

## Members of the Rex Group



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# CONDITIONS OF CARRIAGE FOR CARGO

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| AIRLINE: | <i>Rex Airlines Pty Ltd</i> |
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# 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**.

**"Charges"** mean **Rex's** quoted charges for **Services** calculated under its rates schedule or other agreed rates, the charges in Clause 6 and any tax including goods and services tax ("GST") levied directly on a transaction or supply under these Conditions.

**"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** and 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**.

**"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**.

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# 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.

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## 3. SENDER'S OBLIGATIONS

3.1. The **Sender** must:

3.1.1 unless otherwise agreed, pay in full for the Services in advance and in any case before collection by the Receiver;

3.1.2 ensure the **Con Note** is accurately and fully completed and declaration signed, at the point when the Cargo is tendered to Rex.

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

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## 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 [https://www.legislation.gov.au/Details/F2020C00935/Html/Volume\\_2#\\_Toc403484574](https://www.legislation.gov.au/Details/F2020C00935/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.

5.1 **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 **Charges**.

- 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, 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 Charges 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.

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## 5. CHARGES

- 6.1. The **Sender** must:
- 6.1.1 unless otherwise agreed, pay **Rex** the **Charges** upon tendering the Cargo for shipment and any additional charges detailed below as and when required by Rex;
- 6.1.2 pay freight by gross weight or volumetric weight, whichever is the higher (except in the carriage of live animals where gross weight is applied), as detailed in the Schedule;
- 6.1.3 if the **Cargo** is at any time re-weighed or re-measured and declared weights found to be inaccurate, pay any proportional additional freight charges prior to collection by the Receiver;
- 6.1.4 pay **Rex's** expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any other **Person**;
- 6.1.5 pay any duties, fine or penalties which **Rex** becomes liable to pay or pays in relation to the **Cargo**;
- 6.1.6 supply or pay for additional labour or machinery or both to load, unload, maintain or protect the **Cargo** if the weight or dimensions of the Cargo requires such additional resources;
- 6.1.7 if **Rex** requires, pay for storage under Clause 5.6 if the **Receiver** does not collect the **Cargo** after it arrives at the destination airport;

- 6.1.8 pay the cost, expense or loss to **Rex** of opening or inspecting under Clause 5.1, of destruction or disposal under Clause 5.6, and of sale under Clause 5.6 (including advertisement charges, if such has been incurred in respect of the sale);
- 6.1.9 compensate **Rex** for any cost, expense or loss to **Rex's** property or any **Person** caused by the **Cargo**, the **Sender**, the **Receiver** or any **Person** acting for the **Sender** or the Receiver;
- 6.1.10 if any **Charges** are not paid on the date for payment or as and when payment is required by Rex, pay interest on the unpaid **Charges** at the prevailing GIC rate as published by the ATO and pay any charge or amount owing to **Rex** under any other contract;
- 6.2. The **Services** are considered as fully discharged as soon as the **Cargo** arrives at the destination airport whether they are collected or not and whether damaged or not.
- 6.4. The **Charges** are considered fully earned as soon as the **Cargo** has been received by **Rex**. **Rex** will not refund any payment for **Charges** under any circumstances except as otherwise specified in these Conditions..
- 6.5. **Rex's** quoted Charges represent the exclusive value of the supply for GST purposes, unless specifically stated to include GST.
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## 6. LIEN

- 7.1. **Rex** has a general lien on the **Cargo** and on any other goods of the **Sender** for all **Charges** 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**.
- 7.2. 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.
- 7.3. **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.
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## 7. CLAIMS

- 8.1. 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.
- 8.2. The failure to notify a claim within the time specified under 8.1 is evidence of satisfactory performance by **Rex** of its obligations.
- 8.3. Despite any other Condition other than Clause 10, **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.

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## 8. EXCLUSIONS AND LIMITATIONS

- 9.1. Subject to Clause 10, **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.
- 9.2. Subject to Clause 10, 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**.
- 9.3. Subject to Clause 10, **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.
- 9.4. The exclusions, releases and indemnities in Clause 9.2 and Clause 9.3 extend to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if **Rex** knows they are possible or otherwise foreseeable.
- 9.5. These Conditions apply in all circumstances, including a fundamental breach of contract or breach of a fundamental term.
- 9.6. **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**.
- 9.7. 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.
- 9.8. **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**.

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## 9. LIMITATION OF LIABILITY

10.1. The parties acknowledge that:

10.1.1 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

10.1.2 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.

10.2. 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:

10.2.1 the supplying of the **Services** again; or

10.2.2 the cost paid for the **Services**.

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## 10. LAW

11.1. 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.

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## 11. SEVERABILITY

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

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## 12. VARIATIONS AND WAIVER

13.1. **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.



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## 13. FORCE MAJEURE

- 14.1. **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**.

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## 14. SURVIVAL

- 15.1. Clauses 6, 7, 8, 9 and 10 shall survive the termination or expiry of the contract or agreement to which these Conditions apply.

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## 15. CARRIAGE OF LIVE ANIMALS

- 16.1. Live animals to be transported as freight must be lodged through Dogtainers ([www.dogtainers.com.au](http://www.dogtainers.com.au) or call 1300 13 52 52).
- 16.2. Live animals are charged at the gross weight freight rate.

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## 16. CARRIAGE OF COFFINS

- 17.1. Rex requires 48 hours' notice for the carriage of a coffin. Notification must be made to the Rex Customer Contact Centre on 13 17 13 and the Rex Coffin Carriage Proforma found on the Rex website must be completed and sent by fax to: 02 9667 7797.

Nothing in these Conditions of Carriage for Cargo will prevent the application of consumer guarantees in accordance with the Australian Consumer Law.