

Terms & Conditions

Definitions and interpretation

1.1

In these terms and conditions, unless the context otherwise requires:

"**Everest Removals**" means YU Trading Group Pty Ltd ABN 36 608 78 55 75, trading as Everest Removals.

"**Booking Form**" means the form provided to You prior to the commencement of the Services which identifies the Principal Contractor(s) and the Services that will be performed.

"**Contract**" means a contract for the performance of Services constituted by these terms and conditions and the relevant Booking Form. "**Dangerous Goods**" means Goods which are or may become dangerous, corrosive, explosive, flammable, perishable, noxious, infectious or capable of attracting pests or vermin. "**Goods**" means all goods which are the subject of Services, including any container, packaging or pallet used in connection with any of them.

"**Principal Contractor**" means each person who performs Services and who is identified as such on the Booking Form.

"**Services**" means the services to be undertaken by Principal Contractors as set out on the Booking Form and may include any one or more of Removal Services, Packing and Unpacking Services, Storage Services, Cleaning & Carpet Cleaning Services, or other services.

"**We**" means each Principal Contractor who performs Services under a Contract and, except in relation to provisions of these terms and conditions which relate solely to the performance of Services, Everest Removals, and "**Us**" and "**Our**" have corresponding meanings.

"**Website**" means the Everest Removals website at www.everestremovals.com.au.

"**You**" means the person entering into a Contract as the customer and who is identified as such on the Booking Form and, where the context requires, each other person that that person is authorised to represent, and "**Your**" has a corresponding meaning.

1.2

In these terms and conditions, unless the context otherwise requires:

(a) the singular includes the plural, and vice versa;

(b) if a word or phrase is defined its other grammatical forms have corresponding meanings;

(c) the word person includes an individual, a body corporate, a firm, an unincorporated body, a society, an association and an authority (including a government authority, department or agency);

(d) a reference to a particular person includes their legal personal representatives, administrators, successors, substitutes and permitted assigns;

(e) the word costs includes charges, expenses and legal costs (on a full indemnity basis);

(f) an agreement, representation or warranty by 2 or more persons binds both or all of them jointly and each of them individually;

(g) a reference to a document or an agreement is to that document or agreement as amended or replaced;

(h) a reference to law means statute law, common law and equitable principles;

(i) the meaning of any general language is not restricted by any accompanying example and the words includes, including and such as (or similar phrases) are not words of limitation; and

(j) headings do not affect interpretation.

2. Preliminary

2.1 You acknowledge and agree that:

(a) by signing a Booking Form prior to the commencement of the Services, You:

(1) enter a Contract with Everest Removals and each Principal Contractor named on the Booking Form in Your own capacity and as agent for each person You represent (and that each such person is bound by these terms and conditions); and

(2) have authority to bind each person You represent; and

(b) Everest Removals acts agent for each Principal Contractor. As such:

(1) Everest Removals is not the principal service provider under the Contract and has no liability to You or any person You represent in connection with the performance of any Services;

(2) neither You nor any person You represent may make any claim against Everest Removals (including in negligence or for breach of contract, whether by reason of an act or omission of Everest Removals or a Principal Contractor) for loss or damage arising out of, or costs incurred in connection with, the performance of any Services; and

(3) You must indemnify Everest Removals for all liability arising out of, and all costs incurred in connection with, any claim referred to in clause 2.1(b)(2) which is made despite the operation of that clause.

2.2 You may only make a claim in respect of a particular Service against the particular Principal Contractor who provided that Service and each such claim will be governed by these terms and conditions.

3. Provision of information

3.1 We rely on all information which You or any other person representing You provide(s) to Us for the purposes of quoting for, and in connection with the performance of, the Services. Accordingly, You warrant the accuracy and completeness of all such information.

3.2 Prior to Us quoting and performing Services, You must:

(a) Provide Us with a reasonable estimate of the volume of Goods to be transported or stored or other Services to be performed so that We can determine how to appropriately resource the Services;

(b) Notify Us (in writing if We so require) of any Goods which:

(1) Are Dangerous Goods;

(2) Are inherently fragile or brittle;

(3) Have a value in excess of \$1,000; or

(4) Are otherwise of a nature, importance or value (whether financially or otherwise), that require the exercise of special care or skill which would not be apparent from ordinary visual inspection.

4. Our general rights and discretions

4.1 Prior to commencing any Services We reserve the right to refuse to perform Services either:

(a) at all; or

(b) in respect of Goods of any particular class, at Our sole discretion without being obliged to give reasons or prior notice and without incurring any liability to You.

4.2 We are entitled, at Our sole discretion, to determine the method, manner, time and route that Services will be performed (including, without limitation, in relation to Removal Services, the number and size of the vehicles We use and notwithstanding that prior to commencing the Services We may have indicated that We intended to use a different number or different sized vehicle(s)).

4.3 All times which We provide for the scheduling and performance of Services are guides only. While We will use reasonable efforts to adhere to such times, You acknowledge and agree that given the nature of the Services (including, without limitation, the fact that Services performed for other clients may be completed

early or run over time) We are not liable to You for any failure or delay in performing the Services in accordance with any such guides (nor is any Contract repudiated by any such failure or delay).

4.4 You must ensure that all Goods are provided to Us in a condition which is suitable for Us to perform the Services (including, if applicable, by ensuring any Goods are packed in a proper way to withstand the ordinary risks of transport, except to the extent that You contract Us to package Goods for You).

4.5 If any information You supply to Us at the time a booking is made is incorrect, inaccurate or incomplete, We may, at Our sole discretion, perform Services strictly as per Our quotation or vary Our charges to address any additional or modified Services We are requested to perform.

4.6 It is Your responsibility to arrange parking for Us at all locations at which Services are performed (making provision for the fact that We may arrive early or late). We take no responsibility for the delayed or protracted performance of the Services due to the unavailability of parking (including, without limitation, convenient or proximate parking) and You must bear all of Your own, and separately Our, costs associated with any such delayed or protracted performance.

5. Your warranties

5.1 You warrant that the Goods are owned by You or a person You represent;

(a) Are owned by You or a person You represent;

(1) Are Dangerous Goods;

(2) Comply with all applicable laws relating to their nature, condition and packaging; and

(3) Do not comprise Dangerous Goods, unless You have otherwise disclosed this to Us in accordance with clause 3.2(b)(1)

(b) Each Principal Contractor is authorised to enter all premises at which Services are to be performed by that Principal Contractor. If You do not own those premises You warrant that You have obtained all necessary consents to permit this.

5.2 If, after the commencement of Services, We discover that the Goods include Dangerous Goods which You have not disclosed to Us in accordance with clause 3.2(b)(1), You:

(a) Authorise Us to take any action We deem appropriate, at Your expense and without incurring any liability to You, to dispose of, destroy or otherwise deal with those Dangerous Goods; and

(b) Indemnify Us for any other liabilities arising out of, and all costs incurred in connection with, the handling of the Dangerous Goods.

6. Removal Services

6.1 WE ARE NOT COMMON CARRIERS AND ACCEPT NO LIABILITY TO YOU AS SUCH.

6.2 You:

(a) must ensure that You, or a person who is authorised to represent You, is present when Removal Services are performed at both the pick-up and delivery locations (including when Goods are delivered into or loaded from store);

(b) are responsible for ensuring that:

(1) all Goods are loaded and delivered at such locations and that no Goods are overlooked; and

(2) in the course of performing Removal Services, no other person's goods are transported in error; and

(c) must:

(1) pay Our additional charges (including storage charges) for any Removal Services We perform in relation to Goods which were overlooked or any other person's goods which were transported in error; and

(2) indemnify Us for all liabilities to third parties arising out of, and all costs incurred in connection with, any other person's goods transported in error.

6.3 If We cannot deliver Goods because:

(a) You or a person who represents You is not present at a delivery location;

(b) We are unable to gain access to the premises at the delivery location; or

(c) for any other reason beyond Our reasonable control,

We are entitled, at Our sole discretion, to:

(d) return the Goods to their pick-up location;

(e) store the Goods at a place of Our choosing within a proximity to the delivery location which We consider to be reasonable; or

(f) deliver the Goods to Your address, and charge You an additional amount representing Our costs for so doing (including, in respect of any subsequent re-delivery Services). Any action taken by Us under this clause 6.3 will, unless agreed otherwise, be taken to be a full discharge of Our obligations with respect to Removal Services under the Contract.

6.4 We may refuse to remove large or cumbersome Goods or Goods which weigh in excess of 100kgs (such as pianos, safes and billiard tables) if You have not notified Us of those items at the time of booking. All such items will carry a separate additional charge and any damage which occurs will be at Your sole risk.

6.5 If requested, We may but are not obliged to:

(a) dismantle and reassemble Goods;

(b) transport Goods out of windows, over balconies, off terraces, using fire or external staircases or by other means We consider appropriate and if We consider it necessary or appropriate We may, at Your cost, use hired equipment (such as cranes) to move or transport Goods; or

(c) either Ourselves or using sub-contractors, remove and subsequently reinstate any obstructions (such as doors or windows or associated frames), if We consider it is safe to do so. In such circumstances, an additional charge will apply and any damage which occurs will be at Your sole risk.

6.6 You must ensure that:

(a) if applicable, loading docks and lifts are made available to Us at both pick-up and delivery locations for the duration of the period Removal Services are performed (if possible, on an exclusive basis); and

(b) Our vehicles can gain access to pick-up and delivery locations and that adequate parking is available.

7. Other Services

7.1 Our standard Removal Services do not include Packing or (other than placing items on the floor or some other flat surface) Unpacking Services. If You require Packing or Unpacking Services (or other Services, such as Cleaning or Steam Cleaning) You must notify Us at the time of booking. Separate additional charges will apply to all such other Services.

7.2 We do not guarantee that Our performance of Cleaning Services will result in the removal of all stains or, where applicable, the complete recovery of bonds. Any liability for failure to remove stains is expressly disclaimed.

8. Charges and payments

8.1 Our standard rates for the Services We provide and any additional amounts We are entitled to charge You are set out in the Booking Form.

8.2 All Services We perform will be charged in half hourly increments, rounded up to the nearest half hour, at Our standard rates, unless:

(a) We quote a fixed amount for a Service (and the information You have provided to Us as the basis for Our fixed quote is correct, accurate and complete); or

(b) We agree different rates with You in writing.

8.3 For Removal Services:

(a) the time charged will include the time taken by Us to return to the original pick-up location (subject to a minimum half hour return charge); and.

(b) the fuel levy specified in the Booking Form applies to the total invoice.

8.4 Unless We agree otherwise with You in writing, all of Our charges (other than in respect of Storage Services) must be paid one hour before completion of the Services. Our charges for Storage Services must be paid in advance at the time or times specified in the Booking Form. Payment is to be made at the end of each day for jobs that exceed one day.

8.5 You must pay, or reimburse Us for, all third party costs that are incurred in connection with the performance of any Services and which these terms and conditions require You to pay or permit Us to charge You for.

8.6 You must pay all tolls (including those incurred in returning to a pick-up location), parking costs and (provided We have acted reasonably) parking fines which We incur in connection with the performance of the Services.

8.7 Cancellation fees apply at Our standard rate from time to time for Services cancelled less than 47 hours prior to the designated time for performance. Unless We notify a change, Our standard rate for cancellations is \$70.

8.8 Payments must be made in cash, by bank transfer or by using an approved credit card). Credit card payments will attract the surcharge (if any) We notify from time to time. Unless We notify a change Visa and MasterCard and American Express credit cards attract a processing fee of 3%.

8.9 If a date for the performance by Us of any Services is agreed upon Your acceptance of Our quotation or subsequently, and You require that date to be varied or the Goods are not available on that date, We may charge an additional amount for costs We incur as a result of such variation or unavailability.

8.10 If You and We agree in writing that Our charges will be paid by a third party, and if that party does not pay the charges on the date set for payment or, if no date is set for payment, within 7 days of the date of invoice, You agree to pay the charges.

8.11 If an amount owing by You is outstanding for more than 7 days, we may charge interest on that amount from the due date for payment until the amount is paid in full. Interest is calculated at the St. George Bank of Australia maximum personal overdraft interest rate for amounts not exceeding \$100,000 from time to time plus 2% administration charges, and accrues on a daily basis.

8.12 If we use the services of a collection agency or otherwise incur costs in order to recover an amount owing by You, We may charge you an amount equivalent to the costs we incur in doing so, including, without limitation, the costs of engaging the collection agency, court costs, and legal costs and expenses.

8.13 You must make payments to Us without set-off, counter claims, conditions, restrictions, withholdings or deductions unless required by law.

9. GST

All charges We quote You, or which We are otherwise entitled to charge You, are GST exclusive unless otherwise stated. If GST is payable on any supply made in accordance with these terms and conditions, You will be required to pay Us an additional amount equal to the GST payable.

10. Lien

10.1 All Goods received by Us are subject to a general lien for any amounts due to Us by You or any person You represent relating to any Services provided under these terms and conditions or any other agreement.

10.2 If any amounts due to Us have been outstanding for a period of 2 weeks, We may give 2 weeks prior written notice to You of Our intention to sell Goods which are subject to Our general lien. If the outstanding amount is not paid within that further period, We may SELL ANY OR ALL OF THE GOODS by public auction or, if that is not reasonably practicable, by private sale and apply the net proceeds of the sale in satisfaction of the amounts due.

10.3 The exercise by Us of Our rights under this clause 10 will not prejudice or affect any other rights that We have at law to recover the amounts due.

11. Insurance

11.1 Insurance is NOT included in the removal rates quoted.

11.2 We recommend that You insure Your Goods while they are in Our possession or subject to Our control.

11.3 We will only assist You to arrange insurance if You request Us to do so in writing. Details of the types of cover and the applicable rates are available on request.

11.4 If We make payment of any amount to You in respect of any loss of or damage to Goods or Our delay in the performance of or failure to perform any Services (regardless of whether or not We are obliged to under these terms and conditions), You:

(a) irrevocably:

(1) assign to Us all rights which You have under any policy of insurance to recover that amount; and

(2) appoint Us as Your attorney with full power in Your name to claim and recover that amount; and

(b) must execute all documents and provide all information as may be reasonably necessary to enable Us to obtain the full benefit of this clause 11.3

11.5 You must comply with all the terms of any policy of insurance (including deadlines for notification of claims) to ensure that Your ability to make claims under that policy are not prejudiced, We do not accept any liability to You arising out of Your failure to so comply.

11.6 To ensure that Our ability to make claims under Our insurance policies is not prejudiced, you must notify Us in writing of any public liability or other claims that will or might arise out of Our performance of the Services promptly after you become of them.

12. Guarantee

12.1 If, in addition to Removal Services, you elect to have Goods packed by Us using preventative bubble wrapping (as part of Our Optional Packing Services) then, subject to this clause 12, We guarantee that those Goods will be delivered to Your delivery location free from breakages, or the remedy referred to in clause 12.4 will apply. In this clause 12, all Goods which are covered by Our guarantee are referred to as Guaranteed Goods.

12.2 To benefit from this clause 12, You must:

(a) prior to the commencement of the Removal Services, demonstrate to Our reasonable satisfaction that all Guaranteed Goods are in working order and free from damage;

(b) unless You elect to have Goods unpacked by Us (as part of Our Unpacking Services), prior to the completion of the Removal Services:

(1) unwrap and check the condition of Guaranteed Goods; and

(2) identify to Us any Guaranteed Goods that are not in good working order or have been damaged during the course of the performance of the Removal Services.

12.3 We have no liability under the guarantee given in this clause 12 if, and to the extent that:

(a) You have not complied with clause 12.2;

(b) the Goods which are damaged are paintings, artwork, artefacts, sculptures, glassware, foodstuffs, jewellery, articles made using gold, silver, diamonds or precious stones, bullion, or cash, bonds, securities or any other form of negotiable instrument;

(c) the damage is caused by delay, deterioration or other inherent vice, act of God, dismantling, assembly, testing, or electrical fault or malfunction; or

(d) the damage is at Your sole risk under clause 6.5 or 6.6.

12.4 Subject to this clause 12, if any Guaranteed Goods are damaged during transit, We will in full discharge of Our obligations under this clause 12, at Our sole discretion, to repairing or replacing, or paying the cost of repairing or replacing, such damaged Goods.

13. Exclusions and limitations of liability

13.1 Nothing in these terms and conditions shall be taken or construed as operating to exclude, restrict or modify any guarantee, condition or warranty implied by legislation including the Australian Consumer Law and equivalent State and Territory legislation (each a "Non-excludable Provision") if to do so would contravene that legislation or cause any part of this clause 13 to be void.

13.2 We exclude:

(a) from these terms and conditions, all terms, guarantees, conditions and warranties implied by statute, general law or custom, except any Non-excludable Provision;

(b) all liability to You in negligence for acts or omissions of Us, Our employees, agents or contractors arising out of or in connection with the Services or these terms and conditions; and

(c) all liability to You in contract for consequential or indirect damages, including loss of profits, loss of revenue, loss of use, loss of contract, loss of goodwill, or increased cost of working and damage suffered as a result of claims by any third person

13.3 Except as provided in clause 12 and to the maximum extent permitted by law, Our liability to You for breach of:

(a) any express provision of these terms and conditions is limited to the lesser of:

(1) the amount paid, or payable, by You for the Services in respect of which the breach occurred; or

(2) \$1,000; and

(b) any Non-excludable Provision is limited, at Our sole discretion:

(1) if the breach involves goods, to the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; or the payment of the cost of having the goods repaired; and

(2) if the breach involves services, to supplying the services again; or the payment of the cost of having the services supplied again.

13.4 You acknowledge and agree that reliance by Us on the exclusions and limitations of liability in this clause 13 is fair and reasonable in all the circumstances.

14. General

14.1 These terms and conditions constitute the entire understanding between the parties as to their subject matter and supersede all prior agreements, understandings and communications, whether written or oral, in relation to their subject matter.

14.2 If any provision of these terms and conditions is illegal or unenforceable in any relevant jurisdiction, it must be enforced to the maximum extent possible, and if unenforceable may be severed for the purposes of that jurisdiction, without affecting its enforceability in any other jurisdiction or the enforceability of any other part of these terms and conditions.

14.3 All waivers must be in writing. A single or partial exercise or waiver by a party of a right relating to these terms and conditions does not prevent any other exercise of that right or the exercise of any other right.

14.4 Except as expressly stated otherwise in these terms and conditions, Our rights under these terms and conditions are cumulative and are in addition to any other rights at law.

14.5 We are entitled to unilaterally amend these terms and conditions where the amendment is reasonable. If We elect to do so, you will be informed at least two (2) days before the amendment takes effect. If You do not agree with the amendment, You must terminate the Contract and comply with all Your post-termination obligations under it.

14.6 These terms and conditions are governed by and is to be construed in accordance with the laws applicable in New South Wales, Australia.

Although, all online bookings are attended to and jobs carried out, however we take no responsibility for any unexpected site technical errors or outages. Moreover, as soon as booking forms reach us, we ensure that these are actioned. For peace of mind, call us on 02 9593 0486 to confirm.