

## Southern Furniture Movers Limited T/A Southern Furniture Movers – Terms and Conditions of Cartage

### 1. Definitions

- 1.1 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **"Southern Furniture Movers"** means Southern Furniture Movers Limited T/A Southern Furniture Movers, its successors and assigns.
- 1.3 **"Sub-Contractor"** means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
  - (b) any other person or entity with whom Southern Furniture Movers may arrange for the carriage or storage of any Goods the subject of the Contract; or
  - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.4 **"Client"** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting Southern Furniture Movers to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client's executors, administrators, successors and permitted assigns.
- 1.5 **"Consignee"** means the person to whom the Goods are to be delivered by way of the Services.
- 1.6 **"Goods"** means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.7 **"Services"** means all services provided by Southern Furniture Movers to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, or other place or area, loading or unloading the Goods from any vehicle or other conveyance, stowing or packing the Goods, or fumigating or otherwise handling the Goods etc) to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by Southern Furniture Movers to the Client and includes any advice or recommendations (where the context so permits the terms 'Goods' or 'Services' shall be interchangeable for the other).
- 1.8 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including personal information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using Southern Furniture Movers' website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 **"Price"** shall mean the Price payable (plus any Goods and Services Tax ("GST") where applicable) for the Services, as agreed between Southern Furniture Movers and the Client, subject to clause 6 of this Contract.

### 2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by Southern Furniture Movers.
- 2.2 These terms and conditions are to be read in conjunction with Southern Furniture Movers' quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by Southern Furniture Movers to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- (a) The Client acknowledges and accepts that:
  - (b) the supply of Services on credit shall not take effect until the Client has completed a credit application with Southern Furniture Movers and it has been approved with a credit limit established for the account. In the event that the supply of Services request exceeds the Clients credit limit and/or the account exceeds the payment terms, Southern Furniture Movers reserves the right to refuse Delivery;
  - (c) it is the Client's responsibility to ensure that any glass, stone and concrete composite products be adequately packaged for transport. All due care for such items will be taken by Southern Furniture Movers whilst in transit, however no responsibility will be accepted by Southern Furniture Movers for such products in transit;
  - (d) the Goods are carried or transported and any other Services performed by Southern Furniture Movers are subject only to these conditions and Southern Furniture Movers reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion;
  - (e) unless otherwise agreed to in writing by Southern Furniture Movers, the Services shall be conducted during normal trading hours, Monday to Friday, excluding public holidays. In the event that no arrangements have been made and delivery is effected outside of these hours, then any additional costs shall be borne by the Client; and
  - (f) declaration of the volume of the Goods must be on all consignments and if not declared Southern Furniture Movers' reserve the right to estimate the volume upon loading.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 226 of the Contract and Commercial Law Act 2017 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that Southern Furniture Movers shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by Southern Furniture Movers in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by Southern Furniture Movers in respect of the Services.

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- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of Southern Furniture Movers; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.
- 4. Authorised Representatives**
- 4.1 Unless otherwise limited as per clause 4.2 the Client agrees that should the Client introduce any third party to Southern Furniture Movers as the Client's duly authorised representative, that once introduced that person shall have the full authority of the Client to order any Services on the Client's behalf and/or to request any variation to the Services on the Client's behalf (such authority to continue until all requested Services have been completed or the Client otherwise notifies Southern Furniture Movers in writing that said person is no longer the Client's duly authorised representative).
- 4.2 In the event that the Client's duly authorised representative as per clause 4.1 is to have only limited authority to act on the Client's behalf then the Client must specifically and clearly advise Southern Furniture Movers in writing of the parameters of the limited authority granted to their representative.
- 4.3 The Client specifically acknowledges and accepts that they will be solely liable to Southern Furniture Movers for all additional costs incurred by Southern Furniture Movers (including Southern Furniture Movers' profit margin) in providing any Services, or variation/s requested by the Client's duly authorised representative (subject always to the limitations imposed under clause 4.2 (if any)).
- 5. Change in Control**
- 5.1 The Client shall give Southern Furniture Movers not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change of trustees, or business practice). The Client shall be liable for any loss incurred by Southern Furniture Movers as a result of the Client's failure to comply with this clause.
- 6. Price and Payment**
- 6.1 At Southern Furniture Movers' sole discretion the Price shall be either;
- (a) as indicated on invoices provided by Southern Furniture Movers to the Client in respect of Services provided; or
  - (b) the Price as at the date of delivery of the Goods according to Southern Furniture Movers' current price list; or
  - (c) Southern Furniture Movers' quoted price (subject to clause 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days. Unless specified otherwise, Southern Furniture Movers' quotation is based upon:
    - (i) information (such as an inventory list) supplied by the Client, to which packing, transit, storage and any other associated costs can be calculated;
    - (ii) weekday, single point delivery and collection on a direct transit, door-to-door basis.
- 6.2 Southern Furniture Movers reserves the right to change the Price if a variation to Southern Furniture Movers' quotation is requested:
- (a) by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to Southern Furniture Movers beyond the reasonable control of Southern Furniture Movers (including, without limitation, any variations to the Services originally scheduled, limitations to accessing the site such as the like of stairs and gates, availability of machinery, safety considerations, overflow, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs); or
  - (b) charge freight by kilometres travelled or weight, measurement or value of the Goods, and may at any time re-calculate such freight (including re-weight, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured) and amend the Price accordingly.
- 6.3 At Southern Furniture Movers' sole discretion, a deposit may be required.
- 6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by Southern Furniture Movers, which may be:
- (a) on delivery of the Goods;
  - (b) twenty (20) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by Southern Furniture Movers.
- 6.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and Southern Furniture Movers.
- 6.6 Receipt by Southern Furniture Movers of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then Southern Furniture Movers' ownership or rights in respect of the Services shall continue.
- 6.7 The Client acknowledges and agrees that the Client's obligations to Southern Furniture Movers for the supply of Services shall not cease until:
- (a) the Client has paid Southern Furniture Movers all amounts owing for the particular Services; and
  - (b) the Client has met all other obligations due by the Client to Southern Furniture Movers in respect of all contracts between Southern Furniture Movers and the Client.
- 6.8 Southern Furniture Movers may in its discretion allocate any payment received from the Client towards any invoice that Southern Furniture Movers determines and may do so at the time of receipt or at any time afterwards. On any default by the Client Southern Furniture Movers may re-allocate any payments previously received and allocated. In the absence of any payment allocation by Southern Furniture Movers, payment will be deemed to be allocated in such manner as preserves the maximum value of Southern Furniture Movers' Purchase Money Security Interest (as defined in the PPSA) in the Goods.
- 6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by Southern Furniture Movers nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to Southern Furniture Movers an amount equal to any GST Southern Furniture Movers must pay for any provision of Services by Southern Furniture Movers under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

**7. Confidentiality**

- 7.1 Each party agrees to treat all information and ideas communicated by the other party confidential and each agrees not to divulge it to any third party, without the other party's written consent.
- 7.2 The quotation and the information contained in the quotation or any other schedule provided by Southern Furniture Movers to the Client is done so on a "commercial in confidence" basis thereby, the Client agrees not to reproduce or provide said information in any manner to any third party without the prior written approval of Southern Furniture Movers.
- 7.3 Either party must promptly return or destroy all Confidential Information of the other party in its possession or control at the other party's request, unless required by law to retain it.
- 7.4 Confidential Information excludes information:
- (a) generally available in the public domain (without unauthorised disclosure under this Contract); or
  - (b) required by law, any stock exchange or regulatory body to be disclosed; or
  - (c) received from a third party entitled to disclose it; or
  - (d) that is independently developed.
- 7.5 The obligations of this clause 7 shall survive termination or cancellation of this Contract.

**8. Freight Forwarding**

- 8.1 Except to the extent that any of the Services shall be actually performed by Southern Furniture Movers, Southern Furniture Movers shall act as a forwarding agent only.
- 8.2 Southern Furniture Movers shall be entitled, to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of Southern Furniture Movers may be necessary or desirable to the performance of the Services.
- 8.3 The Client hereby appoints Southern Furniture Movers the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as Southern Furniture Movers may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which Southern Furniture Movers may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, Southern Furniture Movers, or any other person.

**9. Client-Packed Containers**

- 9.1 If a container has not been stowed by or on behalf of Southern Furniture Movers, Southern Furniture Movers shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
  - (b) the unsuitability of the Goods for carriage or storage in containers; or
  - (c) the unsuitability or defective condition of the container.

**10. Nomination of Sub-Contractor**

- 10.1 The Client hereby authorises Southern Furniture Movers (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as Southern Furniture Movers. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled Southern Furniture Movers shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

**11. Southern Furniture Movers' Servants or Agents**

- 11.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of Southern Furniture Movers which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify Southern Furniture Movers and any such servant or agent against all consequences thereof.

**12. Method of Transport**

- 12.1 If the Client instructs Southern Furniture Movers to use a particular method of carriage whether by road, rail, sea or air Southern Furniture Movers will give priority to the method designated but if that method cannot conveniently be adopted by Southern Furniture Movers the Client shall be deemed to authorise Southern Furniture Movers to carry or have the Goods carried by another method or methods.

**13. Route Deviation**

- 13.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of Southern Furniture Movers be deemed reasonable or necessary in the circumstances.

**14. Charges Earned**

- 14.1 Southern Furniture Movers' charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

**15. Demurrage**

- 15.1 The Client will be and shall remain responsible to Southern Furniture Movers for all its proper charges incurred for any reason. A charge may be made by Southern Furniture Movers in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of Southern Furniture Movers. Such permissible delay period shall commence upon Southern Furniture Movers reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee

**16. Dangerous Goods**

- 16.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Client shall not deliver to Southern Furniture Movers, or cause Southern Furniture Movers to deal with or handle, Dangerous Goods.
- 16.2 If the Client is in breach of clause 16.1:
- (a) the Client, and any person delivering the Goods to Southern Furniture Movers, or causing Southern Furniture Movers to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified Southern Furniture Movers against all loss, damages, claims and costs (howsoever arising) incurred by Southern Furniture Movers in connection therewith; and
  - (b) the Goods may be destroyed or otherwise dealt with as determined by Southern Furniture Movers in its absolute discretion at the expense of the Client (or by any other person in whose custody they may be at the relevant time also at the expense of the Client), and neither Southern Furniture Movers nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.
- 16.3 Where Southern Furniture Movers agrees to accept Dangerous Goods, if during the period of cartage, Southern Furniture Movers, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 16.2 shall apply.

**17. Consignment Note**

- 17.1 It is agreed that the person delivering any Goods to Southern Furniture Movers for carriage or forwarding is authorised to sign the consignment note for the Client.

**18. Client's Responsibility**

- 18.1 The Client expressly warrants, represents, confirms and/or acknowledges that:
- (a) Southern Furniture Movers has relied upon the Client in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, Southern Furniture Movers accepts no liability for any discrepancy that may arise with the description; and
  - (b) unless specified otherwise in writing, Southern Furniture Movers has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
  - (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Client accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Client is acting;
  - (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
  - (e) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
  - (f) the person handing over the Goods to Southern Furniture Movers is authorised to sign and accept these terms and conditions;
  - (g) at Southern Furniture Movers' discretion, where differences or omissions between address and/or contact information written on the consignment and/or other documentation or in any form of communication (including, but not limited to, email and telephone) provided by the Client to Southern Furniture Movers, Southern Furniture Movers shall reserve the right to choose which delivery information is followed and shall not be held liable for any associated costs in relocation of the Goods if this address is the incorrect one;
  - (h) where Southern Furniture Movers is engaged to transport a packaged item/s, Southern Furniture Movers reserve the right to refuse to transport these item/s where it is deemed that the packaging is insufficient or inadequate; and
  - (i) bookings shall be made by the person or company who intends to pay Southern Furniture Movers for the provision of the Services unless otherwise clarified prior to quoting.
- 18.2 The Client shall indemnify Southern Furniture Movers against any loss (including any fine, levy, charge or other monetary imposition to which Southern Furniture Movers may become liable incidental to the carriage) damage, death or injury, including loss or damage to Southern Furniture Movers' containers and/or equipment arising out of:
- (a) the Client's unreasonable detention of any vehicle container or other equipment of Southern Furniture Movers;
  - (b) any breach of the Client's warranties under clause 18.1, including the failure to comply with clause 18.1(e)

**19. Delivery**

- 19.1 Southern Furniture Movers is authorised to deliver the Goods at the address given to Southern Furniture Movers by the Client for that purpose and it is expressly agreed that Southern Furniture Movers shall be taken to have delivered the Goods in accordance with this Contract if at that address Southern Furniture Movers obtains from any person a receipt or a signed delivery docket for the Goods.
- 19.2 Southern Furniture Movers may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 19.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
- 19.4 It is the Client's sole responsibility to provide Southern Furniture Movers with accurate delivery instructions and unobstructed access to the nominated address to enable effective delivery, including ensuring that trees are trimmed or cut back along driveways, and/or (for self-load or self-unload) ensuring that foot or vehicular traffic is not impeded and that public safety is considered. If delivery cannot be affected by Southern Furniture Movers (whether due to obstructed access to the nominated address or otherwise) then Southern Furniture Movers at its sole discretion may:
- (a) deposit the Goods in the nearest and safest position to the address, and such action will be deemed to constitute valid delivery; or
  - (b) obtain the use of Hiab or other vehicle/equipment, and charge the Client any costs incurred by Southern Furniture Movers in so doing; or

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- (c) refuse to effect delivery and instead store the Goods, in which case the Client shall be liable for, and shall reimburse Southern Furniture Movers for all costs and expenses incurred in connection with such storage.
- 19.5 The Client shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including ensuring that the nominated address complies with any WorkSafe guidelines and any other relevant safety standards or legislation.
- 19.6 If the Client requests Southern Furniture Movers upon delivery:
- (a) to make delivery of the Goods to a subsequent address, then Southern Furniture Movers may, at their sole discretion, charge the Client the additional costs associated with doing so;
  - (b) to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts) then Southern Furniture Movers shall only do so at their sole discretion, and:
    - (i) Southern Furniture Movers may charge the Client the additional costs associated with doing so;
    - (ii) the Client acknowledges that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of Southern Furniture Movers in providing such assistance; and
    - (iii) notwithstanding that Southern Furniture Movers may refuse such assistance without any liability to the Client whatsoever should they believe that the risk in providing such assistance is unacceptable.
- 19.7 In the event that Southern Furniture Movers stores the Goods under 20 then Southern Furniture Movers will re-deliver the Goods to the nominated address at a time mutually agreed between the parties. The Client shall be liable for any costs incurred by Southern Furniture Movers in both the initial delivery and the re-delivery.
- 19.8 Any time specified by Southern Furniture Movers for the delivery of Goods is an estimate only and Southern Furniture Movers will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that Southern Furniture Movers is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then Southern Furniture Movers shall be entitled to charge the Client any additional costs incurred by Southern Furniture Movers as a direct consequence of any resultant delay or rescheduling of the delivery.

### 20. Conditions of Storage

- 20.1 Southern Furniture Movers will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from Southern Furniture Movers, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case Southern Furniture Movers will be entitled to make a reasonable additional charge.
- 20.2 Southern Furniture Movers' storage charges shall be as quoted to the Client for the first twenty-six (26) weeks of storage, after which period Southern Furniture Movers may change the storage charges from time to time by giving twenty-eight (28) days written notice to the Client.
- 20.3 Southern Furniture Movers is authorised to remove the goods from one warehouse to another without cost to the Client. Southern Furniture Movers will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 20.4 The Client is entitled upon giving Southern Furniture Movers reasonable notice to inspect the Goods in store but a reasonable charge may be made by Southern Furniture Movers for this service.
- 20.5 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving Southern Furniture Movers not less than five (5) working days' notice. If the Client gives Southern Furniture Movers less than the required notice Southern Furniture Movers will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 20.6 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from Southern Furniture Movers to do so. In default, Southern Furniture Movers may after fourteen (14) days' notice to the Client SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to Southern Furniture Movers.

### 21. Loss or Damage

- 21.1 This Contract is "at limited carrier's risk". Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to, chilled, frozen, refrigerated or perishable goods):
- (a) Southern Furniture Movers shall not be under any liability for any loss or damage suffered by Southern Furniture Movers, Client (or any third party) as a result of:
    - (i) the Client contravening clause 18;
    - (ii) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
    - (iii) seizure under legal process; or
    - (iv) saving, or attempting to save, life or property in peril.
  - (b) Southern Furniture Movers shall not be under any liability for any consequential or indirect loss, loss of market or consequences of delay; and
  - (c) the Client will indemnify Southern Furniture Movers against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by Southern Furniture Movers in connection with the Goods.
- 21.2 Subject to the conditions of warranty set out in clause 21.4 Southern Furniture Movers guarantees that if any damage caused by Southern Furniture Movers to the Goods or property of the Client and is reported to Southern Furniture Movers within seven (7) days (preferably earlier where possible) of the date of delivery of the Goods then Southern Furniture Movers will, at Southern Furniture Movers' own cost, repair the Goods or property.
- 21.3 Where Southern Furniture Movers is unable to repair any damage Southern Furniture Movers may, at its sole discretion, compensate the Client for any damage to the Goods or property, by paying the Client the value of the damaged Goods or property (which shall be calculated based on the condition of the Goods prior to the damage occurring). In the event Southern Furniture Movers and Client cannot agree on the amount of

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compensation, the Goods shall be assessed by an independent valuer and the valuer's assessment as to the pre-damage value of the Goods shall become the binding amount of compensation payable.

21.4 The conditions applicable to the warranty given by clause 21.2 are:

- (a) the Client must, prior to the commencement of the removal or storage, give Southern Furniture Movers written notice of any Goods which are of a fragile or brittle nature and which are not readily apparent as such, or which comprise jewellery, precious objects, works of art, collections of items or precision equipment in any case having a value in excess of two thousand dollars (\$2,000.00); and
- (b) the Client or the Client's representative must be present at all times during the loading and unloading of the Goods; and
- (c) damaged Goods must be left as they are found with no further unpacking of the container in which the Goods are located; and
- (d) the guarantee shall cease and Southern Furniture Movers shall thereafter in no circumstances be liable under the terms of the guarantee where damaged Goods:
  - (i) have either not been pre-packed or carted by Southern Furniture Movers; or
  - (ii) are repaired by the Client or a third party not authorised by Southern Furniture Movers; or
  - (iii) are part of a set, pair, suite or collection, repair or compensation of the Goods shall extend only to the proportionate part of the set, pair, suite or collection, regardless of any special value the damaged portion may have as part of the set, pair, suite or collection.
- (e) the guarantee shall exclude:
  - (i) identified risk Goods: where a pre-existing condition affects the Goods, or a particular direction or instruction given by the Client, contravenes Southern Furniture Movers' normal workmanship standards so that damage to the Goods may be unavoidable;
  - (ii) unknown risk: where damage arises from unknown or unseen conditions, or are due to hidden or unidentifiable difficulties beyond the reasonable control of Southern Furniture Movers (e.g. an inherent fault in the Goods or property that is not immediately obvious);
  - (iii) unavoidable risk: where moving Goods (including, but not limited to, pot plants, chipboard, ikea furniture, stone or marble Goods, or fish tanks) can cause unavoidable damage due to the nature of the Goods;
  - (iv) electrical Goods: internal damage to electrical Goods where no external damage has been caused by Southern Furniture Movers;
  - (v) Client packed Goods: as per clause 18.
- (f) the guarantee shall not apply where any and all payment due to Southern Furniture Movers by the Client has been withheld for any reason or is not paid by clear funds.

21.5 Southern Furniture Movers shall not be responsible or liable for any other loss whatsoever (including, but not limited to, consequential loss of value) suffered by the Client as a result of the damage to, or repair of, the Goods.

21.6 Where damage to the Goods relates to, or arises from, the collision or overturning of Southern Furniture Movers' vehicle, or any act of God, war, terrorism, fire, flood, storm or other event beyond the reasonable control of Southern Furniture Movers, the Client shall be compensated only within the ambit of the insurance amount received by Southern Furniture Movers.

21.7 Notwithstanding the above clauses 21.2 to 21.6 nothing in those clauses is intended to have the effect of contracting out of any applicable provisions of the Consumer Guarantees Act 1993.

21.8 No proceeding may be brought against Southern Furniture Movers for the loss of any Goods that occurs while Southern Furniture Movers is responsible for the Goods in accordance with Part 5 (Carriage of Goods), Section 278 of the Act, after the expiry of a period of twelve (12) months from the date on which the carriage should have been completed in accordance with this Contract, however, any application for claim is subject also to the relevant date for the purposes of Section 280, and must be made within six (6) years after the relevant date has occurred.

## 22. Insurance

22.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of Southern Furniture Movers;
- (b) Southern Furniture Movers is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all;
- (c) neither Southern Furniture Movers (or their insurers) accept liability for pot plants, pots, kitset furniture that has not been dismantled, kitset wardrobes, inadequately packed items, deterioration of deep freeze, refrigerated food, or damage caused by moths, rats, vermin, wear and tear, pre-existing damaged or gradual deterioration, whilst in transit or storage;
- (d) plasma televisions must be packed in the carton designed for them and it is the Client's responsibility to ensure the arrangement of this; and
- (e) under no circumstances will Southern Furniture Movers be under any liability with respect to the arranging of any such insurance and no claim will be made against Southern Furniture Movers for failure to arrange or ensure that the Goods are insured adequately or at all.

## 23. Claims

23.1 Notwithstanding clauses 21 and 22 in the event that the Client believes that they have any claim against Southern Furniture Movers then they must lodge any notice of claim for consideration and determination by Southern Furniture Movers within thirty (30) days (as set out in Section 274 of the Act) from of the actual date of delivery or the anticipated date of delivery in the event of non-delivery or the removal or destruction of the Goods. Southern Furniture Movers will respond to that notice of claim within ten (10) days (as set out in Section 275 of the Act) of receipt of the notice and will take all reasonable steps to resolve the matter. In the event that the Client is not satisfied with the resolution provided, the Client may commence court proceedings or arbitration proceedings to resolve the dispute.

23.2 The failure to notify a claim within the time limits under clause 23.1 is evidence of satisfactory performance by Southern Furniture Movers of its obligations.

## 24. Southern Furniture Movers' Lien

24.1 Southern Furniture Movers shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of Southern Furniture Movers (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to Southern Furniture Movers (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and Southern Furniture Movers shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. Southern Furniture Movers shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

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- 24.2 Notwithstanding clause 24.1 nothing shall prejudice Southern Furniture Movers' rights to use any of Southern Furniture Movers' other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 24.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.
- 25. Consumer Guarantees Act 1993**
- 25.1 This Contract is subject to the provisions of the Consumer Guarantees Act 1993 in all cases except where the Client is contracting within the terms of a trade/business (which cases are specifically excluded).
- 25.2 Southern Furniture Movers shall be under no liability whatsoever for loss or damage to Goods unless;
- (a) the Client provides written notice to Southern Furniture Movers detailing the alleged damage, and that such written notice shall be received by Southern Furniture Movers within ten (10) days after the delivery of the Goods; or
- (b) in the case where the Goods have been lost in transit then the Client shall be required to provide written notice detailing the alleged loss within thirty (30) days of the date of dispatch of the Goods.
- 26. Personal Property Securities Act 1999 ("PPSA")**
- 26.1 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by Southern Furniture Movers, over which Southern Furniture Movers invokes a lien; and
- (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to Southern Furniture Movers for Services – that have previously been provided and that will be provided in the future by Southern Furniture Movers to the Client.
- 26.2 The Client undertakes to:
- (a) sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which Southern Furniture Movers may reasonably require to register a financing statement or financing change statement on the Personal Property Securities Register;
- (b) indemnify, and upon demand reimburse, Southern Furniture Movers for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register or releasing any registration made thereby;
- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of Southern Furniture Movers.
- 26.3 Southern Furniture Movers and the Client agree that nothing in sections 114(1)(a), 133 and 134 of the PPSA shall apply to these terms and conditions.
- 26.4 The Client waives its rights as a debtor under sections 116, 120(2), 121, 125, 126, 127, 129, and 131 of the PPSA.
- 26.5 Unless otherwise agreed to in writing by Southern Furniture Movers, the Client waives its right to receive a verification statement in accordance with section 148 of the PPSA.
- 26.6 The Client shall unconditionally ratify any actions taken by Southern Furniture Movers under clauses 26.2 to 26.5.
- 26.7 Subject to any express provisions to the contrary (including those contained in this clause 26), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 27. Security and Charge**
- 27.1 In consideration of Southern Furniture Movers agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, and the Client grants a security interest in all of its present and after-acquired property, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money). The terms of the charge and security interest are the terms of Memorandum 2018/4344 registered pursuant to s.209 of the Land Transfer Act 2017.
- 27.2 The Client indemnifies Southern Furniture Movers from and against all Southern Furniture Movers' costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising Southern Furniture Movers' rights under this clause.
- 27.3 The Client irrevocably appoints Southern Furniture Movers and each director of Southern Furniture Movers as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 27 including, but not limited to, signing any document on the Client's behalf.
- 28. Default and Consequences of Default**
- 28.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at Southern Furniture Movers' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 28.2 If the Client owes Southern Furniture Movers any money the Client shall indemnify Southern Furniture Movers from and against all costs and disbursements incurred by Southern Furniture Movers in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, Southern Furniture Movers' collection agency costs, and bank dishonour fees).
- 28.3 Further to any other rights or remedies Southern Furniture Movers may have under this Contract, if the Client has made payment to Southern Furniture Movers, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by Southern Furniture Movers under this clause 28 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 28.4 Without prejudice to Southern Furniture Movers' other remedies at law Southern Furniture Movers shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to Southern Furniture Movers shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to Southern Furniture Movers becomes overdue, or in Southern Furniture Movers' opinion the Client will be unable to meet its payments as they fall due; or

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- (b) the Client has exceeded any applicable credit limit provided by Southern Furniture Movers;
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 29. Cancellation

- 29.1 Without prejudice to any other remedies Southern Furniture Movers may have, if at any time the Client is in breach of any obligation (including those relating to payment) Southern Furniture Movers may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. Southern Furniture Movers will not be liable to the Client for any loss or damage the Client suffers because Southern Furniture Movers exercised its rights under this clause.
- 29.2 Southern Furniture Movers may cancel any contract to which these terms and conditions apply, or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice the Client shall repay to the Client any sums paid in respect of the Price. Southern Furniture Movers shall not be liable for any loss or damage whatever arising from such cancellation.
- 29.3 In the event that the Client cancels the delivery of Goods, or the provision of any Services, then the Client shall be liable for any loss incurred by Southern Furniture Movers (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

### 30. Privacy Policy

- 30.1 All emails, documents, images or other recorded information held or used by Southern Furniture Movers is Personal Information as defined and referred to in clause 30.3 and therefore considered confidential. Southern Furniture Movers acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 2020 (“the Act”) including Part II of the OECD Guidelines as set out in the Act. Southern Furniture Movers acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client’s Personal Information, held by Southern Furniture Movers that may result in serious harm to the Client, Southern Furniture Movers will notify the Client in accordance with the Act. Any release of such Personal Information must be in accordance with the Act and must be approved by the Client by written consent, unless subject to an operation of law.
- 30.2 Notwithstanding clause 30.1, privacy limitations will extend to Southern Furniture Movers in respect of Cookies where the Client utilises Southern Furniture Movers’ website to make enquiries. Southern Furniture Movers agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client’s:
  - (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to Southern Furniture Movers when Southern Furniture Movers sends an email to the Client, so Southern Furniture Movers may collect and review that information (“collectively Personal Information”)If the Client consent to Southern Furniture Movers’ use of Cookies on Southern Furniture Movers’ website and later wish to withdraw that consent, the Client may manage and control Southern Furniture Movers’ privacy controls via the Client’s web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 30.3 The Client authorises Southern Furniture Movers or Southern Furniture Movers’ agent to:
  - (a) access, collect, retain and use any information about the Client;
    - (i) (including, name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history or any overdue fines balance information held by the Ministry of Justice) for the purpose of assessing the Client’s creditworthiness; or
    - (ii) for the purpose of marketing products and services to the Client.
  - (b) disclose information about the Client, whether collected by Southern Furniture Movers from the Client directly or obtained by Southern Furniture Movers from any other source, to any other credit provider or any credit reporting agency for the purposes of providing or obtaining a credit reference, debt collection or notifying a default by the Client.
- 30.4 Where the Client is an individual the authorities under clause 30.3 are authorities or consents for the purposes of the Privacy Act 2020.
- 30.5 Southern Furniture Movers will destroy Personal Information upon the Client’s request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 30.6 The Client can make a privacy complaint by contacting Southern Furniture Movers via e-mail. Southern Furniture Movers will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within twenty (20) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Privacy Commissioner at <http://www.privacy.org.nz>.

### 31. Service of Notices

- 31.1 Any written notice given under this Contract shall be deemed to have been given and received:
  - (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party’s last known email address.
- 31.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 32. Trusts

- 32.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (“Trust”) then whether or not Southern Furniture Movers may have notice of the Trust, the Client covenants with Southern Furniture Movers as follows:
  - (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

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- (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) the Client will not without consent in writing of Southern Furniture Movers (Southern Furniture Movers will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
  - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
  - (ii) any alteration to or variation of the terms of the Trust;
  - (iii) any advancement or distribution of capital of the Trust; or
  - (iv) any resettlement of the trust property.

### **33. General**

- 33.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect Southern Furniture Movers' right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 33.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New Zealand and are subject to the jurisdiction of the Dunedin Courts of New Zealand.
- 33.3 Southern Furniture Movers shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by Southern Furniture Movers of these terms and conditions (alternatively Southern Furniture Movers' liability shall be limited to damages which under no circumstances shall exceed the Price).
- 33.4 Southern Furniture Movers may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 33.5 The Client cannot licence or assign without the written approval of Southern Furniture Movers.
- 33.6 Southern Furniture Movers may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of Southern Furniture Movers' sub-contractors without the authority of Southern Furniture Movers.
- 33.7 The Client agrees that Southern Furniture Movers may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for Southern Furniture Movers to provide Goods to the Client.
- 33.8 Where Southern Furniture Movers is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of Southern Furniture Movers, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed boarder lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and Southern Furniture Movers gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of Southern Furniture Movers.
- 33.9 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 33.10 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.