



## SIENALEX TRANSPORT PTY LTD

## SUBCONTRACTING CONDITIONS

**IMPORTANT NOTICE:**

Please read the following conditions in this document carefully and in their entirety. You will be bound by these conditions if you accept any job we offer you to provide subcontracting services to us. The conditions provide that you accept responsibility for loss of or damage to goods you carry on our behalf, and also require you to hold certain insurance policies. Please contact our office before accepting any job if you want to negotiate amendments to the conditions.



## SUBCONTRACTING CONDITIONS – SIENALEX TRANSPORT PTY LTD

### 1. DEFINITIONS

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1.1 The meanings of the terms used in these conditions are set out below.

<b>Term</b>	<b>Meaning</b>
<b>ADG Code</b>	the Australian Code for the Transport of Dangerous Goods by Road and Rail, as in force from time to time
<b>Business Day</b>	a day that is not a Saturday, Sunday or any other day that is a public holiday or a bank holiday in the place where an act is to be performed or a payment is to be made
<b>Chain of Responsibility Law</b>	the <i>Heavy Vehicle National Law Act</i> as enacted in any Australian State, the <i>Road Traffic (Administration) Act 2008 (WA)</i> and the <i>Road Traffic (Vehicles) Act 2012 (WA)</i> and any other state, territory or Commonwealth legislation dealing with the obligations of parties involved in road transport activities such as consignors, transport operators, loaders, drivers and schedulers
<b>Client Documentation</b>	all documents relating to the Goods that are supplied by Siendalex Transport Pty Ltd customer or that Siendalex Transport Pty Ltd is requested by its customer to collect or complete
<b>Confidential Information</b>	any information or documents received by the Contractor in connection with this agreement, all past, present or future accounts, Consignment Notes, Manifests, customer lists and contact details, contractor lists, financial records, computer programs, and other operating manuals or other documents that relate to the business carried on by Siendalex Transport Pty Ltd from time to time and all information contained in such documents, including but not limited to any rates paid or payable to the Contractor pursuant to these conditions
<b>Consequential Loss</b>	any indirect or consequential loss; loss of use, loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of these conditions and whether or not foreseeable at the time of entering into any agreement into which these conditions are incorporated
<b>Consignee</b>	a person to whom Goods are delivered or are to be delivered by the Contractor
<b>Consignment Note</b>	a document (including an electronic document) supplied by Siendalex Transport Pty Ltd to the Contractor containing a provision for a consignor or Consignee to acknowledge the collection of or delivery of Goods



<b>Term</b>	<b>Meaning</b>
<b>Contractor</b>	the person providing services to Siennalex Transport whose details appear on the Manifest
<b>Contractor's Personnel</b>	the employees, servants, agents and subcontractors of the Contractor
<b>Dangerous Goods</b>	Goods (including explosives, gases and chemicals) that have been classified as dangerous in the ADG Code
<b>Device</b>	any onboard monitoring system, software, equipment or mechanism including satellite and global positioning systems, speed monitoring and limiter devices recording devices
<b>Fee</b>	means the amount payable to the Contractor for completion of a Job calculated in accordance with clause
<b>Force Majeure Event</b>	an act, event or cause that is beyond the reasonable control of a party, including: <ul style="list-style-type: none"><li>(a) acts of God, lightning, earthquakes, floods, storms, explosions, fires and any natural disaster</li><li>(b) acts of war, acts of public enemies, terrorism, riots, civil commotion, malicious damage, sabotage and revolution</li><li>(c) strikes and labour disputes, to the extent they exceed 14 days</li></ul>
<b>Goods</b>	the property accepted by the Contractor for collection or delivery pursuant to these conditions and includes any container or packaging supplied by Siennalex Transport Pty Ltd or a customer, consignor or Consignee of Siennalex Transport Pty Ltd
<b>GST</b>	a tax, levy, duty, charge or deduction together with any related additional tax, interest, penalty, fine or other charge imposed by or under a GST Law
<b>GST Law</b>	<i>A New Tax System (Goods and Services) Act 1999 (Cth)</i>
<b>Insurance Policies</b>	all insurance policies required to be effected by the Contractor pursuant to clause 9
<b>Job</b>	a task involving the provision of Services
<b>Siennalex Transport</b>	Siennalex Transport Pty Ltd (ACN 602 877 252) and any 'related entity' of Siennalex Transport Pty Ltd (ACN 602 877 252) within the meaning of that term as defined in section 9 of the <i>Corporations Act 2001 (Cth)</i>



<b>Term</b>	<b>Meaning</b>
<b>Manifest</b>	the instructions provided by Siendalex Transport on a subcontractor payment advice or manifest or on any other document setting out the Services required by Siendalex Transport
<b>Owner Driver</b>	<i>Owner Drivers and Forestry Contractors Act 2005 (Vic),</i>
<b>Legislation</b>	<i>Owner-Drivers (Contracts and Disputes) Act 2007 (WA) and Industrial Relations Act 1996 (NSW)</i>
<b>Records</b>	includes records of the remuneration of the Contractor's Personnel and any other records relating to the Contractor's Personnel that are required to be kept by the Contractor under any legislation or any industrial instrument, records that evidence compliance with Chain of Responsibility Law, and records relating to Insurance Policies
<b>Services</b>	all tasks associated with the collection, handling, storage or delivery of Goods pursuant to these conditions including any service or activity referred to in clause 4 of these conditions
<b>Tax Invoice</b>	the same meaning as under GST Law
<b>Vehicle</b>	the vehicle supplied by the Contractor pursuant to clause 6.1 of these conditions, and includes any trailer supplied by the Contractor

## **Construction**

1.2 In these conditions:

- (a) words in the singular include the plural and vice versa;
- (b) words indicating any gender indicate the appropriate gender;
- (c) where a word or phrase is given a particular meaning, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (d) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (e) references to any document (including these conditions) include references to the document as amended, consolidated, supplemented, novated or replaced;
- (f) a reference to a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations, orders and determinations;
- (g) monetary references are references to Australian currency; and
- (h) headings are included for convenience only and do not affect interpretation of these conditions.



## **2. JOBS OFFERED BY SIENALEX TRANSPORT**

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- 2.1 Sienalex Transport may, in its sole discretion, offer the Contractor a Job.
- 2.2 The Contractor must forthwith accept or decline any Job offered to it.
- 2.3 Sienalex Transport may allocate Jobs to service providers in its sole discretion and will generally allocate work to its own vehicles before allocating any Jobs to the Contractor.
- 2.4 Any Job accepted by the Contractor must be performed in accordance with these conditions, the requirements set out in a Manifest and any other requirements specified by Sienalex Transport.

## **3. GENERAL**

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- 3.1 The Contractor must comply with all Acts, regulations, by laws and ordinances and the lawful requirements of any public, municipal or other authority in so far as they apply to the Contractor, the Vehicle or the Services.
- 3.2 The Contractor acknowledges and agrees that:
  - (a) goodwill does not attach to or arise out of these conditions or the performance by the Contractor of the Services;
  - (b) Sienalex Transport has not given the Contractor any guarantee or warranty as to the earning capacity of the Contractor, the minimum number of Jobs to be offered to the Contractor or the minimum level of earnings that the Contractor may make under these conditions; and
  - (c) its engagement to provide Services is non-exclusive and Sienalex Transport may use other carriers to provide the Services.
- 3.3 The Contractor will not claim or exercise or purport to claim or exercise any security interest, lien, charge or other encumbrance over Goods.
- 3.4 The Contractor is an independent carrier that provides Services to Sienalex Transport pursuant to these conditions. Nothing in these conditions is intended to create an employment, agency, joint venture or partnership relationship between Sienalex Transport and the Contractor.
- 3.5 The Contractor must be registered under GST Law.
- 3.6 The Contractor must comply with the *Privacy Act 1988* (Cth), including its obligations in relation to collecting, holding, using and disclosing personal information.
- 3.7 Unless the Contractor has notified Sienalex Transport in writing prior to accepting a Job, the Contractor warrants that this agreement is not regulated by Owner Driver Legislation.
- 3.8 Where these conditions are regulated by Owner Driver Legislation:
  - (a) the guaranteed minimum number of Jobs/hours of Services the Contractor will undertake is nil; and
  - (b) the guaranteed income level that the Contractor will receive is \$nil.



- 3.9 The Contractor acknowledges and agrees that this document contains all of the terms and conditions upon which the Contractor provides Services to Sienalex Transport. The supply or provision of any document by the Contractor to Sienalex Transport will not bind Sienalex Transport, will be of no legal effect and will not constitute a variation of these conditions or amount to a new contract or be part of these conditions, irrespective of any act of Sienalex Transport including execution of any document incorporating (including by reference) any term or terms of any other document.
- 3.10 Without limiting the generality of clause 3.9, any conditions printed on any consignment note or other document issued by the Contractor will not form part of the agreement between Sienalex Transport and the Contractor.

#### **4. SERVICES**

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- 4.1 In consideration of the payment of the Fee, the Contractor will be solely responsible, at its cost, for:
- (a) properly, safely and carefully loading, handling, securing, stowing, transporting, keeping, caring for and unloading the Goods in accordance with any instructions provided by Sienalex Transport;
  - (b) ensuring the Vehicle is not overloaded and does not exceed applicable mass or dimension limits;
  - (c) providing any Services associated with the Goods and the Job in a prompt, efficient and careful manner;
  - (d) upon completion of the unloading of the Goods, ensuring that a representative of the Consignee signs a Consignment Note and any other relevant documents required by Sienalex Transport to evidence delivery of the Goods;
  - (e) accounting to Sienalex Transport for all pallets collected, de-hiring any pallets as directed by Sienalex Transport Pty Ltd ;
  - (f) providing all labour required to provide the Services;
  - (g) performing the Services professionally, competently and in accordance with industry standards;
  - (h) ensuring that the Contractor and each person who operates a Vehicle complies with all reasonable and lawful directions given by Sienalex Transport;
  - (i) where transporting Dangerous Goods, complying with the ADG Code;
  - (j) subject to clause 5, complying with the requirements set out on any Manifest and such other requirements as Sienalex Transport may notify from time to time.



4.2 The Contractor will:

- (a) ensure that the Contractor's Personnel perform the Services with due care and skill and in accordance with industry standards;
- (b) exercise due care and skill to ensure that:
  - (i) the Goods are not lost, damaged or destroyed by the negligence or wilful act or omission of the Contractor or the Contractor's Personnel; and
  - (ii) the premises, plant and equipment of Sienalex Transport or of any Consignee or customer of Sienalex Transport are not damaged by the negligence or wilful act or omission of the Contractor or the Contractor's Personnel; and
- (c) promptly supply Sienalex Transport with a written report in the form required by Sienalex Transport with respect to any incidents that involve injury or potential injury to any person or damage or potential damage to any property that occur during or arising out of the performance of the Services.

4.3 If Goods are lost, damaged or destroyed, or a Consignee makes an allegation that Goods are lost, damaged or destroyed or a Consignee or a customer of Sienalex Transport otherwise makes a complaint in relation to the Services, the Contractor must:

- (a) immediately notify Sienalex Transport;
- (b) provide to Sienalex Transport copies of police reports, independent surveys, insurance surveys and any other reports (including internal reports) in relation to the loss or damage or the cause of the loss or damage or of the complaint; and
- (c) co-operate fully and cause the Contractor's Personnel to co-operate fully with Sienalex Transport in any investigation undertaken by Sienalex Transport or Sienalex Transport's insurer.

4.4 The Contractor will comply with and ensure that the Contractor's Personnel comply with all lawful directions, policies, rules and reasonable requirements of Sienalex Transport Pty Ltd , Sienalex Transport Pty Ltd 's customers and any Consignee relating to safety, access, loading and unloading of Goods.

4.5 The Contractor must:

- (a) keep any Vehicle and any trailer secure at all times when it is left unattended;
- (b) provide a completed Consignment Note to an office of Sienalex Transport within three Business Days from when the Job detailed on the Consignment Note was completed;
- (c) complete any Client Documentation and provide it to an office of Sienalex Transport within three Business Days from when the Job detailed on the Client Documentation was completed;
- (d) comply with the practices and procedures set out in Sienalex Transport's Drug and Alcohol Policy in force at the relevant time;
- (e) notify Sienalex Transport as soon as practicable if the Vehicle is involved in an accident or if the Goods are lost, damaged or stolen or suspected of having been stolen;
- (f) notify Sienalex Transport of any delay in collection or delivery of Goods;
- (g) not make any admission of liability to a customer of Sienalex Transport or to any other party having an interest in the Goods;
- (h) not do anything that may adversely affect any policy of insurance with respect to the Goods or the property of Sienalex Transport;



- (i) ensure that it holds any necessary permits and licences in relation to the Goods or the transport of the Goods;
- (j) ensure that any person who drives the Vehicle is not under the influence of drugs and does not have a blood alcohol content in excess of the legal limit;
- (k) except where an indemnity is not permitted under Chain of Responsibility Law, indemnify and keep indemnified Siennalex Transport against any fine or penalty that is levied or charged as a result of:
  - (i) the driving of the Vehicle; or
  - (ii) a failure to comply with statutory provisions in relation to a Vehicle or the Goods including but not limited to fines or penalties that relate to the method of loading, unloading, securing or transport of the Goods;
- (l) ensure all drivers used by the Contractor to perform the Services have appropriate driver fatigue management accreditation;
- (m) ensure that any person who provides Services carries and completes a work diary or log book at all times in the course of providing the Services; and
- (n) ensure that no driver carrying out Services carries a passenger in a Vehicle while supplying the Services.

4.6 Each of the Contractor's Personnel utilised in performing the Job must:

- (a) hold a current driver's licence in respect of the class of the Vehicle to be driven by the person;
- (b) be covered by a policy of workers' compensation insurance;
- (c) have a right to work in Australia and must not be in breach of any visa requirements or immigration laws;
- (d) if transporting Dangerous Goods, hold a Dangerous Goods licence;
- (e) at the Contractor's cost, before providing any Services, have completed an induction course with Siennalex Transport;
- (f) at the Contractor's cost, complete any other training required by Siennalex Transport or Siennalex Transport's customers, including six monthly induction refreshers;
- (g) before providing any Services, supply identification details and licensing details to Siennalex Transport;
- (h) if requested by Siennalex Transport, provide within three Business Days:
  - (i) evidence that he or she has satisfactorily passed a commercial vehicle medical examination;
  - (ii) a history of driving or traffic related offences; and
  - (iii) a copy of his or her criminal history (if one exists);
- (i) have appropriate driver fatigue management accreditation;
- (j) if Siennalex Transport advises the Contractor of the need for approval of the Contractor's Personnel, be approved by Siennalex Transport; and





- (k) be engaged by the Contractor under terms whereby he or she:
  - (i) consents to submit to drug and alcohol testing in accordance with Sienalex Transport's drug and alcohol policy and as directed by Sienalex Transport from time to time;
  - (ii) agrees to supply to the Contractor a copy of his or her driver history as issued by any relevant statutory authority on an annual basis and within five Business Days of receiving a request from the Contractor or from Sienalex Transport; and
  - (iii) undertakes to immediately notify the Contractor and Sienalex Transport in writing in the event that:
    - (A) he or she has his or her driving licence revoked, cancelled or suspended;
    - (B) his or her driving licence otherwise expires or ceases to be valid; or
    - (C) he or she is convicted of a criminal offence.

4.7 If the Contractor becomes aware that one or more of the Contractor's Personnel has had a driver's licence revoked, cancelled, suspended or if the driver's licence has expired or ceased to be valid, the Contractor must immediately:

- (a) notify Sienalex Transport in writing; and
- (b) ensure the relevant person ceases to drive any Vehicle.

## **5. CHAIN OF RESPONSIBILITY**

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5.1 The Contractor must notify Sienalex Transport as soon as practicable where the Contractor or any person providing Services considers that any request, direction, act or omission of Sienalex Transport, Sienalex Transport's customer or any other party will or may result in the Contractor breaching Chain of Responsibility Law.

5.2 The Contractor must:

- (a) consult its drivers when preparing schedules for collection and delivery of Goods; and
- (b) revise any schedule if road works, weather, traffic condition, road conditions or any other circumstance affects or may affect a driver's ability to comply with that schedule.

5.3 The Contractor must not, and must ensure that Contractor's Personnel do not:

- (a) drive or otherwise perform the Services in an unsafe manner;
- (b) drive or otherwise perform the Services while fatigued; or
- (c) impose any requirement on any Contractor's Personnel that would directly or indirectly influence any Contractor's Personnel to drive or otherwise perform the Services in an unsafe manner or while fatigued.



5.4 If the Contractor considers that it is or may be unable to:

- (a) deliver the Goods in accordance with the anticipated time of delivery set out in any Manifest; or
- (b) deliver the Goods in accordance with any other request made by Sienalex Transport,

without breaching Chain of Responsibility Law, the Contractor must immediately notify Sienalex Transport and must advise Sienalex Transport of any proposed variation to the Services or to the anticipated time of delivery that the Contractor considers is necessary to ensure the Contractor complies with Chain of Responsibility Law.

## **6. VEHICLE AND CONTRACTOR'S PERSONNEL**

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6.1 The Contractor must provide:

- (a) a Vehicle suitable for provision of the Services; and
- (b) Contractor's Personnel for each Vehicle, qualified pursuant to clause 4.6 to provide the Services and in the absolute discretion of Sienalex Transport, suitable in all respects.

6.2 The Contractor must:

- (a) maintain any Vehicle in a safe, roadworthy and clean condition;
- (b) maintain a Dangerous Goods licence for the Vehicle if it is used to transport Dangerous Goods;
- (c) pay all statutory charges associated with any Vehicle including but not limited to registration, compulsory insurance premiums and fines;
- (d) pay all road tolls incurred by the Contractor in providing the Services;
- (e) bear all running expenses associated with any Vehicle including fuel, oil and maintenance costs; and
- (f) provide a copy of the current registration certificate of any Vehicle within five Business Days of a request being made by Sienalex Transport Pty Ltd .

## **7. EQUIPMENT AND PALLETS**

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7.1 The Contractor must utilise and maintain a mobile telephone and pay any costs associated with that mobile telephone to permit Sienalex Transport to contact the Contractor for the purpose of allocating and monitoring Jobs.

7.2 The Contractor must provide and maintain at its own cost any load restraint devices, dogs and chains or other machinery or equipment necessary for performing the Job.

7.3 Where the Contractor transports Dangerous Goods, the Contractor must provide all necessary equipment including placards and all safety equipment required by the ADG Code.

7.4 All equipment or material supplied by Sienalex Transport to the Contractor including for the purpose of packing, holding or supporting the Goods (**Equipment**) will remain the property of Sienalex Transport and will be returned to Sienalex Transport at the completion of the Job.



7.5 If the Contractor:

- (a) fails to return the Equipment; or
- (b) returns the Equipment in a damaged state,

Sienalex Transport may recover the cost of replacing or repairing the Equipment from the Contractor as a debt repayable on demand, or to deduct the cost of replacing or repairing the Equipment from any sum due or that may become due to the Contractor.

7.6 The Contractor must comply, at its own cost, with:

- (a) all directions given by Sienalex Transport in relation to the return, exchange of or delivery of any pallets; and
- (b) any other directions given by Sienalex Transport in relation to documents relating to any pallets.

7.7 If Sienalex Transport is liable for any sum as a result of the Contractor's breach of clause 7.6:

- (a) the Contractor must pay that amount to Sienalex Transport; or
- (b) Sienalex Transport may deduct that amount from any sum due or that may become due to the Contractor.

7.8 The Contractor authorises and consents to Sienalex Transport or Sienalex Transport's authorised agents fitting or installing into the Vehicle any Device that will track, log or collect data; monitor and record the use of the Vehicle, determine the Vehicle's location and speed or limit the Vehicle's maximum speed.

7.9 The Contractor agrees that:

- (a) Sienalex Transport may, in its sole discretion, access and retain any tracking information obtained from any Device; and
- (b) the Device and all tracking information, whether retained by Sienalex Transport or not, remain the property of Sienalex Transport.

7.10 The Contractor must not in any way damage, interfere with or tamper with any Device installed by Sienalex Transport pursuant to clause 7.9.

## **8. LOSS OF OR DAMAGE TO THE GOODS OR SIENALEX TRANSPORT PTY LTD 'S TRAILER**

8.1 If, while Goods are in the Contractor's care, custody or control:

- (a) those Goods are lost or damaged, or deteriorate or are contaminated, or there is a misdelivery or delay in delivery of the Goods; and
- (b) a claim is made against Sienalex Transport in respect of that loss, damage, deterioration or contamination, misdelivery or delay in delivery or any Consequential Loss occasioned thereby by a customer of Sienalex Transport, by the owner of the Goods, or by any third party,

the Contractor will indemnify and keep indemnified Sienalex Transport in respect of such claim including indemnifying Sienalex Transport in respect of any legal costs incurred by Sienalex Transport on an indemnity basis.



- 8.2 The indemnity referred to in clause 8.1 includes any amount that Siennalex Transport pays or agrees to pay a third party arising from loss of or damage to Goods that occurs while the Goods are in the care, custody or control of the Contractor, regardless of whether Siennalex Transport has excluded or limited its liability to the third party.
- 8.3 If any Siennalex Transport trailer is lost, stolen, damaged or destroyed while in the custody of the Contractor, the Contractor will indemnify and keep indemnified Siennalex Transport in respect of:
- (a) the loss, theft, damage or destruction of the Siennalex Transport trailer and any of its accessories; and
  - (b) any damages suffered by Siennalex Transport, including Consequential Loss, as a result of the loss of use of the Siennalex Transport trailer.

## **9. INSURANCE**

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- 9.1 The Contractor must take out and maintain the following insurance policies:
- (a) a comprehensive motor vehicle insurance policy for any Vehicle for the full market value of the Vehicle (excluding GST) that:
    - (i) includes cover for the transport of Dangerous Goods; and
    - (ii) includes third party property damage cover (including supplementary cover for compulsory third party bodily injury cover) to a minimum of:
      - (A) \$30 million any one claim where the claim does not involve losses caused by Dangerous Goods or hazardous goods; and
      - (B) \$10 million any one claim where the claim involves Dangerous Goods or hazardous goods.
  - (b) if the Contractor tows a Siennalex Transport trailer, a trailer in control policy to provide cover for up to three Siennalex Transport trailers to a minimum of \$100,000 per trailer that provides comprehensive cover to Siennalex Transport and the Contractor including cover for the market value of each Siennalex Transport trailer and all trailer accessories, cover for loss of use of any Siennalex Transport trailer and cover for the legal liability of the Contractor associated with the use of any Siennalex Transport trailer;
  - (c) insurance for employees under any relevant worker's compensation legislation;
  - (d) all insurance required by law to be effected by the Contractor in the performance of the Services;
  - (e) a policy of load insurance in an amount of not less than AUD\$250,000 per load to cover loss or damage to the Goods (including Dangerous Goods and Goods) arising out of any accidental damage or loss occurring while the Goods are in the Contractor's custody, including due to fire, theft or flood;
  - (f) a policy of public/products liability insurance in an amount of not less than \$20 million per claim in respect of any liability of the Contractor arising out of the acts or omissions of the Contractor or the Contractor's Personnel. The policy must indemnify the Contractor in relation to its business as a cartage contractor (including the transport of Dangerous Goods) and must indemnify Siennalex Transport as a principal for any liability for the negligence of the Contractor and for legal costs; and
  - (g) any other policy of insurance that Siennalex Transport notifies the Contractor is required.



- 9.2 The Contractor must provide a certificate of currency in respect of any policies required to be effected by the Contractor, within five Business Days of a request by Sienalex Transport.
- 9.3 In the event of loss or damage which falls or may fall within the cover provided by the Insurance Policies, the Contractor must:
- (a) lodge a claim with the relevant insurer (**Claim**) within five (5) Business Days of becoming aware of the occurrence of any event that gives rise or may give rise to loss or damage;
  - (b) keep Sienalex Transport informed of the progress of the Claim;
  - (c) actively pursue the Claim; and
  - (d) if requested by Sienalex Transport, provide Sienalex Transport with copies of documents relating to the Claim.

## **10. CONFIDENTIAL INFORMATION/RESTRAINT**

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- 10.1 The Contractor acknowledges that Sienalex Transport owns all Confidential Information that may come into the Contractor's possession by reason of the performance of Services by the Contractor.
- 10.2 The Contractor agrees that it will not, and will use its best endeavours to ensure that its directors and the Contractor's Personnel do not, disclose to any person any Confidential Information.
- 10.3 During the period the Contractor provides Services to Sienalex Transport pursuant to these conditions, and for a period of one year from the date on which the Contractor ceases to provide Services to Sienalex Transport, the Contractor will not, without the prior written consent of Sienalex Transport (which may be withheld in Sienalex Transport's absolute discretion):
- (a) provide any transport or storage services (directly or indirectly) to any person that is or was a customer of Sienalex Transport during the period the Contractor provided Services to Sienalex Transport;
  - (b) canvass, solicit or endeavour to entice away from Sienalex Transport any clients or customers of Sienalex Transport;
  - (c) solicit, interfere with or endeavour to entice away any employee or contractor of Sienalex Transport; or
  - (d) counsel, procure or otherwise assist any person to do any of the acts referred to in clauses 10.3(a), 10.3(b) or 10.3(c).
- 10.4 The Contractor agrees that each of the restraints set out in this clause is reasonable in scope and duration and reasonably necessary to protect Sienalex Transport's legitimate business interests.

## **11. INSPECTION**

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- 11.1 Sienalex Transport, its employees or agents may conduct an inspection of or request copies of the Records of the Contractor in so far as they relate to the provision of Services.
- 11.2 The Contractor must co-operate with any inspection requested or carried out by Sienalex Transport and, at its own cost, provide copies of any Records within five (5) Business Days of receiving a request from Sienalex Transport.



11.3 Inspections under this clause will be conducted at Sienalex Transport's cost unless Sienalex Transport conducts the inspection because the Contractor has not complied with its obligations under these conditions, in which case the Contractor will be responsible for all reasonable costs incurred by Sienalex Transport in connection with any inspection.

11.4 Sienalex Transport may take copies of any Records inspected pursuant to this clause.

## **12. CONSIGNMENT NOTES**

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12.1 At the time of collecting or delivering any Goods pursuant to these conditions, the Contractor must ensure that the person requesting the collection or delivery of the Goods, or some other person authorised by the owner of the Goods, signs a Sienalex Transport Consignment Note to confirm the request for the collection or delivery of the Goods.

12.2 At the time of delivery of any Goods pursuant to these conditions, the Contractor must ensure that the Consignee:

- (a) signs Sienalex Transport's Consignment Note to indicate that the Goods were received in good order and condition; or
- (b) in the event that the Goods are not in good order and condition, signs the Consignment Note and includes a description of the condition of the Goods on delivery.

## **13. FEES PAYABLE TO THE CONTRACTOR**

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13.1 Sienalex Transport agrees to pay the Contractor the fee in respect of each Job as may be set out on the Manifest or if no fee is set out on the Manifest, the fee calculated by reference to the Sienalex Transport's standard rate schedule.

13.2 The Contractor must submit to the Sienalex Transport a Tax Invoice detailing each Job completed by the Contractor and the Fee claimed by the Contractor.

13.3 Each Tax Invoice issued by the Contractor must be addressed to the Sienalex Transport, state that it is a 'tax invoice' and set out the Contractor's ABN, the relevant Manifest number and Consignment Note number.

13.4 Payments to the Contractor pursuant to this clause will be by electronic funds transfer to a bank account nominated by the Contractor.

13.5 Except where Owner Driver Legislation applies, each undisputed Tax Invoice that complies with this clause 13 will be paid 30 days from the end of the calendar month in which Sienalex Transport receives the Tax Invoice.

13.6 Sienalex Transport is not obliged to make payment for a Job where the Contractor has:

- (a) not made available to Sienalex Transport a signed Consignment Note for the Goods in accordance with clause 4.5;
- (b) not made available to Sienalex Transport the completed Client Documentation for the Goods in accordance with clause 4.5;
- (c) delivered the Goods in a damaged state or failed to deliver the Goods; or
- (d) delivered a quantity of Goods less than the quantity shown on the Consignment Note.



- 13.7 Except where Owner Driver Legislation applies to prevent any set off, Sienalex Transport will be entitled to set off the amount of any claim Sienalex Transport has against the Contractor, against moneys due to the Contractor.

#### **14. SUBCONTRACTING AND ASSIGNMENT**

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- 14.1 The Contractor may not subcontract a Job without first obtaining the consent of Sienalex Transport (which may be withheld in the absolute discretion of Sienalex Transport).
- 14.2 If the Contractor subcontracts a Job:
- (a) the Contractor will not be relieved of any of its liabilities or obligations under these conditions;
  - (b) the Contractor will be liable to Sienalex Transport for any act or omission of the subcontractor or any employee, servant, subcontractor or agent of the subcontractor as if such act or omission were the act or omission of the Contractor or of the Contractor's Personnel; and
  - (c) the Contractor will be responsible for ensuring the suitability in all respects of any subcontractor to perform the Services including without limitation that the Insurance Policies extend to cover the subcontractor or that the subcontractor has its own insurance policies providing the insurance cover referred to in clause 9.1.
- 14.3 The Contractor may not assign its rights under these conditions without the written consent of Sienalex Transport (which may be withheld in the absolute discretion of Sienalex Transport).
- 14.4 Sienalex Transport may assign its rights under these conditions without the consent of the Contractor.

#### **15. EXCLUSION OF LIABILITY**

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- 15.1 To the extent permitted by law, Sienalex Transport will not be responsible or liable for any claims, losses, damages, costs, fines, penalties or expenses (whether direct or indirect) suffered or incurred by the Contractor or any Contractor's Personnel in relation to these conditions or the provision of the Services, regardless of how that claim, loss, damage, cost or expense arises other than to the extent caused by the negligent act or omission of Sienalex Transport.
- 15.2 Notwithstanding any other provision of these conditions, Sienalex Transport will not be liable to the Contractor for Consequential Loss.

#### **16. FORCE MAJEURE**

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- 16.1 If, because of a Force Majeure Event, the Contractor is unable to carry out an obligation under these conditions:
- (a) the Contractor must give to Sienalex Transport prompt written notice and reasonable particulars of the Force Majeure Event and, so far as is known, the probable extent to which the Contractor will be unable to perform or be delayed in performing its obligation;





- (b) the relevant obligations of the Contractor and Siendalex Transport, so far as they are affected by the Force Majeure Event, will be suspended during, but no longer than, the continuance of the Force Majeure Event.
- 16.2 The Contractor must use all reasonable diligence to overcome or remove the Force Majeure Event as quickly as possible.
- 16.3 If the Contractor gives Siendalex Transport a notice under clause 16.1, the parties must meet promptly and each use reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the Force Majeure Event.
- 16.4 Nothing in these conditions will be construed as preventing Siendalex Transport from engaging the services of a party other than the Contractor where a Force Majeure event prevents the Contractor from providing Services.

## **17. INDEMNITIES**

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- 17.1 To the extent permitted by law, the Contractor indemnifies and must keep indemnified Siendalex Transport from and against:
- (a) any claim, demand, loss (including Consequential Loss), liability or expense:
    - (i) arising out of the Contractor's failure to fully comply with its obligations under these conditions or any relevant law or relevant standard; and
    - (ii) arising as a consequence of the Contractor or any of the Contractor's Personnel being held to be or deemed to be an employee of Siendalex Transport; and
  - (b) any amount paid by Siendalex Transport to settle any dispute between the Contractor and a third party or Siendalex Transport and a third party arising out the Services.
- 17.2 The Contractor indemnifies and holds harmless Siendalex Transport against any claims, losses, damages (including claims for Consequential Loss), costs (including legal costs on an indemnity basis), fines, penalties and expenses arising out of or in connection with any act or omission by or on behalf of the Contractor or the Contractor's Personnel in relation to these conditions or the provision of the Services other than to the extent caused by the negligent act or omission of Siendalex Transport.





## 18. TERMINATION

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- 18.1 Sienalex Transport may terminate the provision by the Contractor of Services, or any Job immediately by giving written notice to the Contractor if, in the opinion of Sienalex Transport, any of the following events occur:
- (a) the Contractor goes into liquidation;
  - (b) the Contractor is wound up or dissolved;
  - (c) the Contractor enters into a scheme or arrangement with any of its creditors;
  - (d) an administrator, receiver or manager is appointed to any of the Contractor's assets;
  - (e) the Contractor or any member of the Contractor's Personnel loses or fails to renew a licence or registration that the Contractor or any member of the Contractor's Personnel requires in order to provide the Services or is convicted of a criminal offence;
  - (f) any member of the Contractor's Personnel:
    - (i) breaches Sienalex Transport's Drug and Alcohol Policy in force from time to time;
    - (ii) is convicted of an offence involving the provision of Services while under the influence of alcohol or illegal drugs; or
    - (iii) is convicted of an offence under Chain of Responsibility Law;
  - (g) the Contractor breaches any of these conditions; or
  - (h) the Contractor engages in any conduct that, in the opinion of Sienalex Transport, has damaged or may damage the commercial interests of Sienalex Transport or Sienalex Transport's reputation.
- 18.2 Upon termination by Sienalex Transport of the provision by the Contractor of Services, the Contractor must:
- (a) immediately deliver to Sienalex Transport all property belonging to Sienalex Transport including Confidential Information, Consignment Notes, manuals, price lists, customer lists and keys and, if requested by Sienalex Transport, any Sienalex Transport uniform;
  - (b) complete the Jobs then current as soon as is practicable; and
  - (c) make available for collection by Sienalex Transport any Goods stored by the Contractor.
- 18.3 If the Contractor does not promptly comply with clause 18.2, Sienalex Transport has the right to enter (using such force as is necessary in the circumstances) onto any premises at which it reasonably suspects any Goods or a Sienalex Transport trailer or other property to be located and to retake possession of the Goods and any Sienalex Transport trailer or other property. The Contractor indemnifies Sienalex Transport, its employees, contractors and agents against any Loss or legal proceedings by any person arising in any way out of the repossession or attempted repossession of Goods or a Sienalex Transport trailer or other property pursuant to this clause.



18.4 Upon the termination, for any reason, of any Job or of the Services or of any agreement incorporating these conditions:

- (a) the parties' obligations pursuant to clauses 4.3, 8, 9 and 10; and
- (b) the other provisions by which the Contractor has agreed to indemnify and keep Sienalex Transport indemnified,

will survive and continue to apply.

18.5 Upon termination of any Job, or of the Services or any agreement incorporating these conditions, Sienalex Transport Pty Ltd will be entitled to withhold payment of any fees or payments due under these conditions until such time as the Contractor has complied with clause 18.2.

## **19. OWNER DRIVER LEGISLATION**

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Notwithstanding anything contained in these conditions, Sienalex Transport will continue to be subject to any implied terms imposed by Owner Driver Legislation in so far as such legislation may be applicable and prevent the exclusion or modification of any such term.

## **20. REFERENCES TO AND CALCULATIONS OF TIME**

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Time will be of the essence as regards a date or period determined under these conditions except that a date or period may be altered by agreement in which case time will be of the essence for the date or period as altered.

## **21. NOTICES**

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- 21.1 A notice under these conditions may be given or served by email, prepaid post or by hand to that party at its email address, postal address or business address as set out on the Manifest or to such other address number as the party may have notified in writing to the other party.
- 21.2 A notice sent by email will be deemed received at the time and on the date that it is sent, unless the sender receives notification that the delivery of the email was unsuccessful, in which case the email will not be deemed to have been received.
- 21.3 For the purposes of clause 21.2, 'delivery' of an email means the time that an email reaches the recipient's server.
- 21.4 A notice sent by post will be deemed given on the day it is posted and deemed received six days after posting.
- 21.5 Any notification required to be given by the Contractor to Sienalex Transport Pty Ltd under clauses 4.3, 4.5, 4.6, 4.7, 5.1 and 5.4



## **22. MISCELLANEOUS**

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- 22.1 Any reference to a party in these conditions includes, and any obligation or benefit under these conditions will bind or take effect for the benefit of, that party's executors, administrators, successors in title and assigns.
- 22.2 Subject to the provisions of these conditions, each party will be responsible for all its own costs (including legal costs) incurred in the negotiation of, and the performance of its obligations pursuant to, these conditions.
- 22.3 If any part of these conditions is invalid or unenforceable, that part will (if possible) be read down to the extent necessary to avoid the invalidity or unenforceability, or alternatively will be deemed deleted; and these conditions will remain otherwise in full force.
- 22.4 These conditions represent the entire agreement between the parties and supersede all prior representations, agreements, statements and understandings between the parties.
- 22.5 No amendment to these conditions has any force unless it is in writing. Sienalex Transport may vary these conditions upon providing written notice to the Contractor. Any changes will take effect 30 days from Sienalex Transport giving the written notice to the Contractor.
- 22.6 The failure of a party to these conditions to enforce a provision or the granting of any time or indulgence will not be construed as a waiver of the provision nor of a waiver of the right of the party at a later time to enforce the provision.
- 22.7 An obligation of two or more persons under these conditions binds them jointly and severally and every expressed or implied agreement or undertaking by which two or more persons derive any benefit in these conditions will take effect for the benefit of those persons jointly and severally.
- 22.8 These conditions will be construed in accordance with the laws in force in Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of Western Australia.