

## MONTAGUE LOGISTIC - TERMS AND CONDITIONS

Unless otherwise agreed in writing by Montague and the Customer, these Terms and Conditions are the only terms and conditions on which Montague will agree to provide the Services and are incorporated into and form part of all Contracts. The Customer acknowledges and agrees that it is contracting with the Montague Group Company named as the supplier of the Services on the invoice for the Services supplied and not with any other Montague Group Company.

### Definitions

1. In these Terms and Conditions:

“**Charges**” means the fees and charges payable for the Services (calculated by applying Montague’s current standard rates and charges for the Services or as otherwise agreed with the Customer) and any other fees, costs, taxes, charges or expenses incurred by Montague in respect of the provision of Services or which may be recovered by Montague under these Terms and Conditions;

“**Consignment Note**” means a consignment note issued by Montague or by a Subcontractor on behalf of Montague;

“**Contract**” means the contract for Services between Montague and the Customer comprising the Request, Consignment Note or other document issued by Montague which sets out the contract particulars and the Terms and Conditions;

“**Customer**” means the person named as the Customer in the Contract;

“**Goods**” means the goods accepted by Montague from or for the Customer from time to time together with any containers or packaging or other storage media supplied with the goods;

“**PPSA**” means the Personal Property Securities Act (Cth) 2009;

“**Montague**” means the Montague Group Company that supplies the Services to the Customer as set out in the Contract or the invoice issued by Montague;

“**Montague Group Company**” means WF Montague Pty Ltd (ACN 004 410 664) or Montague Fresh (QLD) Pty Ltd (ACN 067 212 935);

“**Request**” means a request, whether oral, in writing or implied by conduct, from a Customer for the provision of Services and may include a Customer purchase order or the delivery of Goods into Montague’s possession;

“**Services**” means the transport services identified in the Contract and any other services actually provided by Montague in relation to the Goods;

“**Subcontractor**” includes any person who pursuant to a contract or arrangement with any other person (whether or not Montague) performs or agrees to perform the whole or any part of the Services;

“**Terms and Conditions**” means these terms and conditions and any additional terms and conditions included by Montague in an invoice for the Services provided under these Terms and Conditions.

### Terms and Conditions

2. These Terms and Conditions override any inconsistent terms or conditions in any document or communication used by the Customer in relation to the provision of Services or any industry practice or earlier course of dealing. This applies even if the Request, delivery receipt or any other document contains a similar condition to this one or if Montague fails to object to any term or condition the Customer purports to include in its agreement with Montague.

### Contracts

3. A Contract is formed upon acceptance by Montague of a Request. Montague may accept the Request in writing (which includes by issuing a Consignment Note), verbally or by receiving the Goods. In the event of a dispute, Montague’s internal records will be conclusive evidence of when the Contract was formed, of when Goods were received and delivered by Montague and of all Services requested and rendered.

### Status of Montague

4. Montague is not a common carrier, does not accept any liability as a common carrier and may refuse to transport the Goods or any class of goods for any person in its sole discretion.

### Provision of Services

5. The provision of Services in respect of the Goods is entirely at the risk of the Customer and the Customer shall be responsible for effecting all insurances relating to the Goods.

6. Montague shall be entitled to subcontract any part of the Services.

7. The Customer authorises any deviation from the usual route or manner adopted in providing the Services, which Montague, in its absolute discretion, may deem necessary or desirable in the circumstances.

8. To the extent permitted by law and subject to clause 14, Montague accepts no liability for the Goods whatsoever including, without limitation, any liability for any loss, injury or damage in respect of the Goods:

(a) whether occasioned by storage or transportation of the Goods in contact with or proximity to other goods or in improper or varied temperatures, or by sweating, evaporation, leakage, breakage, shrinkage, deterioration, inherent defect, fermentation, wasting, decay, putrefaction, contamination, vermin or evaporation;

(b) whether by way of destruction, loss, theft, fire, storm, flood, tempest, water or Act of God;

(c) whether resulting from or contributed to by strikes, lockouts, shortages of labour or industrial disturbance, or by any defect in or breakdown of premises, plant or machinery or any other circumstance beyond the reasonable control of Montague;

(d) whether resulting from non-delivery or delayed delivery of the Goods; or

(e) whether or not caused or contributed to by the negligence or wilful act or default of Montague, its servants, agents or Subcontractors or of any person who might be vicariously liable for the acts or omissions of any of Montague’s servants, agents or Subcontractors.

### Warranties

9. The Customer warrants that the Goods are owned by the Customer, or, if not owned by the Customer, the Customer is authorised to deal with the Goods as contemplated by these Terms and Conditions, and that the Customer has full right, power and authority to deliver the Goods into Montague's possession and procure the Services.
10. The Customer warrants that the person who delivers the Goods to Montague for carriage is duly authorised to do so for and on behalf of the Customer and binds the Customer to these Terms and Conditions. However, the Customer acknowledges that Montague shall not be bound to recognise any person other than the Customer as the owner, or as a person entitled to possession or delivery, of the Goods or as having any interest therein.
11. If the delivery address should be unattended or delivery cannot otherwise be made by Montague, Montague may at its option store or redeliver the Goods to the Customer and any such storage or redelivery shall be at the Customer's expense.
12. The Customer warrants that the Goods are and will remain free from any deleterious or objectionable matter or odour which would prejudicially affect any other goods transported with the Goods and that the Customer has complied with all relevant laws and regulations in relation to the safety, health, condition, packaging, labelling and carriage of the Goods and that the Goods are packaged in a manner adequate to withstand ordinary risks associated with their carriage having regard to their nature and condition. Montague may at any time require the Customer by notice in writing to collect the Goods from Montague and, if such notice is not complied with, may dispose of, including by way of sale, remove or destroy at the expense of the Customer any or all of the Goods which in the opinion of Montague have become or are likely to become deleterious, deteriorated, objectionable, unwholesome, unfit for human consumption, damaged or contaminated.

### Exclusion of implied terms

13. To the extent permitted by law, all terms, conditions, guarantees or warranties that would be implied into these Terms and Conditions or in connection with the supply of any Services by Montague under law or statute or custom or international convention are excluded.

### Limitation of liability

14. Montague's and its Subcontractors' collective maximum liability to the Customer for any loss the Customer suffers or incurs in connection with these Terms and Conditions or any other liability arising out of or in connection with their subject matter, whether based in contract, tort (including negligence), statute or otherwise and which cannot be excluded under these Terms and Conditions is, to the extent permitted by law, limited to AUD\$5,000 or the Contract value, whichever is the smallest. Montague excludes any liability for any consequential damages and holds the benefit of this clause for itself and on trust for its Subcontractors.

### Indemnity

15. The Customer indemnifies Montague and shall keep Montague indemnified against all liability, loss, costs (including legal costs on an indemnity basis), charges and expenses Montague suffers (either directly or indirectly) in connection with:
  - (a) the Customer's breach of these Terms and Conditions or any other act or omission by the Customer;
  - (b) any claim or demand made by a third party against Montague in connection with Services performed by Montague for the Customer; and
  - (c) Montague exercising or enforcing its rights under these Terms and Conditions.

### Rates and payment

16. The rates for the Services shall be the rates current at the date of acceptance of the Request and specified by Montague in the invoice.
17. All amounts payable by the Customer under these Terms and Conditions are payable within [7 days] of the date of invoice unless otherwise agreed by Montague in writing. Late payment may incur interest at the rate of 18.5% per annum calculated on a daily basis. Interest shall be payable on any moneys outstanding under these Terms and Conditions from the date payment was due until the date payment is received by Montague but without prejudice to Montague's other rights or remedies in respect of the Customer's failure to pay on time.

### 18. GST

- (a) In this Clause 18:

"GST" has the meaning given it in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999;

"Supplier" means the person providing the Taxable Supply; and

"Taxable Supply" has the meaning given it in Section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 and in connection with these Terms and Conditions includes the supply of goods or services by the Supplier.

- (b) If any transaction contemplated by these Terms and Conditions constitutes a Taxable Supply, the party obliged to pay for the Taxable Supply must pay an additional amount equal to the GST payable (if any) on or for the Taxable Supply.
- (c) The Supplier will provide the party receiving the Taxable Supply with a valid tax invoice for GST purposes at the time of request for payment.
- (d) Payment of the GST will be made at the same time, as the payment for the Taxable Supply is required to be made.

### Lien

19. Montague shall have a general lien over the Goods and over any other goods of the Customer in Montague's possession from time to time for all Charges or other moneys due or which become due on any account whether for the provision of Services in respect of the Goods or any other goods or any other service provided by Montague. If the Charges are not paid when due Montague may, after giving the Customer 3 days' notice in writing or, where the Goods are perishable, immediately:

- (a) store the Goods as Montague thinks fit at the Customer's risk and expense; or
- (b) destroy the Goods as Montague thinks fit at the Customer's expense; or
- (c) sell any of the Goods as Montague thinks fit and apply the proceeds to discharge the lien and costs of sale without being liable to any person for loss or damage caused.

In the case of any sale pursuant to this clause, Montague may defray the charges and fees payable out of the proceeds of sale, including any

legal costs in relation thereto, and shall hand over the surplus, if any, on such sale to the Customer, not including interest, and without prejudice to the right of Montague to recover any outstanding charge or fee payable in respect of the Goods not so defrayed out of the proceeds of sale as a liquidated debt. No exception shall be taken upon the ground that the price realised is less than their full market value. Montague's rights under this clause are in addition to, and are not intended to in any way limit, any other rights Montague may have at law, including (without limitation) any rights pursuant to any statutory lien it may be entitled to claim over the Goods.

20. **PPSA**

- (a) In this clause 20, terms that are defined in the PPSA have the same meanings (unless otherwise defined in these Terms and Conditions or the context requires otherwise).
- (b) The Customer acknowledges that these Terms and Conditions constitute a security agreement for the purposes of the PPSA and that a security interest exists over the Goods provided to, and held by, Montague from time to time pursuant to these Terms and Conditions ('**Collateral**').
- (c) In relation to any security interest arising under these Terms and Conditions, the Customer (as grantor):
  - (i) agrees with Montague (as secured party) that, if Chapter 4 of the PPSA would otherwise apply to the enforcement of the security interest, each of the provisions of the PPSA which section 115 of the PPSA permits parties to contact out of, other than sections 117, 118, 123, 128, 134(1) and 135, does not apply to the enforcement of the security interest; and
  - (ii) waives the right to receive any notice under the PPSA (including notice of a verification statement) unless the notice is required by the PPSA and cannot be excluded.
- (d) The Customer (as grantor) consents to Montague (as secured party) effecting a registration on the Personal Property Securities Register established under the PPSA in relation to any security interest arising under or in connection with these Terms and Conditions, and agrees to provide all information and assistance reasonably required to facilitate such registration.
- (e) The Customer must not create or permit any other parties to create any form of Security Interest in the Collateral whilst they are in Montague's possession.
- (f) The Customer warrants that they will not charge or permit any other party to charge the Collateral in any way or to grant otherwise given any interest in the Collateral until all obligations to Montague under these Terms and Conditions have been fulfilled.
- (g) Montague reserves the right to refuse to release the Collateral in whole or in part until all amounts owing to Montague have been paid in full and all other obligations of the Customer to Montague,

including contingent and other liabilities, have been fully satisfied.

**General**

21. Any notice or communication to the Customer under these Terms and Conditions shall be delivered personally, by post, facsimile or by email. If by post, such notice shall be sent to the last known address of the Customer and shall be deemed to have been received by the Customer at the time when in the ordinary course of post it should have been delivered. If by facsimile, such notice shall be deemed to be duly given or made when confirmation of transmission has been received. If by email, such notice shall be deemed to be duly given or made when sent, unless the sender is notified, at the time of sending, that the email has not been successfully transmitted.
22. These Terms and Conditions constitute the entire agreement between Montague and the Customer except to the extent that they are varied or modified by agreement in writing signed by the duly authorised representatives of Montague and the Customer.
23. If any term or condition or part of a term or condition is illegal, unenforceable or invalid, that term or condition or part of the term or condition is to be treated as removed from these terms and conditions, but the rest of these terms and conditions are not affected.
24. Time is of the essence in relation to all of the Customer's obligations.
25. These Terms and Conditions shall be governed by the laws of the State of Victoria, Australia and the Customer agrees to submit to the non-exclusive jurisdiction of its courts.