

**ESPRESSO GOLD PTY LTD ACN 103 309 468 AS TRUSTEE FOR THE FORD FAMILY TRUST TRADING  
AS TRITON CLIMATE CONTROLLED TRANSPORT (TCCT)  
ABN 46 498 268 114**

**TERMS AND CONDITIONS**

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY TRITON CLIMATE CONTROLLED TRANSPORT (TCCT) AND TCCT ACCEPTS INSTRUCTIONS TO PROVIDE SERVICES ONLY ON THESE CONDITIONS

**1. DEFINITIONS & INTERPRETATIONS**

"TCCT" means Espresso Gold Pty Ltd ACN 103 309 468 as trustee for The Ford Family Trust trading as Triton Climate Controlled Transport ABN 46 498 268 114 carrying on business in its own name and under any business name and its officers, employees, servants, agents and sub-contractors.

"The Customer" includes the customer, owner, storer, consignor and consignee of any goods and their agents, if any, and any person delivering goods and signing any consignment or storage note for carriage, storage or any other purpose.

"Goods" are any goods, including the packaging and any pallets or containers, which are the subject of the services provided by TCCT to the Customer under this or any other agreement.

"Services" are the rights, benefits, privileges or facilities that are to be provided, granted or conferred under a contract for or in relation to the performance by TCCT for the Customer and includes handling, storage, carriage and transportation.

"Dangerous goods" includes any goods that are noxious, dangerous, hazardous, flammable, explosive, radioactive or likely to cause damage to any property or person.

**2. TCCT IS NOT A COMMON CARRIER**

TCCT is not a common carrier and will accept no liability as such. TCCT may refuse at its sole and absolute discretion to accept goods of any class or type or any goods of any Customer for handling, storage, carriage, transport or any other purpose without assigning any reason.

**3. FREEDOM TO DECIDE MEANS, ROUTE, PROCEDURE; USE OF THIRD PARTIES**

3.1 TCCT reserves complete freedom to decide the manner, route or procedure to be adopted for the Services and the handling, storage and transportation of the goods and is entitled to engage independent third parties to perform all or any of the functions required of TCCT upon such terms and conditions as TCCT determines appropriate and such independent third parties are entitled to the benefits of these conditions to the same extent as TCCT.

3.2 The Goods are deemed to be in transit notwithstanding that the carriage of the Goods may have been interrupted by TCCT and/or may have been diverted from the usual route for such carriage.

3.3 Freight will be considered earned as soon as the Goods are loaded and dispatched.

**4. SUBJECT TO CONDITIONS**

**4.1 All Services performed by TCCT are subject to these terms and conditions and to the conditions endorsed on the website for TCCT or on any rate schedule, consignment note or booking sheet.**

4.2 If there is a conflict between these conditions and any other document, these conditions will prevail.

## 5 **LIMITATION OF TCCT'S LIABILITY**

If, as a result of the supply by TCCT of Services, the Customer sustains loss or damage by reason of any of the following circumstances, namely:

- 5.1 The loss, mis-delivery, delay in delivery, contamination, evaporation or non-delivery of or damage to the Goods, or the consequential loss including loss of profit arising therefrom however caused or for any reason whatever;
- 5.2 Loss or depreciation of market attributable to delay in forwarding or in transit of the Goods or failure to carry out the instructions given to it by the Customer;
- 5.3 Loss or damage resulting from fire, water, explosion or theft;
- 5.4 Loss, damage or delay of whatever kind arising because of the negligence or wilful default of TCCT, or by reason of a failure by TCCT to exercise due care and skill;

Then the liability of TCCT is hereby limited to payment by TCCT to the Customer of the supplying again of the Services or the cost of having the Services supplied again at the option of TCCT.

## 6 **CUSTOMER'S GENERAL WARRANTIES**

The Customer in entering into a transaction of any kind with TCCT expressly warrants that:

- 6.1 It is either the owner or the authorised agent of the owner of any goods or property the subject matter of the transaction and by entering into the transaction it accepts these conditions for itself as well as for all other parties on whose behalf it is acting;
- 6.2 It has complied with all laws and regulations relating to the nature, packaging, labelling, storage or carriage of the Goods and that the Goods are packed in a manner adequate to withstand the ordinary risks of the Services provided and hereby indemnifies TCCT for any liability whatsoever as a result of or arising out of the failure of the Customer to comply with these warranties;
- 6.3 It has fully and adequately described the Goods on any consignment note or other document presented to TCCT;
- 6.4 The person delivering any Goods to or requiring any services from TCCT is authorised to sign the consignment or storage note or other documents related to the services on behalf of the Customer;
- 6.5 It has and will comply with all the requirements of the Commonwealth of Australia and any States or Territories in relation to the loading, handling and unloading of the Goods and shall be responsible for ensuring that proper facilities and safeguards exist for the collection, delivery, loading, handling and unloading of the Goods by TCCT; and
- 6.6 TCCT is entitled to open any document package or other container in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination where any consignment note or other document is lost, damaged, destroyed or defaced.

## 7 **CUSTOMER'S SPECIFIC WARRANTY – DANGEROUS GOODS**

The Customer warrants that the Goods are not Dangerous goods. In the event of a breach of this warranty the Customer and any person delivering the Goods to TCCT or causing TCCT to handle or deal with the Goods (except under special arrangements previously made in writing) is liable for any loss, damage or expense caused and must indemnify and keep indemnified TCCT against all loss, penalties, claims, costs and expenses incurred by TCCT in connection therewith. If the Goods are found to be Dangerous goods they may be destroyed or otherwise dealt with at the sole discretion of TCCT or any other person in whose custody they may be at the relevant time. If such goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods, property or persons.

## 8 **GOODS AT OWNER'S RISK**

The Goods are handled, stored, carried and transported entirely at the risk of the Customer and TCCT will not be liable to the Customer or any person or persons for any loss of or damage to the Goods or for the death or injury caused to any person arising out of the provision of Services in relation to the Goods whether caused wholly or partly, directly or indirectly by such provision of Services and whether such loss, damage, death or injury arises from the negligence of TCCT or otherwise and this indemnity extends to consequential loss arising from the loss or damage or death or injury. The Customer hereby indemnifies and keeps indemnified TCCT from any and all claims and liabilities of whatsoever nature in connection with any loss, damage, death or injury.

## 9 **GOODS AT OWNER'S RISK**

The Customer acknowledges that TCCT is not an insurer and that TCCT does not effect insurance on behalf of the Customer and that it should arrange for itself any insurance it may require.

## 10 **PACKING, LOADING AND UNLOADING**

10.1 The Customer must package the goods appropriately for the required service and weather conditions and TCCT will not be liable for any loss or damage whatsoever to the Goods not adequately packaged for the type of Goods and/or the type of service and destination.

10.2 **TCCT accepts no responsibility for the return of pallets to the Customer.**

10.3 Labour and/or equipment to load or unload a vehicle are the responsibility of the Customer.

## 11 **DELIVERY**

11.1 TCCT is authorised to deliver the Goods at the address given to TCCT by the Customer for that purpose and TCCT will be taken to have delivered the Goods in accordance with this agreement if at that address it obtains from any person a receipt or signed manifest for the Goods.

11.2 If the nominated place of delivery is unattended or if delivery cannot be otherwise effected by TCCT due to a lock-out, picket line or for any other reason, TCCT may at its option, deposit the Goods at that place (and the deposit of the Goods will be conclusively presumed to be due delivery) or re-deliver the Goods to the Customer at the Customer's expense.

## 12 **LIEN**

12.1 Without prejudice to the rights of TCCT at common law the Goods and all documents relating to the Goods which come into the possession or under the control of TCCT are subject to a special and general lien for monies due to TCCT in respect of services and/or disbursements relating to the Goods, and for any other indebtedness to TCCT from whatever cause by the Customer in so far as permitted by law.

12.2 TCCT may at any time and without notice to the Customer stop or suspend the performance of the Services while monies due to TCCT from the Customer remain unpaid.

- 12.3 If the Customer fails on reasonable demand being made to pay charges due to TCCT in respect of any services rendered by TCCT, TCCT may, without further notice to the Customer, sell the goods and apply the proceeds of the sale towards the discharge of the Lien and costs of the sale and TCCT shall not be liable to the Customer or any person for any loss or damage or consequential loss or damage thereby caused.

### 13 CLAIMS

- 13.1 Any claim by the Customer against TCCT must be made in writing and notified to TCCT:

13.1.1 in the case of damage to the Goods within 5 days of delivery;

13.1.2 in the case of delay in delivery or non-delivery within 30 days of the date when the Goods should have been delivered; or

13.1.3 in any other case within 5 days of the event giving rise to the claim.

Any claim not made and notified as above will not be enforceable against TCCT. No claim of any kind shall be made against any officer, employee, servant, agent or sub-contractor of TCCT on any grounds whatsoever.

### 14 HOW NOTICE IS TO BE SERVED BY TCCT

TCCT may serve any notice in writing to the Customer or any other person:

14.1 personally; or

14.2 by post to the Customer or other person's last known address.

### 15 ALTERATIONS OR VARIATIONS TO CONDITIONS

No employee, servant or agent of TCCT has the authority to alter or vary these trading conditions. Any such alteration or variation shall only apply if approved in writing by TCCT.

### 16 GUARANTEES RELATING TO THE SUPPLY OF SERVICES

16.1 Notwithstanding any other provisions of these conditions, these conditions must not be construed so as to exclude or limit any liability of TCCT to consumers which arises and which may not by law be excluded or limited under the Australian Consumer Law.

16.2 The liability of TCCT, if any, under any guarantee relating to the supply of services, implied herein by the provisions of the Australian Consumer Law is limited to, at TCCT's option, the supplying again of the services or the payment by TCCT to the Customer of the cost of having the services supplied again.

16.3 Unless written notification to the contrary is given by the Customer to TCCT at or prior to entering into these conditions the Customer expressly warrants and represents that all or any Services to be supplied by TCCT and acquired by the Customer pursuant to this agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

### 17 PAYMENT FOR SERVICES

17.1 The Customer must pay any amount it is required to pay to TCCT as consideration for the Services as set out on the consignment note in full and without deduction, notwithstanding any right the Customer may have to a credit or an offset however arising.

17.2 The Customer must pay the Goods and Services Tax ("GST") payable by TCCT as a consequence of the supply of the Services at the same time as making payment of the consideration for the Services or within seven days of receipt of a written demand by TCCT if the GST amount was not calculated on the consideration.

17.3 If required by TCCT, the Customer must pay an additional fee to TCCT in respect to any delays in excess of 30 minutes in loading or unloading trucks occurring other than from the default of TCCT commencing from TCCT reporting for loading or unloading.

18 **SEVERANCE**

If any provision of these terms and conditions is unenforceable, the provision is severable and its unenforceability will not affect any other part of these terms and conditions.

19 **LAW AND JURISDICTION**

These terms and conditions are governed by the laws of South Australia and each party submits to the jurisdiction of the courts of South Australia.