

QUBE ENERGY
TRANSPORT – STANDARD TERMS AND CONDITIONS



1. DEFINITIONS

1.1 In these Terms:

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Claim means any action, claim, suit, allegation, demand, loss, liability, damage or cost of whatsoever nature;

Consequential Loss means loss or damage, whether direct or indirect, in the nature of loss of profits, loss of revenue, loss of production, liabilities in respect of third parties (whether contractual or not), loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a party was advised of the possibility of such loss or damage;

Customer means the person named in any Order form or similar document or who requests provision of the Services, any person acting on behalf of, and with the authority (express or implied) of the Customer engaging the Services or any person who delivers Goods to QUBE for Services to be carried out;

Dangerous Goods means Goods classified as such by either the IATA Dangerous Goods Regulations or the Australian Dangerous Goods Code or Goods that otherwise might injure or damage people, property or the environment. They include Goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive.

Externally-Administered Body Corporate has the meaning given to that term in the Corporations Act 2001;

Goods means the cargo accepted from, or on behalf of, the Customer together with containers, packages, pallets, crates, cases and equipment for use in connection with the storage, handling and carriage of that cargo;

Loss means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or arising from any claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent and includes Consequential Loss;

Order means an order, or standing appointment or engagement, for the supply of Services;

Owner means the owner of the Goods or any person holding a better proprietary interest in the Goods than the Customer;

QUBE means Qube Energy Pty Limited (ABN 33 006 430 039) and any of its Related Bodies Corporate involved in the provision of the Services;

QUBE Personnel means any officers, employees, agents or subcontractors of QUBE;

PPSA means the *Personal Property Securities Act 2009* (Cth) and any terms used in clause 16 that have a defined meaning under the PPSA bear the same meaning in that clause;

Related Body Corporate has the meaning given to that term in the Corporations Act 2001;

Services means all of the services and operations (including cartage, transport and storage) undertaken in respect of the Goods by QUBE in any capacity (including as forwarding agent, shipping agent, forwarder, carrier or bailee) for the Customer; and

Terms means the terms and conditions set out herein.

2. THE CONTRACT

2.1 Subject to clauses 2.2 and 2.5, these Terms and any QUBE-generated Order form govern the contract or engagement entered into between QUBE and the Customer (**Contract**) and the Services supplied. These Terms are subject only to any services level agreement or rates

agreement entered into by QUBE and the Customer. Unless otherwise specifically agreed in writing by the parties, these Terms will prevail over existing or subsequent terms and conditions set out in any document (including any order form of the Customer), which the Customer directly or indirectly provides to QUBE and such other terms and conditions are rejected by QUBE.

- 2.2 If the parties have entered into QUBE's 'Bill of Lading for International Sea Carriage - Terms and Conditions' (**Bill of Lading**, a copy of which is available from QUBE's website), then in the case of inconsistency between the Terms and the Bill of Lading, the Bill of Lading shall prevail.
- 2.3 These Terms constitute the entire agreement of the parties about its subject matter.
- 2.4 QUBE is not a common carrier, accepts no liability as such and Services are subject to these Terms. QUBE may refuse to handle, transport or store Goods for the Customer for any reason whatsoever and without QUBE having any liability to the Customer by reason of that refusal.
- 2.5 Subject to clause 2.6, these Terms may be altered or amended at any time by publication on QUBE's website (with hard copies available on request). It is the Customer's responsibility to review the Terms prior to placing an Order.
- 2.6 The Terms applying to your Order are those in force at the time you placed the Order and any change will apply only in respect of Orders placed after the date of the change.
- 2.7 The Customer will be deemed to have accepted these Terms (as amended) by placing an Order with QUBE for the Services or providing Goods to QUBE.

3. QUBE Personnel

- 3.1 QUBE (and any subcontractor of QUBE) may subcontract all or part of the Services to any person including a Related Body Corporate. The Customer must not assign or subcontract its rights under the Contract without QUBE's prior written consent.
- 3.2 The Customer agrees that QUBE Personnel have the benefit of these Terms which QUBE holds on trust for them and can, if requested, enforce it on their behalf.

4. ORDERS

- 4.1 Any quotation by QUBE may be withdrawn by QUBE at any time and is not to be construed as an offer by, or an obligation on, QUBE to supply Services.
- 4.2 Services are supplied at the rates notified by QUBE at the time of its acceptance of the relevant Order.
- 4.3 QUBE may accept or refuse any Order, or on the provision of 7 days' notice (provided the time for performance of the Services does not fall within this period) cancel any previously accepted Order in its absolute discretion, and may make its acceptance of an Order conditional (e.g. upon a satisfactory credit assessment of the Customer).
- 4.4 Once placed, an Order cannot be cancelled or deferred by the Customer without QUBE's prior written agreement and then only on terms that the Customer will fully indemnify QUBE against any Loss suffered by it as a result of that cancellation or deferral. The indemnity in this clause 4.4 does not apply in cases where the cancellation or deferral is reasonably attributable to an act or omission of QUBE or QUBE Personnel.
- 4.5 All Orders are deemed placed with the authority of the Customer and in its name and QUBE is under no obligation to enquire as to the authority of the person placing the Order.
- 4.6 The Customer must provide QUBE with accurate details in each Order. QUBE is under no obligation to enquire as to the accuracy of the details in any Order or whether the Services will be fit for the purpose required by the Customer.

5. GOODS AND SERVICES

- 5.1 The acceptance of the Goods by QUBE for storage pending shipment shall not bind QUBE to ship the Goods and QUBE may suspend or stop indefinitely supplying the Services at any time on 7 days' notice (provided the time for performance of the Services does not fall within this period), to the extent permitted by law.
- 5.2 QUBE is not liable for any delay in delivery out of the Goods or in the delayed supply of Services and, on notification to the Customer, QUBE reserves the right to extend the date for delivery out of the Goods and the supply of Services.

- 5.3 QUBE may at any time require the Customer to remove the Goods from their location of storage at the Customer's expense (whether in the case of non-shipment or otherwise) and if the Customer fails to do so within 7 days of such notice, without limiting any other right of QUBE, the Customer shall be liable to pay QUBE's reasonable costs of storage from the date of such notice until the date of their removal.
- 5.4 The Customer must provide prior written notice and instructions regarding:
- (a) any special handling requirements (including as temperature) for the storage and transport of Goods; and
 - (b) Dangerous Goods including a full and accurate written description of them.
- 5.5 If, in the opinion of QUBE, the Goods are Dangerous Goods or do not meet legal requirements or recommendations of relevant government agencies relating to the Goods or Services, or are unsuitable to be handled by QUBE using the equipment and operating procedures normally employed by QUBE in providing the Services, QUBE in its absolute discretion may, without notice or recourse to the Customer:
- (a) refuse to provide the Services in respect of the Goods or any part of them; or
 - (b) take whatever measures (including testing or analysis of the Goods) it deems necessary at the risk and expense of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by QUBE; and/or
 - (c) at the cost of the Customer, destroy, dispose of or render harmless the Goods without prejudice to any of QUBE's rights under these Terms, and the Customer will bear all risk of Loss arising in connection with such Goods.
- 5.6 If the Customer instructs QUBE to use a particular method of handling, storage or transportation of the Goods, QUBE will give consideration to that method, but the Customer gives QUBE authority to:
- (a) use any method for handling, transporting or storing the Goods as QUBE sees fit; and
 - (b) deviate from the usual route or method of transport of the Goods which may in the absolute discretion of QUBE be necessary or desirable in the performance of the Services.
- 5.7 QUBE is authorised to deliver the Goods to the address given to QUBE by the Customer for delivery and QUBE shall be deemed to have delivered the Goods in accordance with these Terms if at that address, QUBE obtains from any person a receipt or signed delivery docket for the Goods.
- 5.8 If the address given to QUBE for delivery is unattended or if delivery cannot otherwise be effected by QUBE at that address, QUBE may at its option:
- (a) deposit the Goods at that address which shall be conclusively deemed to be delivery under these Terms; or
 - (b) store the Goods and re-deliver the Goods to the Customer at the Customer's cost.
- 5.9 The Customer must:
- (a) give prior written notice to QUBE if any of the Goods are liable to customs duties or port charges or other supply chain costs and charges and pay such charges or, if agreed by QUBE, reimburse QUBE if it agrees to pay those costs and charges on behalf of the Customer;
 - (b) ensure that the Goods are ready for pickup so that QUBE is not delayed in performing the Services.
 - (c) arrange at its cost, all necessary labour and facilities to load and unload the Goods. The Customer must ensure loading and unloading of the Goods complies with all relevant laws, QUBE's workplace safety standards and QUBE's directions.

6. CHARGES

- 6.1 The charges do not include any applicable taxes (including but not limited to GST, import duties and export duties). The Customer must pay any taxes payable or in connection with the provision of the Services.
- 6.2 It is the Customer's responsibility to understand the applicable rates and charges prior to placing an Order as they may change at any time.
- 6.3 The rates and charges applying to an Order are those in force at the time the Services or

Goods are quoted (or ordered if a specific quote is not sought) and will be current for the period set out in a written quote. If no period is specified in writing because, for example, a quote may have been given over the telephone or by email, the period is deemed to be 7 days. If the Customer places an Order outside this currency period then the rates and charges will be those applying at the time the Order is placed.

- 6.4 Rates are stated, and payment must be made, in Australian dollars (unless otherwise agreed).
- 6.5 Charges shall be deemed to be earned when the Goods are loaded for carriage or transport, whether or not the Goods are delivered, damaged or lost.
- 6.6 QUBE reserves the right to impose waiting time charges in respect of loading or unloading delays in excess of 30 minutes. In relation to perishable Goods, the delay period shall commence upon QUBE responding for loading or unloading.
- 6.7 QUBE may, at the Customer's cost, expend any amount it considers necessary or desirable in order to preserve the Goods or to secure the safety, storage, carriage or shipment of the Goods.

7. INVOICING AND PAYMENT

- 7.1 QUBE will issue to the Customer a tax invoice for the Services and any goods supplied in accordance with the requirements of the law relating to GST and the Customer must pay the Charges as indicated on QUBE's invoice or other similar document.
- 7.2 QUBE's charges are exclusive of GST. The Customer must pay GST on the charges at the same time as payment is made under clause 7.3.
- 7.3 Unless otherwise specified by QUBE in writing, the due date for payment is 7 days from the date the invoice is issued by QUBE.
- 7.4 The Customer must pay the invoice in full without any deduction, set-off or counter-claim.
- 7.5 If payment remains unpaid 7 days after date of the invoice, QUBE may, in addition to its other rights and remedies under these Terms and at law:
 - (a) Suspend performance of its obligations under the Contract until the full amount outstanding is paid in full;
 - (b) exercise a general lien over, and power of sale of, the Goods under clause 8. The Customer is still liable to pay any amount still owing to QUBE after such sale; and
 - (c) immediately commence legal proceedings to recover the amount owed.
- 7.6 QUBE is entitled to retain and be paid all commissions, allowances and remuneration paid including those customarily paid by or to forwarding agents, customs agents, shipping agents, forwarders, storers, carriers or bailees.
- 7.7 If QUBE makes credit available to the Customer (beyond the payment terms referred to in clause 7.3), QUBE may cease to supply the Services to the Customer on credit on 7 days' notice and may but is not obliged to provide reasons. If QUBE ceases to supply the Services to the Customer on credit then all fees and charges will become payable after the expiry of this notice period.
- 7.8 QUBE may charge the Customer interest on any overdue amount calculated daily at 4% above the base commercial overdraft rate of the National Australia Bank applicable during the period that the amount is overdue.

8. LIEN

- 8.1 The Goods are accepted subject to a general and particular lien for all charges due, or which may become due, to QUBE by the Customer in respect of the Services. If QUBE intends on exercising its lien over, and power of sale of, the Goods, QUBE must first notify the Customer of that intention, identify the matters to which the Customer must attend in order to avoid that outcome, and allow the Customer 7 days in which to attend to those matters. If at the conclusion of that period, the lien has not been satisfied and/or the Goods are not collected, then subject to law, QUBE may at its option - in the case of perishable Goods immediately and in any other case upon the expiration of a further 7 days' notice - either:
 - (a) remove such Goods or part thereof and store them in such place and manner as QUBE shall think proper at the risk and cost of the Customer;
 - (b) sell by public auction or private sale such Goods or part thereof upon such terms as it thinks fit and apply the proceeds in or towards discharge of the lien without being liable to

any person for any Loss thereby caused; or

(c) dispose of abandoned Goods at the expense of the Customer in any way QUBE deems fit and without compensation being payable to the Customer, and the Customer must indemnify QUBE for all costs incurred by QUBE in the exercise of these rights.

9. FORCE MAJEURE

- 9.1 If QUBE is wholly or partially precluded from performing the Services or otherwise complying with its obligations under these Terms by anything outside QUBE's reasonable control (the "**Force Majeure Event**"), then QUBE's obligation to perform all of its obligations under these Terms will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 9.2 If the Force Majeure Event (and consequential inability to perform the Contract) continues for a period longer than sixty (60) days from its initial occurrence, then either party may terminate this Contract by written notice to the other with no liability to the other as a result.

10. LIMITATION OF LIABILITY

- 10.1 Subject to clauses 10.2 and 10.3:
- (a) all warranties, descriptions, representations, guarantees or conditions, whether express or implied by law, trade, custom or otherwise, and all specific conditions, even though such conditions may be known to QUBE, are to the fullest extent expressly excluded;
 - (b) QUBE and QUBE Personnel are not liable for any delay or Loss arising from the supply of or failure to supply Services (including any Loss of, deterioration in, mis-delivery out of, or failure to deliver out, Goods) for any reason whatsoever, including breach of contract (including fundamental breach), negligence, breach of duty as bailee, or the willful act or default of QUBE or QUBE Personnel.
- 10.2 Nothing in these Terms excludes, restricts or modifies any guarantee, right or remedy conferred on the Customer by the Australian Consumer Law (including provisions relating to unfair contract terms) or any other applicable law insofar as they cannot be excluded, restricted or modified by agreement.
- 10.3 If the exclusion of liability in clause 10.1 is reduced, void or not available, QUBE's liability for any Claims arising out of this Contract, including liability for breach of this Contract, in negligence or in tort or for any other common law or statutory action, shall:
- (a) be limited to the extent the Loss the subject of the claim was caused directly by Qube or its Personnel;
 - (b) in all events, exclude Loss relating to any delay in delivery out of the Goods or in the delayed supply of Services and for any Consequential Loss; and
 - (c) in any one case (excluding liability for breach of a non-excludable consumer guarantee) be limited to the re-supply of the Services, or at QUBE's option, payment of the cost of having the Services re-supplied.
- 10.4 To the extent permitted by law, every exemption, exclusion or limitation in these Terms of whatsoever nature applicable to QUBE or to which QUBE is entitled under these Terms shall also be available and shall extend to protect:
- (a) all QUBE Personnel; and
 - (b) all persons who are or might be vicariously liable for the acts or omissions of any such person,
- and for the purposes of this clause 10.4, QUBE is or shall be deemed to be acting as an agent on behalf of and for the benefit of all such persons and each of them and all such persons and each of them shall to this extent be deemed to be parties to these Terms.

11. NOTIFYING OF CLAIMS

- 11.1 Subject to any statutory rights and remedies, the Customer's rights and remedies will be subject to the following:
- (a) If the Customer believes QUBE is liable, the Customer must notify QUBE in writing within 48 hours of delivery of the Goods by QUBE to the Customer. If QUBE does not receive a written notice from the Customer within that time, the Goods are deemed to be free from any defect or damage and QUBE will have no liability to the Customer. Notwithstanding the Customer's Claim, the Customer remains liable to pay all of QUBE's Charges.

- (b) The Customer must afford QUBE an opportunity to inspect the Goods within a reasonable time following delivery if the Customer believes the Goods are defective or damaged.
 - (c) To the extent permitted by law, QUBE will have no liability to the Customer, even if the Customer gives QUBE a written notice within that time, if the Customer does not commence legal proceedings against QUBE within 6 months of the date of delivery or from the date of the alleged breach of contract, whichever is earlier. Where the Goods have not been delivered, proceedings must be commenced within 12 months of the date the Goods should have been delivered.
- 11.2 If the Customer becomes aware of any Claim made, contemplated or taken against it by any third party in respect of Goods or the Services, the Customer must, within 7 days of becoming aware, notify QUBE of that Claim and give Qube a reasonable opportunity to respond before taking any action in respect of it.
- 11.3 Before settling any third-party Claim in respect of which the Customer seeks or may seek compensation or a contribution from QUBE, the Customer must first notify QUBE of that proposed settlement and reasonably consider feedback from Qube.
- 11.4 The Customer must not make, and must ensure the Owner does not make, any Claim against any QUBE Personnel which attempts to impose upon any of them any liability whatsoever in connection with the Contract or the Services and, if any such Claim should nevertheless be made, to indemnify QUBE and any QUBE Personnel against all consequences thereof.

12. INSURANCE

- 12.1 The Customer must arrange and maintain insurance in relation to the Goods for their full insurable value.
- 12.2 Unless otherwise agreed in writing, the Goods are not insured by QUBE nor will insurance be arranged by QUBE on behalf of the Customer.

13. WARRANTIES AND OBLIGATIONS

- 13.1 The Customer warrants that:
- (a) it has responded to all of QUBE's questions accurately and has accurately and fully described and clearly marked the Goods and has provided all necessary instructions and accurate information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods;
 - (b) it has complied with the requirements of any applicable laws relating to the nature, condition, packaging, handling, labelling, storage and carriage of the Goods and it shall provide all necessary assistance, information and documentation to enable QUBE to comply with any of its obligations under such laws;
 - (c) it shall not tender any Dangerous Goods or temperature-controlled Goods for the provision of Services by QUBE without complying with the requirements in clause 5.4;
 - (d) the Goods are received in by QUBE within the correct temperature range and are packaged to withstand handling, transport and storage;
 - (e) it alone owns the Goods, or if the Customer is not the Owner, it has the authority of the Owner to agree to these Terms and acts as the Owner's agent who agrees to the handling, transport and storage of the Goods on these Terms;
 - (f) it has authorised any person who delivers any Goods to, or collects any Goods from, QUBE for and on behalf of the Customer to do so;
 - (g) the Goods are free from any encumbrance, charge, lien or any other interest;
 - (h) the Goods are and will remain free of any objectionable matter or odours which may affect other Goods in storage, unless the condition of the Goods has previously been notified in writing to QUBE and QUBE has accepted the Goods in that condition;
 - (i) the Goods are not illegal, sanctioned or contraband and the Customer has not asked QUBE to handle, transport or store the Goods in any way that could be unlawful and that the actual handling, transport or storage of the Goods by QUBE in the usual course will not be unlawful; and
 - (j) all relevant weight data will be supplied to QUBE and the weight data (if any) will include all accompanying packaging (including cartons, pallets and stretch-wrap).

14. INDEMNITY

14.1 The Customer agrees:

- (a) to indemnify and keep indemnified QUBE and QUBE Personnel against all Claims and Loss that may be brought against QUBE or QUBE Personnel or which QUBE may pay, sustain or incur as a direct or indirect result of any negligence, Dangerous Goods or mis-described Goods, breach or non-performance of this Contract by the Customer, or non-compliance with any law or regulation. QUBE may enforce this right of indemnity at any time, including before it has incurred the Loss; and
- (b) that, to the extent permitted by law, the indemnity referred to in clause 14.1(a) will operate irrespective of whether any Loss arises from or is contributed to by negligence, contractual breach, or a wilful, deliberate or unauthorised act or omission by QUBE or by any of its sub-contractors, agents or servants.

14.2 To the extent that the indemnity in clause 14.1 is by law void, read down or not available, the indemnity will apply but be reduced to the extent the Loss arises from or is contributed to by negligence, contractual breach, or a wilful, deliberate or unauthorised act or omission by QUBE or by any of its sub-contractors, agents or servants.

15. DEFAULT AND TERMINATION

15.1 In the event that:

- (a) any Charges or other amounts payable by the Customer to QUBE are overdue or unpaid, or the Customer fails to meet any other obligation to QUBE or in QUBE's opinion the Customer is likely to be unable to meet its payment or other obligations to QUBE;
- (b) the Customer becomes an Externally-Administered Body Corporate, bankrupt or insolvent or has a receiver appointed in respect of all or some of its assets, makes or is likely to make an arrangement with its creditors, has a liquidator (provisional or otherwise) appointed or is otherwise placed under statutory or official management;
- (c) the legal or beneficial ownership (excluding listed companies), or the effective control (where control has the meaning given to that term in section 50AA of the Corporations Act 2001) of the Customer's business, is transferred, or the nature of the Customer's business is materially altered; or
- (d) any of the Terms are breached by the Customer and the Customer fails to rectify the breach within 10 days of written notice from QUBE, then:
- (e) QUBE will be entitled to cancel all or any part of an Order which remains unperformed in addition and, without prejudice to its other remedies, terminate the Contract; and
- (f) all Charges outstanding under any Order and any other amounts owing to QUBE will, whether or not due for payment, immediately become due and payable.

16. PERSONAL PROPERTY SECURITIES REGIME

16.1 The Customer must not register a security interest against QUBE without first notifying QUBE in writing.

16.2 The parties agree that the subject matter referred to in section 275(1) of the PPSA is confidential and each party must not disclose any such information to a third party.

17. PRIVACY

17.1 The Customer agrees that QUBE may obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by QUBE. The Customer consents to QUBE being given a consumer credit report to collect overdue payment on commercial credit (under section 18K(1)(h) of the *Privacy Act 1988* (Cth)).

17.2 The Customer agrees that QUBE may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for any of the following purposes:

- (a) to assess an application by Customer;
- (b) to notify other credit providers of a default by the Customer;
- (c) to exchange information with other credit providers as to the status of the Customer's

credit account, where the Customer is in default with other credit providers; or
(d) to assess the credit worthiness of Customer and obtain a consumer credit report.

18. MISCELLANEOUS

- 18.1 QUBE may set off any amount owing to it or apply (on the provision of notice to the Customer) all or part of any credit balance towards satisfaction of any amount owing (whether or not due for payment) by the Customer. The Customer may not set off any amount owing by, or apply or assign any credit balance which it may have with, QUBE and agrees not to attempt any such assignment.
- 18.2 If a clause or part of a clause is illegal, unenforceable, void or invalid, that clause or part of it is to be:
- (a) read down to the minimum extent necessary to achieve its validity or intent, if applicable; or else
 - (b) severed from this Agreement,
- without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision.
- 18.3 This Contract is governed by the laws of the Commonwealth of Australia and the State or Territory in which the Goods were accepted by QUBE for transport and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in that State or Territory.