

BLACK DIAMOND REMOVALS TERMS AND CONDITIONS

1. Definitions In these conditions:

1.1 **"We"** means Black Diamond Removals, ABN 23 120 169 120, and "Us" and "Our" have corresponding meanings;

1.2 **"You"** means the party entering into the agreement for Services with Us, and includes the party to whom Our quotation is addressed and the party by whom the acceptance is signed, and "Your" has a corresponding meaning;

1.3 **"Ancillary Services"** means services which are ancillary to the Services, but which We do not offer or provide, including transportation by sea, rail or air, and transportation of vehicles, trailers, caravans, boats and animals;

1.4 **"Goods"** means all furniture and other effects which are to be the subject of the Services;

1.5 **"Services"** means the whole of the work to be undertaken by Us in connection with the Goods including removal and (if applicable) storage;

1.6 **"Subcontractor"** means any person other than one of Our employees who, under any agreement or arrangement with Us (whether directly or indirectly) performs or agrees to perform the whole or any part of the Services, but does not include any Third Party Provider;

1.7 **"Third Party Provider"** means any person who We have arranged to carry out any Ancillary Services; Words in the singular include the plural, and words in one or more genders include all genders.

2.0 **We are not Common Carriers** WE ARE NOT COMMON CARRIERS AND ACCEPT NO LIABILITY AS SUCH. We reserve the right to refuse to quote for the carriage of goods for any particular person and for carriage of any goods or classes of goods at Our discretion.

3.0 Your Obligations and Warranties

3.1 **Information supplied by You.** You warrant that any information which You have provided to Us and on which We have reasonably relied in assessing any quotation or estimate of the resources necessary to carry out the work is accurate.

3.2 **Owner or Authorised Agent.** You warrant that, in entering into this agreement, You are either the owner of the Goods, or the authorised agent of the owner.

3.3 **Packaging of the Goods.** Except where We have packed the Goods, You warrant that You have complied with all laws and regulations relating to the packaging, labelling or carriage of the Goods, and that the Goods are packed in a manner adequate, having regard to their nature, to withstand the ordinary risks of removal, carriage and storage.

3.4 **Presence at Loading/Unloading.** You will ensure that You or some person on your behalf is present when the Goods are loaded or unloaded, except if they are being unloaded into or loaded from store.

3.5 **Dangerous Goods.** You warrant that the Goods do not include any firearms or plants or goods which are or may become of a dangerous, corrosive, highly combustible, explosive, damaging or noxious nature nor likely to encourage any vermin or pest or to cause infection unless You have disclosed to Us in writing the presence and nature of any such items prior to them being made available to Us for loading or storage. We may refuse to remove or store such items. If We discover any article or substance of this nature after the Goods have been received by Us, We may take any reasonable action, including destruction or disposal, as We may think fit without incurring any liability to You.

3.6 **Fragile Goods and Valuable Items.** You will, prior to the commencement of the removal or storage, give to Us 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 stones, other precious objects, works of art, money, collections of items, deeds, securities or precision equipment in any case having a value in excess of \$2,000. We may either refuse to carry any such goods or require them to be carried, at Your cost, by a higher security mode of transport if We consider it is inappropriate for them to be the subject of a general personal effects shipment.

3.7 **Goods Left Behind or Moved in Error.** You will ensure, to the best of Your

ability, that all Goods to be removed (other than Goods being removed from store) or stored are uplifted by Us and that none is taken in error.

4. Method of Carriage, Subcontractors and Ancillary Services

4.1 **Mode of Carriage.** We shall be entitled to carry, or arrange for the carriage of, the Goods by any reasonable route (having regard to all the circumstances including the nature and destination of any other goods being carried on or in the conveying vehicle or container) and by any reasonable means, including, where We consider it necessary or desirable, by sea, rail or air, and for that purpose, as Your agent, to arrange for a Third Party Provider effect such carriage by sea, rail or air.

4.2 **Ancillary Services.** Where We engage any Third Party Providers, We do so on Your behalf and as Your agent, and subject to the terms and conditions of that party.

We accept no liability, including liability for any loss or damage, arising out of the provision of Ancillary Services. However, if We arrange for a Third Party Provider to undertake carriage of the Goods by sea, rail or air, and the Goods suffer loss or damage at some time when they are either in Our possession or the possession of the Third Party Provider, and if We cannot establish, on the balance of probabilities, that the Goods were in the possession of the Third Party Provider when that loss or damage occurred, the Goods will be deemed to have been in Our possession at that time.

4.3 **Subcontractors.** We may use a Subcontractor or Subcontractors to undertake the whole or any part of the Services, but if We do so, We will continue to be responsible to You for the performance of the Services.

4.4 **Liability of Subcontractors and Employees.** Any provisions in these conditions which limit Our liability also apply to Our Subcontractors and to Our employees and to the employees of Our Subcontractors. For the purposes of this subclause, We are, or are deemed to be, acting as agent or trustee on behalf of each of the persons referred to, and each of them shall to that extent be deemed to be parties to this agreement.

5. **Delivery** We shall not be bound to deliver the Goods except to You or a person authorised in writing by You to receive the Goods. If We cannot deliver the Goods either because there is no authorised person there to receive them on Our arrival, or because We cannot gain access to the premises, or for any other reason beyond Our control, We will be entitled to unload the Goods into a warehouse, and will be entitled to charge an additional amount for storage and for the subsequent re-delivery of the Goods. If this happens, We will endeavour to contact You to ascertain whether You have any alternative instructions, and if so, We will carry out those instructions if reasonably practicable. We will be entitled to make a reasonable additional charge for any additional work or costs thereby required or entailed..

6. Storage Conditions

6.1 **Inventory.** We will prepare an inventory of Goods received for storage and will ask You to sign that inventory. You will be provided with a copy of the inventory. If You sign the Inventory, or do not do so and fail to object to its accuracy within 7 days of receiving it from Us, the inventory will be conclusive evidence of the Goods received by Us. The inventory will disclose only visible items and not any contents unless You ask for the contents to be listed, in which case We will be entitled to make a reasonable additional charge.

6.2 **Contact Address.** You agree to advise Us of an address to which We can forward any notice or correspondence, and to promptly notify Us of any change of address.

6.3 **Price Changes.** Our storage charges will be as quoted to You for the first 26 weeks of storage. After 26 weeks, We may change the storage charges from time to time on giving 28 days' written notice to You.

6.4 **Warehouse Change.** We are authorised to remove the Goods from one warehouse to another without cost to You. We will notify You of the removal and advise the address of the warehouse to which the Goods are being removed, not less than 5 days before removal (except in emergency, when such notice will be given as soon as possible).

6.5 **Inspection of Goods in Store.** You are entitled, upon giving Us reasonable notice, to inspect the Goods in store, but a reasonable charge may be made by Us for this service.

6.6 Removal From Storage. Subject to payment for the balance of any fixed or minimum period of storage agreed, You may require the Goods to be removed from store at any time on giving Us not less than 5 working days' notice. If You give Us less notice, We will still use Our best endeavours to meet your requirement, but shall be entitled to make a reasonable additional charge for the short notice.

6.7 Compulsory Removal and Disposal. You agree to remove the Goods from storage within 28 days of a written notice of requirement from Us to do so. In default, We may, after 14 days' notice to You, SELL ALL OR ANY OF THE GOODS by public auction or on Ebay or a similar online auction sale facility or, if that is not reasonably practicable, by private treaty and apply the net proceeds in or towards satisfaction of any amount owing by You to Us.

7. Charges and Payments

7.1 Variation of Work Required and Delay. If the work You ultimately require Us to do varies from the work for which a quotation or estimate has been given, or if We are prevented from or delayed in undertaking the Services or any part thereof (except where that prevention or delay results from a factor within Our control), we will also be entitled to make a reasonable additional charge. We will also be entitled to reimbursement from You of any amount which We have been required to pay to a third party (other than a Subcontractor) to obtain or effect delivery of the Goods.

7.2 Alteration of Dates. If a date for the performance by Us of any Services is agreed upon in the quotation and acceptance or subsequently, and You require that date to be altered or the Goods are not available on that date, We will be entitled to make a reasonable additional charge for any loss or additional expense occasioned by such alteration or unavailability.

7.3 Payment by Third Party. If You arrange with Us or instruct Us that Our charges are to be paid by a third party, and if that party does not pay the charges within 14 days of the date set for payment or, if no date is set for payment, within 14 days of the date of invoice, You agree to thereupon pay the charges.

7.4 Default Charges. If amounts are outstanding from You to Us for more than 30 days, We will be entitled to charge interest at the Commonwealth Bank maximum personal overdraft interest rate for amounts not exceeding \$100,000 from time to time, calculated on monthly rests.

7.5 Contractual Liens. All Goods received by Us will be subject to a general lien for any moneys due by You to Us relating to any Services provided under this or any other agreement. Without prejudice to any other rights which We may have under this contract or otherwise at law, if any amounts have been outstanding for a period of 26 weeks, We may give 28 days' written notice to You of intention to sell, and if the outstanding amount is not paid within that period, We may SELL ALL OR ANY OF THE GOODS by public auction or on Ebay or a similar online auction sale facility or, if that is not reasonably practicable, by private treaty and apply the net proceeds in or towards satisfaction of the amount due.

8. Loss or Damage – Private Removals and Storage

8.1 Australian Consumer Law. Except where the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, this agreement will be subject to the guarantees set out in sections 60, 61 and 62 of the Australian Consumer Law (as enacted as Schedule 2 of the Competition and Consumer Act 2010) being, in particular, a guarantee that the Services will be rendered with due care and skill, and the following conditions of this clause 8 will apply.

8.2 Exclusions. We will not be liable for any loss or damage nor any delay which results from any cause beyond Our control, including any loss or damage occurring in the course of the provision of Ancillary Services by Third Party Providers.

8.3 Damage to Goods – Packaging. If the Goods sustain damage by reason of defective or inadequate packing or unpacking, and the packing or unpacking (as the case may be) was not undertaken by Us or a Subcontractor, We will not be liable.

8.4 Damage to Goods – Inherent Risk. Certain goods (including electrical and mechanical appliances, computer equipment, scientific instruments and certain musical instruments) are inherently susceptible to suffer damage or disorder upon removal. Unless that damage or disorder results from the want of due care and skill on Our part, We will not be liable.

8.5 Notification of Loss or Damage. Any claim for loss or damage under this

clause 8 is to be notified by You to Us in writing, or by telephone and later confirmed in writing, within a reasonable time after the date of delivery. We will have the best chance of locating any misplaced items, or ascertaining the cause of damage, if that notification is given to Us within 2 working days.

8.6 Maximum Value of Goods. In any claim for loss or damage under this clause 8, any estimate of the value of the Goods which You have provided to Us, whether for the purposes of insurance or otherwise, will be prima facie evidence that the total value of the Goods, or the value of any item or group of items for which a value was specified, did not exceed that estimate at the time of loss or damage.

9. Loss or Damage – Commercial Removals and Storage

9.1 Application. If the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged, the following conditions of this clause 9 will apply.

9.2 Negligence. We will only be liable for loss or damage to the Goods or any other property resulting from Our negligence (including the negligence of any Subcontractor, but excluding the negligence of any Third Party Provider), and in any event that liability will be limited to \$100 per item or package, or \$1,000 in respect of all Goods moved or stored under this agreement (whichever is the lesser), and \$200 in respect of any other property.

9.3 Exclusions. We will not be liable for any loss, damage or delay which results from any cause beyond Our control, including weather or industrial disputes; any loss or damage resulting from inadequate or improper packing or unpacking unless the Goods damaged or causing damage were both packed and unpacked by Us; loss or damage to any fragile goods or valuable items as referred to in sub-clause 3.6, even if of a value less than \$2000; nor electrical, electronic or mechanical derangement of Goods.

9.4 Claims. In circumstances where We are liable under subclause 9.2, notice of the claim must be given by You to Us as soon as possible, and written notice must be given within 14 days of the date of delivery or, in the case of loss, the date upon which the Goods would ordinarily have been delivered, failing which We will have no further liability.

10. Insurance

10.1 Our Insurance. We offer to arrange for the Goods to be insured during transit and storage, and details of the type of insurance and the rates are set out in Our quotation and/or will be provided on request. This insurance will only be arranged if You request Us in writing to do so (including by so indicating in Your written acceptance of Our quotation).

10.2 Other Insurance. You may, of course, arrange insurance with an insurer of Your choice.

11. Disputes

11.1 Notification of Dispute. If You or We consider that a dispute has arisen in relation to this agreement (either during the Services, or after they have been completed), written notice of the dispute will be given to the other party. Even if that notice is given, You and We must continue to perform any obligations outstanding by Us under the agreement.

11.2 Dispute Resolution. If You and We cannot resolve the dispute between Us, You are entitled to refer the dispute to the Australian Furniture Removers Association (telephone 02 9659 5300) which has procedures for dispute resolution, and We, but not You, will be bound by the outcome of that referral.

12.1 Variation. The terms of these conditions cannot be varied other than by You and Our mutual consent. Our consent can only be given by a proprietor, director, secretary or manager, and must be evidenced in writing.

12.2 Notice. Any notice to be given by Us to You may be given personally or by prepaid post addressed to Your address last known to Us, or by facsimile to a facsimile number at that address, or by electronic mail.

13. Applicable Law The law which governs this agreement will be the law applicable in the place in which the agreement is made

12. Variation an