of the terms, conditions and/or warranties of this agreement.
- 8.8 **Timebar.** Any right You may have against Us to any legal remedy shall be extinguished unless legal proceedings are brought against us within 6 months from the date of this contract or the date the Services were completed or the date the Services should have been completed, whichever date occurs first.
- 8.9 **Small Business** – If You are a “Small Business” and this agreement is a “Small Business Contract” as defined under Schedule 2 of the CCA, the parties to this agreement agree that:
- (a) Our right to limit or exclude liability as aforesaid is based on a low cost rate/no responsibility service. Accordingly, You should obtain your own insurance to cover any loss or damage resulting from our Services.
 - (b) Your indemnity referred in clause 8.7 above will not apply to the extent that the claim, loss, damage, payment, fine, expense, duty, tax impost, outlay, cost or other liability incurred by us resulted from the negligence, recklessness or willful misconduct of the Company, its servants, agents of Subcontractors.
 - (c) The wording of the consequential loss clause 7.8 will replace the wording in clause 8.5 above
 - (d) The wording of the timebar clause 7.10 will replace the wording in clause 8.8 above.
- 8.10 **Computer, Printers, Servers.** If you are requesting the Move of computers, printers and/or servers, you warrant that any loss and/or damage or other incident occurring during the Services will be for Your account, responsibility and/or liability. You warrant that You will not make a claim against us or hold Us responsible or liable in any way and will indemnify us for any loss, damage, expense and/or liability occurring as a result of the provision of Our Services for such Goods.
- 9. Negotiation of Extension of Responsibility/Liability/Insurance**
- 9.1 Upon negotiation with You in writing, We may agree to greater responsibility and liability than set out in sub-paragraphs 8.3 and 8.4 of the above provision upon payment of additional charges by You as required. Applicable rates for greater responsibility and liability are subject of discussion and negotiation between the parties.
- 9.2 Should You not choose nor the parties agree to Us taking greater responsibility and liability for the services for additional charge pursuant to sub-paragraph 9.1 above, the parties agree that We provide a lower cost service on the premise that We have the right to exclude or limit liability and/or seek indemnity as provided for in this Agreement.
- 9.3 Additionally or alternatively, You may choose in writing to have Us arrange insurance for You in respect of each shipment of Goods by paying a premium of 1% of the cost of the Goods to be indemnified up to A\$100,000 for loss of or damage to the Goods during transit as transit is used and/or defined under the relevant policy of insurance and on payment of a \$750.00 deductible.
- 9.4 We only arrange the insurance as Your agent through a licensed insurance broker with an insurance company.
- 9.5 Any such insurance so arranged will be subject to the usual exceptions and conditions of policies of the insurance company or underwriters taking the risk. Should such insurers dispute liability for any reason, You as the insured shall have no recourse against Us whatsoever and any recourse by You shall be against the insurer.
- 9.6 Depending on the level of responsibility and liability or insurance cover agreed between You and Us pursuant to sub-paragraphs 9.1 and/or 9.3 above, You may need to consider seeking Your own insurance cover for loss or damage You may incur that is not fully indemnified by Us or insurance pursuant to subparagraphs 9.1 and/or 9.3 above. Other than the insurance agreed between You and Us as aforesaid, no insurance will be arranged or effected by Us on the Your behalf.
- 9.7 Should You choose to insure Yourself or others for any loss or damage You may incur as a result of the Services whether insurance is arranged by Us, You or otherwise, You agree that any rights of subrogation of the insurer are fully waived as against Us, Our employees agents or Subcontractor(s) in respect of the Services.

Applicable Law and Jurisdiction

10 Applicable Law and Jurisdiction.

- 10.1 Any interpretation of, or dispute arising under, this Agreement shall be governed by the laws of Victoria, and shall be determined exclusively by the courts of, the place in which the Services are performed.

11 Representations

- 11.1 **Representations.** By accepting the terms and conditions herein, You agree that you did not rely on any representation, promise, warranty or condition by Us not expressly made (in writing) part of this contract.

12 Severance & Waiver

- 12.1 **Severance.** It hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect the application of any other part of such provision or any other provision hereof.
- 12.2 **Waiver.** Should We elect not to exercise any of Our rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights We may have against You.

13 Inconsistency & Priority

- 13.1 **Inconsistency.** To the extent of any inconsistency, these terms will prevail over any other terms or a part thereof issued by Us or You.