



PEL-AIR CONDITIONS OF CARRIAGE FOR CARGO

1. Definitions

1.1. In these conditions:

"**Cargo**" means the goods accepted from the **Sender** with any container or packaging supplied by or for the **Sender**.

"**Conditions**" mean the version of these Conditions of Carriage for Cargo in force when the Cargo is tendered to REX and "Condition" refers to any one of these "Conditions" that the context implies.

"**Con Note**" means Consignment Note which contains required details and declarations about the Cargo and accompanies the Cargo throughout its journey.

"**Person**" includes any person, firm, corporation, governmental authority or state or federal government.

"**Receiver**" means any **Person** specified by the Sender to collect the **Cargo**.

"**REX**" means **REGIONAL EXPRESS HOLDINGS LIMITED ABN 18 099 547 270** or any of its related bodies corporate within the meaning of that expression in Section 9 of the Corporations Act 2001 carrying on business in their own names and under any business names and their officers, servants, agents and **Sub-Contractors, who is a contracting party vis-à-vis the Sender.**

"**Sender**" means any **Person** contracting REX for **Services**

"**Services**" means the whole of the operations and services undertaken by **REX** in any way whatsoever connected with or concerning the **Cargo**.

"**Sub-Contractor**" means:

1.1 any **Person** REX arranges to provide **Services** for the **Cargo**; and

1.2 any **Person** who is a servant, agent, employee or sub-contractor of **REX**.

2. Services Basis

2.1. **REX IS NOT A COMMON CARRIER** and does not accept any liability as a common carrier and may refuse to perform **Services** for any **Person**.

2.2. **REX** relies on the details supplied to it but **REX** cannot verify and does not admit their accuracy or completeness and a signature by **REX** is only an acknowledgment for the number of items received.

2.3. **REX** will deliver **Cargo** to the destination airport only.

3. Sender's Obligations –

3.1. The **Sender** must:

3.1.1 ensure the **Con Note** is accurately and fully completed and declaration signed, at the point when the **Cargo** is tendered to **REX**. If the **Sender** is responsible for arranging the freight handling including the loading into and unloading from the aircraft, the **Con Note** will be replaced with the submission of a correct load manifest showing the number and weight of items loaded;

3.1.2 ensure the **Receiver** or its agent removes the **Cargo** once it arrives at the destination airport.

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Member of the **reX**. Group

4. Sender's Warranties and Indemnities

4.1. The **Sender** warrants that:

- 4.1.1 it has fully and adequately described the **Cargo**, its nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods http://www.comlaw.gov.au/Details/F2014C01256/Html/Volume_2#_Toc403484574) and Civil Aviation Regulations about the notification, classification, description, labelling, transport and packaging of the **Cargo** and that, given its nature, the **Cargo** is packed in a proper way to withstand the ordinary risks of the **Services**; and
- 4.1.2 it has confirmed that the **Cargo** does not contain an explosive material and has fully and adequately secured the **Cargo** from unauthorised access from the time it has been sealed until the time it is delivered to **REX**; and
- 4.1.3 the **Person** delivering the **Cargo** to **REX** for the **Services**
 - is authorised to do so;
 - is authorised to nominate the **Receiver**; and
 - is authorised to accept these **Conditions**.
- 4.1.4 except as set out in these **Conditions**, neither it nor any other **Person** will make an allegation or claim against **REX** or any other **Person** about the **Cargo** or the **Services**, AND the **Sender** indemnifies **REX** from any loss, damage, expense, penalty, fine or liability arising from the **Sender's** breach of these warranties, the **Sender's** obligations or these **Conditions**.

5. REX's Rights

- 5.1. **REX** may open any document, wrapping, package or other container in which the **Cargo** is placed or carried to inspect them either to determine their nature or condition or to determine their ownership or destination.
- 5.2. If in **REX's** opinion the **Cargo** is or is liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, **REX** may at any time and at the **Sender's** cost destroy, dispose of, abandon or render them harmless without compensation to the **Sender**, **Receiver** or any other **Person** and without prejudice to **REX's** right to any amounts due.
- 5.3. If the **Sender** instructs **REX** to use a particular method of providing the **Services** **REX** will give priority to that method but at its absolute discretion **REX** may provide the **Services** by another method.
- 5.4. **REX** may carry, store, redirect, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the **Cargo** with others and as principal or agent may arrange for the **Services** to be provided by any **Sub-Contractor** on any terms.
- 5.5. If **REX** believes it is necessary or desirable, **REX** may deviate from the usual route or method of transport and use other modes.
- 5.6. If the **Cargo** is not collected by the Receiver on the day of arrival at the destination, or if amounts owing are not paid in full prior to collection by the **Receiver**, **REX** may at its absolute discretion,
 - store the **Cargo** and charge the **Sender** for storage;
 - destroy the **Cargo** and charge the **Sender** for disposal cost; or
 - sell the **Cargo** to recover any unpaid amounts due or amounts owing to **REX** by the **Sender**. In respect of such sale, **REX** shall have the right in its absolute discretion to sell the **Cargo** by private treaty and **REX** does not owe any duty to the **Sender** or any other **Person** to obtain the best price or any reasonable price or to sell the **Cargo** in an auction or open market.



6. Lien

- 6.1. **REX** has a general lien on the **Cargo** and on any other goods of the **Sender** for all **amounts** due or which become due on any account the **Sender** has with **REX**, whether for the **Services** concerning the **Cargo** or any other goods or any other service provided by **REX**.
- 6.2. In exercising its rights of sale under Clause 5.6 the proceeds of the sale will be used to discharge the lien and costs of sale.
- 6.3. **REX** may deduct or set-off from any monies due from **REX** to the **Sender** against any debts and monies due from the **Sender** to **REX** under the contract to which these Conditions apply or any other contract.

7. Claims

- 7.1. If **REX** is liable for damage to or loss of the **Cargo** or any part of the **Cargo**, no claim may be made unless notice of the claim is lodged in writing within 2 days of the date of arrival or scheduled arrival at the destination airport.
- 7.2. The failure to notify a claim within the time specified under 7.1 is evidence of satisfactory performance by **REX** of its obligations.
- 7.3. Despite any other **Condition** other than Clause 9, **REX** will be discharged from all liability for loss or damage in respect of the **Services** unless an action is brought within 6 months of tendering of the **Cargo** to **REX**.

8. Exclusions and Limitations

- 8.1. Subject to Clause 9, **REX**'s supply of the **Services** is on the basis that all conditions, warranties and terms implied by statute, general law or custom are excluded, unless they are set out in these Conditions.
- 8.2. Subject to Clause 9, the **Cargo** will at all times be accepted and the **Services** provided at the sole risk of the **Sender** and **REX** excludes all liability to any **Person**, including the **Sender**, for acts or omissions of **REX**, whether in tort (including negligence), contract, bailment or otherwise or for loss of, damage to or deterioration or contamination of the **Cargo**, or any delay, non-delivery or other failure to supply the **Services**.
- 8.3. Subject to Clause 9, **REX** excludes all liability for, and the **Sender** and **Receiver** release and indemnify **REX** against, all loss, damage, cost and expense (including solicitor and client costs on an indemnity basis) from any claim by any **Person**, whether in tort (including negligence), contract, bailment or otherwise or for loss of, or damage to, any property, or injury to, or death of any **Person**, arising out of any acts or omissions of **REX** in respect of the **Cargo**, the **Services**, any delay, non-delivery or other failure to supply the **Services** or these Conditions.
- 8.4. The exclusions, releases and indemnities in Clause 8.2 and Clause 8.3 extend to include loss of profits, business or anticipated savings or any other indirect or consequential damage or economic loss; and even if **REX** knows they are possible or otherwise foreseeable.
- 8.5. These **Conditions** apply in all circumstances, including a fundamental breach of contract or breach of a fundamental term.
- 8.6. **REX**, in addition to acting for itself, also acts as agent of and trustee for each of its servants, agents and **Sub-Contractors** so they are entitled to the full benefit of these **Conditions**, including any exclusions or limitations of liability, to the same extent as **REX**.
- 8.7. Even if **REX** breaches any of these **Conditions**, all the rights, immunities and limitations of liability in these **Conditions** continue to have their full force and effect in all circumstances.
- 8.8. **REX** is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments by any **Person** other than the **Sender**.



9. Limitation of Liability

9.1. The parties acknowledge that:

9.1.1 under applicable state, territory and Commonwealth law (including the Trade Practices Act), certain conditions and warranties may be implied in any contract based on these conditions and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (the "Non-Excludable Rights"); and

9.1.2 notwithstanding any clause of these **Conditions**, the Non-Excludable Rights are not excluded, restricted or modified by these Conditions except to the extent permitted by law.

9.2. Notwithstanding any other clauses in these **Conditions**, if any liability is found to attach to **REX**, the **Sender's** sole remedy and **REX'S** sole liability is limited to and shall not exceed:

9.2.1 17 Special Drawing Rights (approximately USD 20) per kg for loss of or damage of the **Cargo**.

10. Law

10.1. These **Conditions** are governed and must be construed under the laws of the State of New South Wales and the parties submit to the exclusive jurisdiction of the courts of that State.

11. Severability

11.1. If a Condition or part is unenforceable the unenforceability does not affect any other part of the Condition or any other Condition.

12. Variations and Waiver

12.1. **REX** is not bound by any waiver, discharge or release of a Condition or any agreement which varies these **Conditions** unless it is in writing and signed for **REX** by an authorised officer.

13.2. If **REX** waives a breach of a Condition the waiver does not operate as a waiver of another breach of the same or any other Condition or as a continuing waiver.

13. Force Majeure

13.1. **REX** shall not be liable for any failure or delay in the performance of the Services for the time and to the extent that such failure or delay is caused by strikes, riots, war, civil commotions, terrorist acts, hostility between nations, governmental laws, orders or regulations, embargos, actions by the government or any agency thereof, acts of God, storms, inclement weather, fire, sabotages, explosions or other contingencies beyond the reasonable control of **REX**.

14. Survival

14.1 Clauses 6, 7, 8 and 9 shall survive the termination or expiry of the contract or agreement to which these **Conditions** apply.

