



COLD STORAGE AGREEMENT

TERMS AND CONDITIONS

FOODBOSS COLDSTORAGE PTY LIMITED ABN 91 106 531 784

24-27 Lambridge Place, Penrith NSW 2750

These supply terms ("Terms" or "Agreement") apply (unless agreed otherwise) to the supply of cold storage, warehousing and any related services including but not limited to stocktaking ('Coldstorage') by Foodboss Coldstorage Pty Ltd (**FOODBOSS COLDSTORAGE**) to the Customer from time to time. Any supply of Coldstorage by FOODBOSS 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), container hold over charges, freight charges, taxes, delivery fees, fines, penalties, labels, quarantine charges, disposal, transport or audit fees, stock taking, stamp duty, 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 for the Coldstorage.

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 and including but not limited to for loss, damages, interest, legal costs and expenses or otherwise.

Cold Storage means the supply of cold storage, warehousing and any related services including but not limited to stocktaking, inwards, outwards movements and downstacking.

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 to or for whom Coldstorage is supplied by FOODBOSS COLDSTORAGE, but will also include, where the context permits, the beneficial owner or mortgagee/charge of the goods being stored, and the Customer's administrators, liquidators, executors, permitted assigns and successors.

Facility or Premises means any and all cold storage facilities operated by FOODBOSS COLDSTORAGE from time to time or that may be used for Coldstorage by FOODBOSS COLDSTORAGE in carrying out the Coldstorage for a Customer.

FOODBOSS COLDSTORAGE means Foodboss Coldstorage Pty Ltd 106 531 784 and its agents, employees, successors, liquidators, administrator and permitted assigns.

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.

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

2. Coldstorage application

2.1 Quotations provided whether in writing or otherwise for Coldstorage charges are best estimates based on information provided. Pricing may vary given more specific information regarding movements, quantities or specialist requirements from the original application.

3. Order Request and Liability

3.1 All order requests must come by email, and sent through to the appropriate email address. All order requests must be placed by 3pm for the following business day dispatch (Monday to Friday). Please review Standard Operating Practices for further details.

3.2 The Customer must make known in writing to FOODBOSS COLDSTORAGE the nature of Goods.

3.3 These Terms will override any conditions contained in a Customer's Order Request, regardless of the form of the Order Request.

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

3.5 The Customer warrants and represents to FOODBOSS COLDSTORAGE that any communication from the Customer regarding the use of FOODBOSS COLDSTORAGE'S services is from an authorised Customer representative.

4. Cost of Storage

4.1 The Customer must pay to FOODBOSS COLDSTORAGE:

- (i) the Fees for the Coldstorage and any Additional Charges for or related to the Coldstorage;
- (ii) within 14 days from the date of invoice from FOODBOSS COLDSTORAGE;
- (iii) by direct debit to FOODBOSS COLDSTORAGE' bank account or in such other manner as FOODBOSS COLDSTORAGE may advise; and
- (iv) without set-off counter claim, cross demand or withholding or any kind.

4.2 The Customer must pay to FOODBOSS COLDSTORAGE the minimum storage fee per week advised to the Customer for the Cold Storage by FOODBOSS COLDSTORAGE whilst ever the Customer is provided with Cold Storage at the Facility.

4.3 FOODBOSS COLDSTORAGE at its option may withhold further Coldstorage or refuse an Order Request without prejudice to any of its existing rights if:

- (i) the Customer does not use the Facility for a period of 14 consecutive days or more; and
- (ii) the Customer is in default of one or more of the terms of this Agreement, including but not limited to the payment terms.

- 4.4** FOODBOS COLDSTORAGE reserves the right to vary its Fees. Should this occur and it is other than for a Consumer Price Index (CPI) increase, FOODBOS COLDSTORAGE must give written notice to the Customer. In the event that the Customer does not agree to the new Fees it shall be entitled to terminate this Agreement upon 30 days' notice being given to FOODBOS COLDSTORAGE, 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 FOODBOS COLDSTORAGE 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.
- 4.5** Any requests for Stock taking are to be completed by FOODBOS COLDSTORAGE staff, at a suitable or within an agreed time frame. The customer shall be liable for applicable charges.
- 4.6** From time to time, it may be necessary to store the Customer's goods or items ("**Goods**") on a site other than the Facility, including but not limited to reasons such as sudden overflow. The Customer authorises FOODBOS COLDSTORAGE in its absolute discretion to store the Goods the subject of the Cold Storage at another site and without prior notice to the Customer. In this circumstance, all records, and stock control will be managed from the FOODBOS COLDSTORAGE Facility.
- 4.7** 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 FOODBOS COLDSTORAGE without prejudice to FOODBOS COLDSTORAGE'S other rights or remedies in respect of the Customer's failure to pay on time.
- 4.8** The Customer is liable for and FOODBOS COLDSTORAGE is entitled to charge to the Customer any debt collection or recovery costs, including solicitors costs on an indemnity basis, in the event the Customer is in default of payment and recovery action or steps are taken by FOODBOS COLDSTORAGE.
- 4.9** Any questions relating to an invoice must be raised with FOODBOS COLDSTORAGE within 7 days of the date of invoice.
- 5.1 Pallets** (For further details, please see Pallet Policy at the end of this document)
- 5.1** Where possible, pallets are to be transferred directly to the receiver. Where this is not possible, transfers to FOODBOS COLDSTORAGE'S account will incur a 30-day delay date.
- 6. Delivery of Goods**
- 6.1** The Customer warrants to FOODBOS COLDSTORAGE that in respect of all Goods delivered to FOODBOS COLDSTORAGE for Cold Storage:
- it is the owner of the Goods and / or entitled to possession of the Goods;
 - the Goods are not dangerous; and
 - the description of the Goods given to FOODBOS COLDSTORAGE is accurate in all respects.
- 6.2** FOODBOS COLDSTORAGE'S tally of Goods received shall be final and conclusive evidence as to the quantity and description of Goods received.
- 6.3** The Customer must notify FOODBOS COLDSTORAGE in writing from time to time of any change in its address or in the ownership of the Goods.
- 6.4** FOODBOS COLDSTORAGE at its discretion may require the Customer's written instructions relating to the surrender, delivery or disposal of the Goods but shall also be entitled to rely upon oral instructions given by the Customer, its servants or agents. In respect of all Goods received and / or stored or dealt with at the oral or written instructions of the Customer, the Customer hereby indemnifies and will keep indemnified FOODBOS COLDSTORAGE against any and all Claims whatsoever in respect of the receipt and / or Cold Storage of the Goods.
- 6.5** The Customer hereby indemnifies and will keep indemnified FOODBOS COLDSTORAGE against any Claim made by any third party claiming an interest of whatsoever nature in the Goods including but not limited to where the Customer countermands any request by a third party for the Goods to be dealt with in a particular way or in accordance with that party's instructions.
- 6.6** All estimates of delivery or Cold Storage dates and times are estimates only and FOODBOS COLDSTORAGE shall not be held liable for any claims for non-compliance with such estimated dates and times given.
- 6.7** For all deliveries of goods, the Customer must immediately notify FOODBOS COLDSTORAGE in writing of any discrepancy relating to the Goods.
- 6.8** FOODBOS COLDSTORAGE cannot reasonably have knowledge of the condition of the of the Storer's Goods at the time of delivery, especially wrapped, boxed or packaged goods (but not limited to), FOODBOS COLDSTORAGE cannot accept any liability, responsibility or claims in respect of any alleged deterioration of the goods whilst in the coldstore.
- 7. Insurance**
- 7.1** The Customer must insure and maintain insurance in relation to the Goods the subject of the Cold Storage.
- 7.2** Insurance will not be effected by FOODBOS COLDSTORAGE and the Goods remain at all times at the risk of the Customer.
- 7.3** To the extent permissible at law, where the Customer's Goods are damaged, injured or lost while in Cold Storage with FOODBOS COLDSTORAGE including the following:
- arising from or caused by failure of the refrigeration unit, electricity failure or interruption, fire, theft, storm, tempest, flood, acts of God, or water or however any such loss or injury may occur;
 - negligence or alleged negligence or any act or omission of FOODBOS COLDSTORAGE or its servants or agents and from any cause whatsoever and without limitation by non-delivery or delayed delivery of the Goods, any injury, damage or loss caused or contributed to by the method of Cold Storage of the Goods including temperature, chilling, freezing, varied temperatures, sweating, evaporation, leakage, breakage, shrinkage, deterioration, fermentation, wasting, decay, purification, contamination; or
 - any injury, damage or loss caused by or contributed to be strikes, lock-outs, shortage of labour, defects or breakdowns of plant machinery or Facility.

8. Dangerous Goods

- 8.1** Goods are considered to be dangerous if they are classified as such either under any Australian Dangerous Goods law or code or if they might in the reasonable opinion of FOODBOSS COLDSTORAGE injure or damage people, property or the environment. This will include goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.
- 8.2** The Customer must inform FOODBOSS COLDSTORAGE if the Goods to be stored are dangerous. FOODBOSS COLDSTORAGE in its absolute discretion may refuse storage of them.
- 8.3** The Customer must indemnify and keep indemnified FOODBOSS COLDSTORAGE in respect of all Claims whatsoever that arise out of or relate to Goods which are dangerous.

9. Deterioration of Goods

- 9.1** At any time and without notice, and at the expense of the Customer, FOODBOSS COLDSTORAGE may remove and if it thinks fit, sell or destroy Goods or any part thereof which FOODBOSS COLDSTORAGE at its absolute discretion has determined to be or likely to become contaminated, deteriorated, objectionable or unwholesome or a source of contamination or danger to FOODBOSS COLDSTORAGE, its servants or agents or to other goods stored by other Customers or which the Customer has failed to remove. As soon as reasonably possible the Customer will be notified of stock removal or destruction.
- 9.2** No Claim, including any Claim for Consequential Loss may be made by the Customer against FOODBOSS COLDSTORAGE for FOODBOSS COLDSTORAGE acting in accordance with clause 9.1 and the Customer indemnifies FOODBOSS COLDSTORAGE against any Claim.

10. Handling of Goods

- 10.1** FOODBOSS COLDSTORAGE is authorised by the Customer to use such method for the handling of the Goods as FOODBOSS COLDSTORAGE in its absolute discretion deems reasonably appropriate.
- 10.2** The Customer agrees and acknowledges that a standard pallet size must be used for all inward deliveries. A pallet is 1.2M x 1.2M and under 1 Tonne (including the pallet) in weight and 1.2 in height. Anything over this size will be down stacked over an additional pallet and relevant charges applied.
- 10.3** FOODBOSS COLDSTORAGE will only prepare transport of goods on a standard pallet (1.2M x 1.2M) not more than 1 Tonne in weight (including pallet weight of 50KG) and to a maximum height of 2.4Meters (Double stacked). Should the relevant order be larger than this, then the order will be spread over additional pallets without notification and relevant charges applicable.
- 10.4** FOODBOSS COLDSTORE will be entitled to use its own discretion in relation to where the Goods are stored and whether the Goods need to be stored in bulk, sorted into separate lots, or any other aspect of their Cold Storage. FOODBOSS COLDSTORAGE is not obligated to inform the Customer of such.
- 10.4** The Customer agrees that a shrinkage provision of 0.50% is calculated on the average number of pallets stored per annum and is to be applied per year to any Goods the subject of the Cold Storage. This allowance and recognition for shrinkage will be carried forward if not fully utilised in a prior year. This provision will allow a small quantity of losses resulting from handling / Cold Storage of Goods and no Claim will be by the Customer against FOODBOSS COLDSTORAGE for this recognised shrinkage provision allowance.
- 10.5** Goods awaiting collection must be collected on the required date. Goods not collected after 48 hours of the required date, will be placed back into the Coldstore with relevant charges applicable.

11. Limitation of Liability

- 11.1** FOODBOSS COLDSTORAGE's liability is limited, to the extent permissible by law and at FOODBOSS COLDSTORAGE option to:
- (a) the supply of service again; or
 - (b) the payment of the cost of having the services supplied again.
- 11.2** To the extent permitted at law:
- (a) all other warranties whether implied or otherwise, are excluded and FOODBOSS COLDSTORAGE 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 COLDSTORAGE's failure to complete or delay in completing Cold Storage services;
 - (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 Cold Storage in relation to the Goods the subject of such Claim.

12. Liens

- 12.1** The Customer acknowledges that FOODBOSS COLDSTORAGE may have a common law or statutory lien over the Goods the subject of the Coldstorage which is not affected by the operation of this Agreement.
- 12.2** In the event that there is no such lien or in addition to such statutory or common law lien, the Customer agrees that FOODBOSS COLDSTORAGE has a general lien over all Goods the subject of any and all Coldstorage provided by FOODBOSS COLDSTORAGE for the Customer from time to time including for all Fees and Additional Charges and 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 and Additional Charges owing or that may be owed to FOODBOSS COLDSTORAGE.

13. PPSA RIGHTS

- 13.1** Defined terms in this clause have the same meaning as given to them in the PPSA.
- 13.2** Where clause 12.2 applies:
- (a) the terms of this Agreement are a Security Interest for the purposes of PPSA;
 - (b) FOODBOSS COLDSTORAGE may register a Security Interest in the Goods (the "Collateral") and their Proceeds on the Personal Property Securities Register ('PPSR').

- 13.3** For the purpose of any PPSR registration:
- (a) the Collateral will fall into the PPSA classification of “other Goods”;
 - (b) 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;
- 13.4** Where clause 12.2 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.

14. Force Majeure

- 14.1** If FOODBOSS COLDSTORAGE 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.
- 14.2** 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.
- 14.3** A **Force Majeure** event affecting a party means anything outside that party’s reasonable control including, without limitation, flood, fire, theft, storm, tempest, act of God, war, strike, cut in electrical supply, lockout and shortage of labour.

15. Termination

- 15.1** Either party may terminate this Agreement and any Cold Storage the subject of this Agreement without cause on giving to the other party 30 days’ written notice.
- 15.2** FOODBOSS COLDSTORAGE may immediately terminate this Agreement and any Cold Storage 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 FOODBOSS COLDSTORAGE, will constitute a ‘material default’.
- 15.3** At the effective date of termination for whatever reason, the following will apply:
- (a) FOODBOSS COLDSTORAGE will invoice to the Customer all amounts for Cold Storage and related fees and charges to the date of termination;
 - (b) the Customer must immediately pay to FOODBOSS COLDSTORAGE any and all Fees and Additional Charges invoice by FOODBOSS COLDSTORAGE 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) subject to clause 15.3(c), the Customer is to remove or procure removal of its Goods from FOODBOSS COLDSTORAGE Cold Storage and attend to compliance to clause 15.3(b).

16. General

- 16.1** The Customer must pay all tax imposts or other charges which may apply to the Cold Storage of the Goods from time to time and imposed by any governmental or similar authority.
- 16.2** Any variations to FOODBOSS COLDSTORAGE Terms and Conditions will be sent via email to the Customers contact email. Updated Terms and Conditions can be found on our website.
- 16.3** Continued use of services constitutes acceptance of Terms and conditions
- 16.4** FOODBOSS COLDSTORAGE reserves the right to terminate or vary this Agreement with a minimum of 30 days’ notice.
- 16.5** 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.
- 16.6** This Agreement and its enforceability shall not be affected by any failure by FOODBOSS COLDSTORAGE to execute it.
- 16.7** 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.

17. Jurisdiction

- 17.1** 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.



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 FOODBOSSTransport may deem necessary or expedient for the purpose of Transporting the Customer's Goods.

4.5 FOODBOSSTransport is also authorised to accept on behalf of the Customer any terms and conditions in any form used by such sub-contractor engaged by FOODBOSSTransport 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 FOODBOSSTransport 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 FOODBOSSTransport 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 FOODBOSSTransport.

6.2 Insurance will not be effected by FOODBOSSTransport and the Customer must affect and maintain insurance in respect of the Goods.

7 Limitation of Liability

7.1 FOODBOSSTransport's liability is limited, to the extent permissible by law and at FOODBOSSTransport 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 FOODBOSSTransport 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 FOODBOSSTransport'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, FOODBOSSTransport 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 FOODBOSSTransport and will keep FOODBOSSTransport 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 FOODBOSSTransport 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 FOODBOSSTransport. 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 We will use reasonable endeavours to arrange for a Proof of Delivery of the goods. You agree that You have no right to demand a Proof of Delivery and We are not liable to You for failing to provide a Proof of Delivery. You agree that you will not withhold payment of any invoice if We do not provide a Proof of Delivery.

8.6 All delivery dates and times are estimates only as Transport can be affected by factors outside of FOODBOSSTransport's control including but not limited to traffic incidents and any requirement on FOODBOSSTransport to comply with any Chain of Responsibility obligations as such incidents arise. FOODBOSSTransport 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.

8.7 FOODBOSSTransport will not be responsible for the loading and unloading of any goods, unless requested by the Customer and agreed to in writing by FOODBOSSTransport. The customer acknowledges and agrees that FOODBOSSTransport drivers do not have Forklift licences and are therefore not permitted to operate such equipment.

8.8 Loading or Unloading is the responsibility of the transport site or depot FOODBOSSTransport must access to complete the booking. Any equipment offered by the depot to FOODBOSSTransport drivers (such as pallet jacks or other), to assist in the loading or unloading; shall remain the sole responsibility of the depot. FOODBOSSTransport shall not be liable for damage of any kind to equipment that does not belong to FOODBOSSTransport.

8.8 FOODBOSSTransport 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), FOODBOSSTransport 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 FOODBOSSTransport:

- (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 FOODBOSSTransport;
- (c) by direct debit to FOODBOSSTransport' bank account
- (d) without set-off counter claim, cross demand or withholding or any kind.

- 9.2** FOODBOSSTransport 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 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;
- 11.3** 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 FOODBOSS TRANSPORT are or may be bound by Chain of Responsibility statutory obligations. While FOODBOSS TRANSPORT will endeavour to meet required time slots or delivery objectives FOODBOSS TRANSPORT supports in full driver fatigue initiatives and FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT any and all information, document and evidence of compliance with Chain of Responsibility at the request of FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT's and / or FOODBOSS COLDSTORAGE'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 FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT, will constitute a 'material default'.
- 15.3 At the effective date of termination for whatever reason, the following will apply:
- (a) FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT any and all Fees and Additional Charges invoice by FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT and attend to compliance to clause 15.3(b).

16. Force Majeure

- 16.1 If FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT 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 FOODBOSS TRANSPORT 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.



PALLET POLICY

Hire Equipment Trading Terms

Effective 1st 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.

