

- information provided by it to the Company is correct. (c) Any incorrect information may mean that the Company is unable to provide the Services or may result in an increase in the Charges.
- 4.2 **5 X Y e i U h Y f** - The Customer is responsible for calculating and informing the Company of the volume of the Goods the subject of the Services, to ensure that the number and size of vehicles to be used by the Company for the Services is adequate.
- 4.3 **C k b Y f #** - By accepting these Terms in accordance with clause 2.2, the Customer warrants that it is, or is authorised to act on behalf of, the owner of the Goods and is authorised to accept these Terms.
- 4.4 **; c c X g U h G H** - The Customer must notify the Company before the Start Time if any of the Goods include, contain or incorporate:
- difficulty** - dangerous goods, banned substances, animals and/or plants (as moving these may be a breach of the law);
 - delicacy** - goods of a fragile or brittle nature which are not readily apparent as such, and any special precautions that should be taken when moving such goods; and/or
 - size** - large or heavy Items (including pianos and pool tables), for which the Company will provide a separate quotation.
- 4.5 **; c c X g c b 7 c a d Y h | c b**
- Identification** - The Customer must ensure that all Goods to be moved or stored are correctly identified and that none is taken by the Company's staff in error.
 - Fit** - (i) The Customer is responsible for ensuring that Goods will fit the Drop-Off Address. (ii) The Company's staff are not trained or insured to (and will not) remove doors or windows, and in such cases will be authorised to leave the relevant Goods outside the relevant premises. (iii) The Customer is responsible for arranging a specialist if needed.
- 4.6 **D U f _] b [U b X U W W Y g g**
- Parking fines** - (i) The Customer is responsible for providing adequate parking and access for the Company to provide the Services. (ii) The Company will park in any safe areas at the Customer's direction, *except* a 'clearway'. (iii) If the Customer instructs the Company to park in an area that is not legally available for parking, then the Customer must pay any resulting parking fines or fees incurred by the Company (which will add any such parking fines or fees to the Customer's Charges). (iv) All of the Company's vehicles are eligible to use 'loading zones', but any relevant time limits will apply.
 - Access** - (i) The Customer is responsible for informing the Company about any awkward or difficult access to or at any Pick-Up Address or Drop-Off Address. (ii) Awkward or difficult access can *include* no vehicular access, no parking available in close proximity to the relevant address and cramped stair and hallway conditions. (iii) The Company reserves the right to make additional Charges due to such circumstances.
- (c) **Waiting time** - (i) The Company will not be required to wait for more than thirty (30) minutes after arrival at any Pick-Up Address or Drop-Off Address to receive access. (ii) If by that time the Company has not received such access, the Company will not be required to provide the Services, but the Customer must still pay for the Company's attendance.
- 4.7 **B c U W W Y g g h** (a) The Customer (and any person associated with the Customer) is liable for any part of any Company vehicle. (b) The Customer is fully responsible for any damage caused to any person or Goods by such action.
5. **8 9 @ = J 9 F M**
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- 5.1 **8 Y j j Y f m X Y h U j g** - The Company will provide the Services (including delivering the Goods) in accordance with the details contained in the Job Confirmation.
- 5.2 **8 Y Y a Y X X Y** - The Services will be taken to have been completed (and the Goods will be taken to have been delivered) in accordance with these Terms at Completion.
- 5.3 **A Y h \ c X c Z** - The Company may move the Goods by any reasonable means and any reasonable routes.
- 5.4 **B c b ! X Y** - If the Company cannot deliver the Goods to the final Drop-Off Address because of any inaccurate information provided by the Customer or as a result of any unforeseen circumstances, the Company may:
- return** - return the Goods to the Pick-Up Address;
 - other delivery** - deliver the Goods to the Customer at another address; or
 - storage** - place the Goods into storage (and the Company may charge the Customer for the storage and re-delivery of such Goods)
- any such action will not entitle either party to treat any Agreement as having been repudiated.
6. **7 < 5 F ; 9 G 5 B 8 D 5 M A 9 B H**
-
- 6.1 **7 \ U f [Y g**
- Obligation** - In return for the Company providing the Services, the Customer must pay the Charges to the Company.
 - Estimates** - Any indications of Charges provided to the Customer in advance of providing the Services (including in a Job Confirmation) are estimates only.
 - Minimum / additional** - (i) The minimum Charges will be calculated at two (2) hours from the Start Time. (ii) Any time spent in providing the Services *over* two (2) hours will be charged for in one (1) minute intervals, in accordance with the hourly rates referred to in Schedule 1.
 - Deposit** - The Customer must pay to the Company such deposit on account of the Charges as may be specified (including in the Job Confirmation) by the Company.
 - Invoice** - The Company may issue the Customer an Invoice at or after Completion.
- 6.2 **J U f | U h** If, at any time after the Company has issued the Customer a Job Confirmation, or otherwise within forty-eight (48)

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hours before the Start Time, the work required to undertake the Services varies in any way from that described in the Job Confirmation or the Customer's instructions, the Company reserves the right to:

- (a) resources - assign additional vehicles, staff or any other resources to complete the Services;
- (b) stop - stop providing the Services and re-start on a later date;
- (c) Charges - increase the Charges payable for the Services; and/or
- (d) recovery - recover any costs incurred by the Company as a result of any variation, *including* any amounts paid to a third party to perform any part of the Services.

6.3 **Delay** - (a) Delays due to traffic conditions, road repairs, route selection and the like are inherent to the furniture removal industry. (b) To the maximum extent permitted by law, the Company will not be liable for any loss or damage (*including* consequential loss) as a result of any delay in the provision of the Services.

6.4 **Toll roads** - (a) The Company will not normally use toll roads (for example, Citylink or Eastlink in metropolitan Melbourne). (b) However, if the Company deems that the most practicable route involves, or the Customer instructs the Company or its staff to use, a toll road, the Customer will be liable to pay all toll charges (and the Company will *include* these in the Customer's Charges).

6.5 **Payment** - (a) The Company must pay the Charges immediately on Completion, by cash, electronic funds transfer (EFT), or credit or debit card, only, or otherwise in accordance with a relevant Invoice. (b) A surcharge of an additional two point two percent (2.2%) will apply to credit and debit card payments. (c) The Company does not accept cheques. (d) The Company's bank account details are:

Account Name.:	Easy Peasy Removals
Account No.:	325 402 534
BSB:	083 004
Bank:	National Australia Bank Ltd
Branch:	330 Collins Street, Melbourne VIC 3000
Reference:	<i>Job number or Customer surname</i>

6.6 **Late payment** - (a) Notwithstanding the Company's rights under clause 6.2(d), where any sum is due to be paid but is not paid on the due date, it will bear interest calculated daily at the rate for the time being fixed under section 2 (*Penalty interest rate*) of the *Penalty Interest Rates Act 1983* (Vic) from and *including* the due date until but *excluding* the date of actual payment. (b) If payment is late, a payment arrangement has not been adhered to, or the Customer has not responded to the Company's reasonable attempts to make contact, the Company will refer the relevant debt to a collection agency. (c) The Customer will be liable for all costs incurred in relation to any debt recovery process.

6.7 **Lien** - (a) Where money is owed by the Customer, the Company reserves the right to retain, refuse to deliver, or re-enter the Customer's premises and seize, the Goods, and hold them until payment is made. (b) Where payment is not forthcoming, the Company may dispose of the Goods in place of payment.

7. LIMITATION OF LIABILITY

7.1 Statutory Guarantees

- (a) Law - The Company acknowledges that under applicable state, territory and Commonwealth laws (*including* the *Competition and Consumer Act 2010* (Cth)), certain statutory express and implied guarantees and warranties (*including* the statutory guarantees under the *Australian Consumer Law*) will be implied into these Terms ("**Statutory Guarantees**").
- (b) Liability - Any liability which the Company may have for any breach of a Statutory Guarantee is limited (at the Company's election) to (in respect of the relevant Services in relation to which the breach has occurred): (i) supplying the Services again; or (ii) paying the cost of having the Services supplied again.

7.2 **Exclusions** - *Except* as expressly set out in these Terms or in respect of the Statutory Guarantees:

- (a) implied - the Company expressly *excludes*, to the maximum extent permitted by law, all representations, warranties, covenants, undertakings or conditions, express or implied, arising by statute, regulation, general law, equity, trade, custom, usage or otherwise, in relation to the Services;
- (b) absence - the Company makes no representations, warranties, covenants or undertakings under these Terms, any Agreement or any other any agreement with the Customer; and
- (c) liability - the Company's liability in respect of any such representations, warranties, covenants or undertakings is limited to the fullest extent permitted by law.

7.3 **Liability limitation** - To the maximum extent permitted by law, the Company will **not** be liable for damage caused by the Company, *other* than that which occurs as a result of:

- (a) packing / wrapping - the packing into or unpacking from boxes, or the wrapping or unwrapping, of the Goods by the Company's staff;
- (b) un/loading - the loading in or unloading from a vehicle of the Company the Goods for the purpose of transporting them; and/or
- (c) transporting - the transporting of the Goods in a vehicle of the Company, but only: (i) if the relevant vehicle is damaged by fire, flood, collision or over-turning; and (ii) to the extent the Company is compensated by the Company's insurer for damage to the Goods in such circumstances.

8. GOODS GUARANTEE

8.1 **Goods Guarantee** - Despite clause 7, and subject to the remainder of this clause 8, the Company guarantees to (at its election):

- (a) repair - repair any damage to the Goods caused;
- (b) replacement - replace any Goods damaged; or
- (c) compensation - compensate the Customer for any damage to the Goods caused,

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- by the Company's negligence in respect of the Services (the "Goods Guarantee").
- 8.2 **Conditions** - The Goods Guarantee is *subject* to all of the following conditions:
- (a) **No inventory** - To save time and cost, the Company will not be required to take an inventory of the Goods.
 - (b) **Presence** - (i) The Customer (or its authorised adult representative) must always be present during the entirety of the Services at the Pick-Up Address and at the Drop-Off Address, *including* loading and unloading, in all circumstances. (ii) If the Customer (or its authorised adult representative) leaves or is not present, for any amount of time, the Goods Guarantee will not apply.
 - (c) **Reporting** - (i) The Customer must: (A) inspect all Goods as they are unloaded and/or relocated; (B) report to the Company any damage to the Goods before Completion; and (C) at that time, note in writing any damage the Customer considers the Company to have caused on, and give to the Company, the Job Confirmation or another document. (ii) The Goods Guarantee will not cover claims for any damage discovered by the Customer *after* the Company has left the Drop-Off Address.
- 8.3 **Repair / replacement** - (a) The Company's responsibility under the Goods Guarantee in respect of repairing, replacing or compensating, in respect of any damaged Goods, is limited to doing so on a 'like for like' basis. (b) The Company will choose (at its discretion) to repair, replace or compensate, and will arrange all repairs. (iii) The Company will procure that any repairs will be: (A) made to as near the condition of the Goods before the damage occurring as is practicable; and (B) limited to the affected area of damage only. (c) To the maximum extent permitted by law, the Company will not be liable for any other damage or loss, *including* any consequential loss or diminution of value as a result of repairs.
- 8.4 **Compensation** - (a) If the Company elects under the Goods Guarantee to compensate the Customer for any damage to the Goods caused by the Company's negligence in respect of the Services, the Company will do so by paying to the Customer the value of the damaged Goods, before the damage occurring. (b) If the parties cannot agree that value, it will be determined by an independent valuer chosen by the Company.
- 8.5 **Limit** - The costs of any repair, replacement or compensation payable under the Goods Guarantee are limited to two thousand dollars (A\$2,000) for each individual item, or (if several items are packed together in a box) two thousand dollars (A\$2,000) for each box of items.
- 8.6 **Customer participation** - *Subject* to clause 4.7, the Customer may participate, or agree for others to participate, in the provision of the Services, but the Company will not be liable for any damage not caused by the Company.
- 8.7 **Sets** - Where an item is part of a pair, set or collection of items, replacement, repair or compensation will extend only to the proportionate part of the pair, set or collection of items, regardless of any special value the damaged part may have as part of such pair, set, or collection of items.
- 8.8 **Exclusions** - The Goods Guarantee will not apply where:
- (a) **identified risks** - the existing circumstances or conditions of an item, or particular directions or instructions from the Customer, contravene the Company's normal workmanship practices, such that damage to the Goods may be unavoidable;
 - (b) **unknown risks** - the relevant damage arises from conditions or things which are not known to the Company (for example, a defect in an item which is not immediately obvious);
 - (c) **unavoidable risks** - the relevant damage is caused to an item that is inherently susceptible to suffering damage when being moved, where such items *include*: pot plants; fish tanks; scientific equipment; furniture that is self-assembled or made of pressed wood (if that furniture has not been flat-packed for transport); electronic goods not packed in their original packaging or an appropriate box suitable for transport; marble or masonry items; and/or any other item the nature of which renders it inherently susceptible to unavoidable damage on movement;
 - (d) **electrical goods** - internal damage is caused to electrical items, where the Company has caused no major recorded external damage;
 - (e) **unsafe packaging** - the relevant items sustain damage because of defective or inadequate packing or unpacking; and/or
 - (f) **actions** - the relevant damage is caused during dismantling or reassembling the relevant items and/or lifting them to or from a height.
- 8.9 **Cap** - In no event whatsoever will the Company's total liability under or in relation to these Terms and any Agreement, in connection with any claim or loss, whether in contract, tort, under statute or otherwise, in respect of the aggregate of all matters arising out of or in relation to any one (1) event or series of events, exceed the aggregate of the Charges paid by the Customer to the Company.
9. **INTELLECTUAL PROPERTY**
- 9.1 **Permission** - The Customer provides to the Company all necessary consent, waiver, authority and licence to:
- (a) **photos / videos** - take or record photographs or videography of the Customer and/or its property: (i) as proof of Completion or any pre-existing damage to any Goods; and/or (ii) during provision of the Services, for advertising and promoting the Company and the Services by publishing the same on any website, social networking site and/or public platform; and/or
 - (b) **reviews** - use or copy any reviews of the Company or the Services shared on any website, social networking site and/or public platform.
- 9.2 **Ownership** - For the avoidance of doubt, any intellectual property or other material or information created or commissioned by the Company or a third party in connection with the Services will be owned by the Company.

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10. INDEMNITY

The Customer must at its own cost indemnify, keep indemnified, defend and hold harmless the Company from and against, and pay the Company on demand the amount of, all and any claims, losses, damages and/or costs whatsoever which the Company may suffer or incur arising out of, associated with, or in relation to

- (a) **instructions** - the Company complying with any instruction of the Customer (or its authorised adult representative) relating to the Services;
- (b) **statements** - the Customer (or any person associated with the Customer) making any statement about the Services (for example, about their quality or characteristics) without the Company's approval; and/or
- (c) **breaches** - any breach by the Customer (or any person associated with the Customer), its associates and/or personnel of these Terms or any Agreement.

11. CONFIDENTIALITY

Subject to clause 9 and all applicable laws, the parties must keep these Terms, all transactions contemplated by them and any Agreement confidential, and not disclose them, *other* than to each party's associates, personnel and advisers who have a need to know and are required to keep such matters confidential, or with the other party's consent.

12. DISPUTES

- 12.1 **Notification** - A party claiming that a dispute has arisen relating to the subject matter of these Terms or any Agreement must notify the other party in writing, providing details of the dispute.
- 12.2 **Negotiations** - Each party must promptly use its best endeavours to nominate a senior representative of the party to meet as soon as reasonably practicable to negotiate in good faith with a view to resolving the dispute.
- 12.3 **Mediation** - If such negotiations do not resolve the dispute, either party may refer the matter to an independent mediator nominated jointly by the parties (or if the parties cannot agree, then as nominated by the President of the Law Institute of Victoria upon the application of either party) at their joint cost to assist the parties to resolve the dispute.
- 12.4 **Proceedings** - A party must not begin legal proceedings in respect of a dispute, *unless* this dispute resolution procedure has been exhausted, although a party may at any time to seek injunctive, declaratory or other interlocutory relief in order to protect or preserve its rights under these Terms or any Agreement.

13. GENERAL

- 13.1 **Entire agreement** - (a) These Terms (together with the documents referred to in or contemplated by them, *including* any Job Confirmation) constitute the entire agreement of the parties relating to the subject matter of these Terms. (b) *Except* as required by statute (*including* in respect of clause 7), no terms will be implied (whether by custom, usage, course of dealing or otherwise) into these Terms or any Agreement.
- 13.2 **No reliance** - (a) In entering into any Agreement, no party has relied on any express or implied representation, warranty, undertaking, covenant, assurance or collateral agreement (*including* any made negligently) which is not set out in these

Terms (together with the documents referred to in or contemplated by them, *including* any Job Confirmation). (b) Each party waives all rights and remedies (*including* any based on negligence) which might otherwise be available to it in respect of the same.

- 13.3 **Further assurances** - Each party must promptly do all things that another party from time to time reasonably requires of it to effect, perfect or complete the terms and conditions of these Terms, any Agreement and any matter contemplated by them.
- 13.4 **Severability** - If anything in these Terms or any Agreement is unenforceable, illegal or void then it is to be read down so as to be valid and enforceable or, if it cannot be read down, the provision is or, where possible, the offending words are, to be severed from these Terms or any Agreement without affecting the validity or enforceability of the remaining provisions (or parts of those provisions) of these Terms or any Agreement, *unless* this would materially change the intended effect of these Terms or that Agreement.
- 13.5 **Waiver** - (a) A party can only waive a right or remedy provided in these Terms or any Agreement or by law by express written notice. If a party delays or fails to exercise any power, right or remedy under these Terms or any Agreement, this will not operate as a waiver of that power, right or remedy, nor will it impair or prejudice it. (b) Any single or partial exercise or waiver of any power, right or remedy relating to these Terms or any Agreement will not prevent its further exercise or the exercise of any other power, right or remedy. (c) A party will not be liable for any claim by or loss of any other party caused or contributed to by any waiver, exercise, attempted exercise or failure to exercise, or any delay in the exercise of, a right.
- 13.6 **Relationship** - (a) These Terms and any Agreement do not create any relationship of employment, joint venture, partnership, agency or trust, nor any fiduciary relationship, between the parties, nor give rise to any duty of care by either party to the other, and the relationship of the parties will at all times be that of commercial contractual counterparties only. (b) These Terms and any such Agreement do not authorise any party to act so as to bind any other party.
- 13.7 **No merger** - On completion or ending of the transactions contemplated by these Terms and any Agreement, the rights and obligations of the parties under these Terms and that Agreement will not merge and any provision that has not been fulfilled remains in force.
- 13.8 **Survival** - Any provision of these Terms or any Agreement which by its nature or intention is intended to survive the ending of such Agreement continues to apply after such ending, and a provision of these Terms or any Agreement which can and is intended to operate after its ending will remain in full force and effect, *including* any and all indemnities.
- 13.9 **Approvals** - A party may give conditionally or unconditionally withhold its approval or consent in its absolute discretion, *unless* these Terms expressly provides otherwise.
- 13.10 **Remedies** - The rights of a party under these Terms and any Agreement are cumulative and not exclusive of any rights provided by law.
- 13.11 **Subject to change** - The Company may change these Terms at any time without notification.

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- 13.12 **Assignment** - The rights of the parties under these Terms and any Agreement are personal, and no party may assign, transfer, novate, dispose of or otherwise deal in any interest in its rights and/or obligations under these Terms and any Agreement or any part of the same without the consent of the other party.
- 13.13 **Third parties** - A person who is not the Company or the Customer may not enforce these Terms or any Agreement.
- 13.14 **Uncontrolled events** - No party will be liable for any failure to perform, or delay in performing, any of its obligations under these Terms or any Agreement (*other* than in respect of payment) where such failure or delay is caused by an event not within its reasonable control (such as an act of God), *provided that* the party claiming the benefit of this provision must use its reasonable endeavours to put itself in a position where it is able to meet its obligations under these Terms and any such Agreement as soon as is reasonably practicable.
- 13.15 **Independent advice** - Each party acknowledges that it has been given the opportunity to obtain independent legal advice before entering into any Agreement, and that it understands, the terms and effect of these Terms and that Agreement.
- 13.16 **GST** - All amounts payable under these Terms and any Agreement are expressed *exclusive* of GST and must be made together with all applicable GST, but otherwise free and clear, and without deduction or set-off, of any amount in respect of taxes or any other amount whatsoever.
- 13.17 **Costs and expenses** - *Subject* to clause 6, each party must bear its own costs and expenses arising out of and in connection with the carrying into effect of these Terms and any Agreement.
- 13.18 **Law and jurisdiction** - These Terms and any Agreement will be governed by and construed with the laws of Victoria and the parties submit to the *non-exclusive* jurisdiction of the courts of and in Victoria and any courts which can hear appeals from them.

SCHEDULE 1 - Charges

1. **Components** - The Company will calculate the Charges for a particular job on the basis of the following key components, as may be adjusted for difficult, unusual or other relevant circumstances:
 - 1.1 **time** - time spent by the Company in providing the Services, from the Start Time until Completion (*subject* to a minimum charge in accordance with clause 6.1(c)), at an hourly rate stated in the Job Confirmation;
 - 1.2 **resources** - resources required for the Company to provide the Services, in terms of vehicles and staff to be used, as stated in the Job Confirmation; and
 - 1.3 **fuel** - fuel consumed by the Company's vehicles in providing the Services, *including* travelling from the Company's premises to the Pick-up Address before the Start Time and from the Drop-Off Address the Company's premises after Completion, at a rate or in an amount stated in the Job Confirmation.
2. **Estimate** - The Company will provide the Customer on request with an estimate of its proposed Charges for a particular job, in advance, *including* by means of the Job Confirmation.
3. **Final** - However, the Company will calculate (and inform the Customer of, and the Customer must pay) the final Charges for a particular job on or after Completion, when the exact time, resources and fuel actually required to provide the Services are known.