



# TRANSPORT AGREEMENT TERMS AND CONDITIONS

FOODBOSS TRANSPORT PTY LIMITED ABN 42 052 352 673  
24-27 Lambridge Place, Penrith NSW 2750

These supply terms (“Terms” or “Agreement”) apply (unless agreed otherwise) to the supply of transport, and transport related services (“Transport”) by Foodboss Transport Pty Ltd (**FOODBOSS TRANSPORT**) to the Customer from time to time. Any supply of Transport by FOODBOSS TRANSPORT to the Customer following an Order Request from the Customer is a supply pursuant to this master supply agreement and such supply does not give rise to a new or separate agreement.

## 1. Definitions

In these Terms unless the contrary intention appears:

**Additional Charges** means all goods and services tax (GST), storage fees, re-delivery fees, hand unload fees, on-forwarding charges, tolls, fines, fuel levies, penalties, freight charges, demurrage, customs fees and charges, pallet or container hold over charges, labels, taxes, quarantine charges, disposal, audit fees, stamp duty, weekend or public holiday surcharges, interest, legal and other costs of recovery of unpaid money and all other government imposts and all money other than the fees payable by the Customer to FOODBOSS TRANSPORT for the Transport.

**Chain of Responsibility** means any chain of responsibility obligations that may be applicable to the parties:

- (i) under the Heavy Vehicle National Law in the Australian Capital Territory, New South Wales, Queensland, South Australia, Tasmania and Victoria;
  - (ii) under the road transport laws of Western Australia and the Northern Territory;
  - (iii) under any federal or state Modern Slavery legislation and regulations;
  - (iv) under any other regulatory or legislative regime;
- and as modified or varied from time to time.

**Claim** means in relation to a party, a demand, action or proceeding made or brought by or against the party, however arising (including in contract or negligence) and whether present, unascertained, immediate, future or contingent.

**Consequential Loss** means loss of revenue, loss of profit or anticipated profit, loss of business, loss of business reputation, loss of opportunities, loss of anticipated savings, loss of goodwill and any other loss suffered by a party as a result of a breach of this Agreement that cannot reasonably be considered to arise directly and naturally from that breach.

**Customer** means the person or entity for whom Transport is supplied by FOODBOSS TRANSPORT, but will also include, where the context permits, the beneficial owner or mortgagee/charge of the goods being stored and its administrators, liquidators, executors, permitted assigns and successors.

**FOODBOSS TRANSPORT** means Foodboss Transport Pty Ltd A C N: 052 352 673 and its agents, employees, successors, liquidators, administrator and permitted assigns.

**Goods** means any article, goods, products, equipment or any other thing that is the subject of or requested to be the subject of Transport Services by or on behalf of the Customer.

**Fees** means fees advised by FOODBOSS TRANSPORT to the Customer from time to time and any Additional Charges payable for or related to the Transport supplied or to be supplied by FOODBOSS TRANSPORT for the Customer from time to time.

**PPSA** means the *Personal Property Securities Act 2009 (Cth)* and includes any regulations made in relation to the PPSA, any amendments to the PPSA and such regulations.

**Transport** means any all transport, and transport related services carried out by FOODBOSS TRANSPORT under this Agreement from time to time including any storage and handling, stocking, and loading as may be requested.

## 2. Transport application

**2.1** Quotations provided whether in writing or otherwise for Transport charges are best estimates based on information provided. Pricing may vary given more specific information, additional costs or unforeseen or additional charges as described above may be applicable.

**2.2** Use of FOODBOSS TRANSPORT SERVICES are deemed as accepting these Terms and Conditions.

### 3. Booking Request and Liability

**3.1** All booking requests must come by email, and sent through to the appropriate email address. All order requests must be placed by 2pm for the following business day dispatch (Monday to Friday).

**3.2** These Terms will override any conditions contained in a Customer’s Order Request, regardless of the form of the Order Request.

**3.3** Where the Customer comprises of more than one party, liability by the Customer will be taken as joint and several.

### 4. Transport Services

**4.1** FOODBOSS TRANSPORT is not a common carrier and will accept no liability as such. All Goods are Transported subject to these Terms and FOODBOSS TRANSPORT reserves the right at its discretion to refuse the Transport of any Goods or any class of Goods for any reason, firm or company.

**4.2** Subject to these Terms, FOODBOSS TRANSPORT will collect, carry and deliver Goods as noted on the relevant Order Request or as otherwise agreed in writing with the Customer.

**4.3** The Customer warrants and represents to FOODBOSS TRANSPORT that any communication from the Customer regarding the use of FOODBOSS TRANSPORT’S services is from an authorised Customer representative.

- 4.4 It is agreed and acknowledged by the Customer that FOODBOSS TRANSPORT may at any time sub-contract or engage a third party to carry out or discharge the Transport services, including without limitation such carriers (whether common or otherwise), forwarding agents or shipping agents as FOODBOSS TRANSPORT may deem necessary or expedient for the purpose of TRANSPORTING the Customer's Goods.
- 4.5 FOODBOSS TRANSPORT is also authorised to accept on behalf of the Customer any terms and conditions in any form used by such sub-contractor engaged by FOODBOSS TRANSPORT to carry the Customer's.
- 4.6 If at any time the Customer's Goods are required to be warehoused or held at a place pending their freighting or delivery, such Goods shall be held at the Customer's sole risk and expense.

#### **5. Nature of Goods**

- 5.1 The Customer must make known in writing to FOODBOSS TRANSPORT at the time of placing an Booking Request, the nature of Goods which may be subject to special Fee rates of cartage.
- 5.2 Noxious, dangerous, hazardous or inflammable or any Goods deemed to be dangerous by FOODBOSS TRANSPORT shall be Transported at the Customer's own risk and the Customer shall be liable for any loss, damage, (Consequential Loss or otherwise) arising from Transport of such dangerous Goods.

#### **6 Risk and Insurance**

- 6.1 The Goods remain at all times at the risk of the Customer and not FOODBOSS TRANSPORT.
- 6.2 Insurance will not be effected by FOODBOSS TRANSPORT and the Customer must affect and maintain insurance in respect of the Goods.

#### **7 Limitation of Liability**

- 7.1 FOODBOSS TRANSPORT'S liability is limited, to the extent permissible by law and at FOODBOSS TRANSPORT option to:
- (a) the supply of service again; or
  - (b) the payment of the cost of having the services supplied again.
- 7.2 To the extent permitted at law:
- (a) all other warranties whether implied or otherwise, are excluded and FOODBOSS TRANSPORT is not liable in contract, tort (including, without limitation, negligence or breach of statutory duty) or otherwise to compensate the Customer for any loss or damage, including Consequential Loss of any nature caused by FOODBOSS TRANSPORT'S failure to complete or delay in completing Transport services;
    - I. This includes any claim resulting in loss, damage or deterioration of goods from equipment failure, by either negligence, mechanical failure or wilful act, FOODBOSS TRANSPORT or related entities are not liable.
  - (b) any Claim for loss or damage for Goods is limited to an amount not exceeding the Fees paid in total (excluding GST) by the Customer for the Transport in relation to the Goods the subject of such Claim.
- 7.3 The Customer hereby indemnifies FOODBOSS TRANSPORT and will keep FOODBOSS TRANSPORT indemnified against any liability whatsoever in respect of the Goods, including but not limited to any Claim by any person or entity who claims to have or who has, an interest in the Goods of whatsoever nature and any acts or omissions of FOODBOSS TRANSPORT in relation to such Claims.

#### **8 Delivery and Bookings**

- 8.2 Delivery of the Goods shall be at the address given by the Customer in writing to FOODBOSS TRANSPORT. If delivery cannot be made at the arranged or given time, or during normal trading hours then an additional charge will be payable by the Customer for any consequential storage, and further delivery and transport attempts.
- 8.3 All transport bookings are to be made by 12pm the preceding day of departure. Any cancellation after this time will incur a futile charge.
- 8.4 A signed receipt or acknowledgement of delivery in whatever form shall constitute proof of delivery.
- 8.5 All delivery dates and times are estimates only as Transport can be affected by factors outside of FOODBOSS TRANSPORT'S control including but not limited to traffic incidents and any requirement on FOODBOSS TRANSPORT to comply with any Chain of Responsibility obligations as such incidents arise. FOODBOSS TRANSPORT is not liable for any delay or failure to by any estimate date and time given but will use its reasonable endeavours to meet such delivery date and time requests.
- 8.6 FOODBOSS TRANSPORT will not be responsible for the loading and unloading of any goods, unless requested by the Customer and agreed to in writing by FOODBOSS TRANSPORT. The customer acknowledges and agrees that FOODBOSS TRANSPORT drivers do not have Forklift licences and are therefore not permitted to operate such equipment.
- 8.7 Loading or Unloading is the responsibility of the transport site or depot FOODBOSS must access to complete the booking. Any equipment offered by the depot to FOODBOSS drivers (such as pallet jacks or other), to assist in the loading or unloading; shall remain the sole responsibility of the depot. FOODBOSS TRANSPORT shall not be liable for damage of any kind to equipment that does not belong to FOODBOSS TRANSPORT.
- 8.8 FOODBOSS TRANSPORT cannot reasonably have knowledge of the condition of the of customers goods at the time of collection or delivery, especially wrapped, boxed or packaged goods (but not limited to), FOODBOSS TRANSPORT cannot accept any liability, responsibility or claims in respect of any alleged damage or deterioration of the goods they are delivering.

#### **9. Cost of Transport**

- 9.1 The Customer must pay to FOODBOSS TRANSPORT:
- (a) the Fees and any Additional Charges as described in 1. (but not limited to) for related Transport services
  - (b) within 14 days from the date of invoice from FOODBOSS TRANSPORT;
  - (c) by direct debit to FOODBOSS TRANSPORT' bank account
  - (d) without set-off counter claim, cross demand or withholding or any kind.
- 9.2 FOODBOSS TRANSPORT may, at its option, withhold further Transport or refuse an order without prejudice to any of its existing rights if the Customer is in default of one or more of the terms of this Agreement.

- 9.3** FOODBOSSTransport reserves the right to vary its prices. Should this occur and it is other than for a Consumer Price Index (CPI) increase, FOODBOSSTransport must give written notice thereof to the Customer. In the event that the Customer does not agree to the new prices it shall be entitled to terminate this Agreement upon 30 days' notice being given to FOODBOSSTransport, in which case the terms of clause 15 apply, and the new prices shall not apply during the period of that notice. The Customer agrees that FOODBOSSTransport is entitled to increase its Fees pursuant to an annual CPI increase and such increase does not give rise to a right to the Customer to terminate the Agreement
- 9.4** The Customer is liable to pay to FOODBOSSTransport any additional unforeseen costs, such as but not limited to demurrage (chargeable if delays occur in blocks of 15 min intervals), warehousing, subcontractor payments or third-party costs, cross docking charges, or any penalties for authorised loads that are over weight limits, delivery of the Goods perishing in transit, any additional charges for Transporting Goods on or through a Public Holiday, and extra kilometres incurred above the most direct route, due to unforeseen instance (such as road closures, flooding, storm damage). Please see Point 1 on additional Charges .
- 9.5** The carrying out of the Transport for a Customer does not entitle the Customer to sole cartage by FOODBOSSTransport or use of any trailer used or engaged by FOODBOSSTransport. FOODBOSSTransport reserves the right to Transport other Goods for other Customers if space prevails at FOODBOSSTransport'S sole discretion.
- 9.6** Any questions relating to an invoice must be raised within 7 days.
- 9.7** Late payment may incur interest at the rate of 18.5% per annum calculated on a daily basis. Interest shall be payable on any moneys outstanding under these terms and Conditions from the date payment was due until the date payment is received by FOODBOSSTransport without prejudice to FOODBOSSTransport'S other rights or remedies in respect of the Customer's failure to pay on time.
- 9.8** The Customer is liable for and FOODBOSSTransport is entitled to charge to the Customer any debt collection or recovery costs in the event the Customer is default of payment and recovery action or steps are taken by FOODBOSSTransport, including solicitors costs on an indemnity basis.
- 10. Liens**
- 10.1** The Customer acknowledges that FOODBOSSTransport may have a common law or statutory lien over the Goods the subject of the Transport which is not affected by the operation of this Agreement.
- 10.2** In the event that there is no such lien or in addition to such statutory or common law lien, the Customer agrees that FOODBOSSTransport has a general lien over all Goods the subject of any and all services provided by FOODBOSSTransport for the Customer from time to time including for all Fees, Additional Charges and other charges under this Agreement, including a right to sell the such Goods where the Customer is in default under these Terms and to apply such sale proceeds as against all Fees, Additional Charges and other charges under this Agreement owing or that may be owed to FOODBOSSTransport.
- 11. PPSA RIGHTS**
- 11.1** Defined terms in this clause have the same meaning as given to them in the PPSA.
- 11.2** Where clause 10.2 applies:
- (a) the terms of this Agreement are a Security Interest for the purposes of PPSA;
  - (b) FOODBOSSTransport may register a Security Interest in the Goods (the "Collateral") and their Proceeds on the Personal Property Securities Register ('PPSR').
  - (c) for the purpose of any PPSR registration:
    - (i) the Collateral will fall into the PPSA classification of "other Goods";
    - (ii) to the extent permissible at law the Customer waives its right to receive notification of any Verification Statement or Finance Change Statement and nothing in sections 130 and 143 of the PPSA apply to this Security Agreement;
- 11.1** Where clause 10.2 applies and to the extent permitted by law, and the Customer waives its right to any of the following:
- (a) receive notices pursuant to sections 95, 123, 130, 132(4), 132(3)(d) and 135
  - (b) object to purchase of the Collateral by the Secured Party under section 129;
  - (c) redeem the Collateral under section 142; and
  - (d) reinstate the Security Agreement under section 143.
- 12. Loads and Weights**
- 12.1** All legal load weights must be strictly adhered to. For full loads, Goods weights must be supplied to ensure compliance. For any over loading by Customers, including Containers collected or delivered over legal weights, the Customer shall be liable for the full costs incurred for any charges, penalties, or unpacking or storage charges , including any further charges incurred by FOODBOSSTransport by delivery or collection of Goods on behalf of the Customer.
- 12.2** The Customer agrees and acknowledges that a standard pallet size of Goods is a pallet 1.2M x 1.2M. A single pallet for Transport only is to be no higher than 1.9M and or no more than 1 Tonne in total including pallet weight. Pallet standard pallet weight is estimated to be 50KG. If a pallet is deemed to be over standard size either in height or weight, the consignment will be charged an additional pallet fee, and will include charges for downstacking. Suitable single pallets may be double stacked as long as the combined height is under 2.4M and under 1 Tonne in weight.
- 12.3** Notification of any accident or incident on site must be communicated immediately with FOODBOSSTransport'S management team within 24 hours of the Customer becoming aware of such accident or incident.
- 12.4** It is the responsibility of the Customer to provide training for on-site procedures and inductions at any delivery point.
- 12.5** Any Work Health & Safety (WHS) issues at any delivery point will be discussed for further negotiation with the objective to providing a safe working environment to all. The Customer must co-operation with FOODBOSSTransport in relation to any WHS issues.

**13. Chain of Responsibility**

- 13.1 All drivers engaged by, and FOODBOSSTransport are or may be bound by Chain of Responsibility statutory obligations. While FOODBOSSTransport will endeavour to meet required time slots or delivery objectives FOODBOSSTransport supports in full driver fatigue initiatives and FOODBOSSTransport will not be liable for any missed delivery or Transport slots due to unforeseen fatigue issues or in complying with any Chain of Responsibility obligations.
- 13.2 The Customer will comply with any and all Chain of Responsibility obligations it may be subject to or will provide to FOODBOSSTransport any and all information, document and evidence of compliance with Chain of Responsibility at the request of FOODBOSSTransport within 14 days of such request.

**14. Pallets**

- 14.1 Pallets (Chep and Loscam). Where possible, pallets are to be transferred directly to the receiver. Where this is not possible transfers to FOODBOSSTransport’s and / or FOODBOSSTransport’s account will incur a 30 day delay date. Please see pallet policy guidelines which the Customer agrees to adhere to set out below.

**15. Termination**

- 15.1 Either party may terminate this Agreement and any Transport the subject of this Agreement without cause on giving to the other party 30 days’ written notice.
- 15.2 FOODBOSSTransport may immediately terminate this Agreement and any Transport the subject of this Agreement for default of any material term of this Agreement by the Customer where it has given 14 days written notice to the Customer and the Customer fails to rectify that default. For the avoidance of doubt, non-payment of any Fees and / or Additional Charges when due to FOODBOSSTransport, will constitute a ‘material default’.
- 15.3 At the effective date of termination for whatever reason, the following will apply:
  - (a) FOODBOSSTransport will invoice to the Customer all amounts for Transport and related fees and charges to the date of termination;
  - (b) the Customer must immediately pay to FOODBOSSTransport any and all Fees and Additional Charges invoice by FOODBOSSTransport regardless of whether or not payment has yet fallen due at as the effective date of termination;
  - (c) termination does not affect any rights that a party may be entitled to exercise against the other under this Agreement; and
  - (d) and subject to clause 15.3(c), the Customer is to remove or procure collection of its Goods from FOODBOSSTransport and attend to compliance to clause 15.3(b).

**16. Force Majeure**

- 16.1 If FOODBOSSTransport or any of its servants or agents are wholly or partially prevented from performing its obligations under this Agreement by a Force Majeure event, then the obligation to perform in accordance with this Agreement will be suspended for the duration of the Force Majeure event.
- 16.2 If the Force Majeure event continues for a period longer than seven days from its initial occurrence either party shall be entitled to terminate this agreement by written notice to the other and without prejudice to any rights or obligations that either party may have accrued prior to such termination.
- 16.3 A *Force Majeure* event affecting a party means anything outside that party’s reasonable control including, without limitation, flood, fire, theft, storm, tempest, electricity supply, traffic incidents, act of God, war, strike, lockout and shortage of labour.

**17. General**

- 17.1 The Customer must pay all tax imposts or other charges which may apply to the Transport of the goods from time to time and imposed by any governmental or similar authority.
- 17.2 Any variations to FOODBOSSTransport Terms and Conditions will be sent via email to the Customers contact email. Updated Terms and Conditions can be found on our website.
- 17.3 Continued use of services constitutes acceptance of Terms and conditions
- 17.4 FOODBOSSTransport reserves the right to terminate or vary this Agreement with a minimum of 30 days’ notice.
- 17.5 Any whole or part of a clause of this Agreement shall be capable of severance if held to be illegal, invalid or otherwise unenforceable without affecting any other part of the Agreement, which shall remain in full force and effect.
- 17.6 This Agreement and its enforceability shall not be affected by any failure by FOODBOSSTransport to execute it.
- 17.7 The Terms of this Agreement are commercial in confidence and the Customer will not discuss these Terms with any other person or entity unless for the purpose of seeking legal advice or required by compulsion of law.

**18. Jurisdiction**

- 18.1 This Agreement is governed by the law in force in the State of New South Wales and, in relation to any dispute arising out of or in connection with this Agreement each party submits to the exclusive jurisdiction of the courts of the State of New South Wales and waives any objection to proceedings in any such court on the grounds of venue or that the proceedings have been brought in an inconvenient forum

I have read and understand the Terms of this Agreement and agree to be bound.

I am an authorised signatory of the Customer and am authorised to sign this Agreement for and on behalf of the Customer

.....  
Signed by Authorised signatory

.....  
Print name and position

.....  
Print Customer’s name

.....  
Date



## PALLET POLICY

### Hire Equipment Trading Terms

Effective 1<sup>st</sup> September 2018 the following guidelines apply to all trading partners and Customers unless alternative agreements have been implemented. Customers and contractor to FOODBOSS are required to comply with the below terms.

#### Pallet Delay Days:

Transfers onto FOODBOSS " account are subject to a standard **30 day delay date** from the date of receipt. Delay dates will apply to all trading partners unless alternative agreements have been made. Vendors must **raise transfers direct to receiver** where possible.

Account Type	Account Number	Contact
Chep Account	1610204416	pallets@foodboss.com.au
Loscam Account	212067	loscam@foodboss.com.au

#### Guidelines for Transfers onto FOODBOSS pallet account

- Only **Chep Pallets (10001)** and **Loscam Pallets (WP)** will be accepted. No responsibility will be taken for other equipment codes including but not limited to: **FB2 Bins (6060), Vicfam Plastic Pallets, Skids, Plain Pallets**
- Transfers must clearly state sending account name, account number, shipment date, quantity and a reference. FOODBOSS reserve the right the correct quantities subject to check. FOODBOSS **Connote number** is the preferred reference. If this is not known please include customer purchase order numbers to assist with allocations.
- A **copy of the pallet transfer** must be supplied at the time of delivery or pick up. If this is not possible a copy must be emailed or faxed at the earliest possible time. **Failure to supply** documentation could result in the transfer being **rejected**.
- It is the **responsibility of the Sender** to raise transfers onto our account and to process the transfers in a timely manner. Foodboss will not raise transfers onto our account on behalf of vendors or carriers. Transfers must be processed within **3 months** of the shipment date (please see below claims policy)
- **Exchange pallets** may be provided if an active pallet account is not available provided the sender agrees to sign an FOODBOSS ' **Connote** as Proof of Receipt. It is the sender's responsibility to organise exchange pallets **prior to pick up** as our fleet does not travel with empty pallets on board "just in case" FOODBOSS will not be liable for exchange pallets not provided at the time of pick up if exchange pallets were not requested by the sender prior to the pick up.

#### Claims Policy

- Any enquiries/claims must be made in writing to pallets@foodboss.com.au
- Any claims for transfers outside of **3 months** from the delivery date will **not be backdated**, once verified transfers will only be accepted as of the **date of the query**. FOODBOSS reserves the right not to investigate queries older than **6 months** from the shipment date.
- Claims will not be investigated without signed pallet transfers or signed supporting paperwork.
- FOODBOSS connotes or invoice numbers must be referenced in order to investigate a claim.