



## MX ENTERPRISES PTY LTD T/AS WWW.E-GO.COM.AU

### “E-GO” INDEMNITY FOR LOSS OR DAMAGE - TERMS & CONDITIONS

1. These terms and conditions (hereinafter referred to as “Conditions”) shall apply where the Customer chooses to purchase indemnity cover against loss or damage in the course of placing an order for supply of services through the computer-based on-line booking system situated on the website (“Website”) known as “*ego.com.au*” (the system and the order herein referred to as “*e-go*” and “*e-go booking*” respectively) owned and operated by MXE.
2. In these provisions:
  - (a) “MXE” means MX Enterprises Pty Ltd (A.C.N. 650 217 351) whether trading in its own name or as “*www.e-go.com.au*”, and shall be deemed to include any employee, agent or sub-contractor of MXE
  - (b) “MXE’s vehicle” shall include any vehicle used by MXE to carry goods on behalf of the Customer and shall include any vehicle owned by MXE or a related corporation and any vehicle owned or operated by a sub-contractor while engaged by MXE in the carriage of goods on behalf of the Customer
  - (c) “Consignee” means the intended recipient of the consignment as advised to MXE by or on behalf of the Customer
  - (d) “consignment” means the goods the subject of an *e-go* booking and the subject of a single consignment note
  - (e) “consignment note” means (depending on the type of service ordered by the Customer) either:
    - (i) a document in a form approved by MXE raised by MXE or the Customer to accompany a consignment; or
    - (ii) an entry on MXE’s form known as a run sheet, identifying the Customer and Consignee of the consignment to which (i) or (ii) relates and used to obtain a recipient’s signature as proof of delivery of the consignment.
  - (f) “Customer” means the person who in the course of placing an *e-go* booking has agreed to purchase Indemnity Cover against loss of or damage to goods and has acknowledged to have read, understood and accepted these Conditions
  - (g) “Owner” in relation to goods means a person (other than the Customer) having ownership of or a right to or an interest in those goods
  - (h) “Indemnity Cover” means the extent of indemnity against loss or damage to goods the Customer has chosen from the various alternatives set forth on the “Optional Services” page of the Website
  - (i) “Indemnity Fees” means the fees the Customer has paid to MXE during the course of placing an *e-go* booking by choosing to pay the fees set forth on the “Optional Services” page corresponding to the Indemnity Cover
  - (j) “Excess Amount” is the amount referred to as “excess” on the “Optional Services” page corresponding to the Indemnity Cover
  - (k) “goods” means the wares or other items of property in respect of the transportation of which the *e-go* booking has been made
  - (l) “Claim” means a claim by the Customer against MXE pursuant to these provisions to recover the amount of loss or damage to goods the subject of Indemnity Cover
  - (m) “Claim Goods” means the goods the subject of a Claim
  - (n) “amount of loss or damage” in relation to Claim Goods means:
    - (i) in the case of damage - the diminution in the cost price of the Claim Goods to the Customer or Owner (as the case may be) due directly to the damage sustained by the Claim Goods while in the possession of MXE; and
    - (ii) in the case of loss – the cost price to the Customer or Owner (as the case may be) of manufacturing, purchasing or otherwise acquiring those goods; and
    - (iii) where the Claim by the Customer arises from a claim brought against the Customer by the Owner with respect to such loss or damage, whichever is the lesser of the amount of that claim and the amount referred to (i) or (ii) hereof (as the case may be)
  - (o) Except where repugnant to or inconsistent with the provisions hereof, in these Conditions:
    - (i) the singular includes the plural and vice versa;
    - (ii) any gender includes the other genders;
    - (iii) “person” includes a natural person, corporation, or other legal entity
3. (1) In consideration of the Customer paying the Indemnity Fees and accepting these Conditions, MXE agrees, subject to these Conditions, to indemnify the Customer against the amount of loss or damage to goods contained in a single consignment over and above the Excess Amount up to the amount of the Indemnity Cover.



- (2) The amount calculated in accordance with 3(1) is hereinafter referred to as the “Indemnified Amount”.
  - (3) For the avoidance of any uncertainty:
    - (a) no Indemnified amount will be claimable against or be payable by MXE where it is less than or equal to the Excess Amount;
    - (b) the Indemnified Amount will not exceed the Indemnity Cover, notwithstanding that the latter is less than the actual amount of loss or damage suffered by the Customer; and
    - (c) the Indemnified Amount will not exceed the actual amount of loss or damage suffered by the Customer even though the latter is less than the Indemnity Cover.
4. The Indemnity Fees are in addition to the charges paid by the Customer for the supply of transportation services pursuant to the e-go booking.
5. The Indemnified Amount shall:-
- (1) extend only to the amount of loss of or damage to goods comprised in the consignment and not to any indirect or consequential loss or damage suffered as a result of loss of or damage to goods (including, without limiting the generality of the foregoing, loss of profit or custom or damage to reputation or goodwill or liability to any third party arising from such loss or damage);
  - (2) apply to the goods only while they are in the possession of MXE; and
  - (3) be subject to the limitations and exclusions hereinafter provided.
6. In relation to Claims the following provisions shall apply:
- 6.1 A Claim to be valid and eligible for consideration by MXE must be made in writing on a form supplied by MXE for that purpose (“Claim Form”) and returned to MXE within the following relevant time limit:
- (1) where the receiver of the goods has noted on the consignment note that alleged loss or damage to the goods has been detected at time of delivery, *within seven (7) days* from date of delivery;
  - (2) where no such notation is made on the consignment note (and except where the loss or damage was not reasonably apparent to the receiver at the time of receipt in which case the provisions of 6.1(1) shall apply) *within 24 hours* from the time of delivery (or in case of goods missing from the consignment, when delivery in the ordinary course should have been effected);
  - (3) where the Claim relates to complete failure by MXE to have a vehicle attend at the designated delivery address to effect delivery of the goods, within seven (7) days from the despatch date specified on the consignment note.
- 6.2 A Claim will not be valid or eligible for consideration if based only on absence of evidence of proof of delivery endorsed on Customer’s paperwork accompanying the goods if that evidence is provided on MXE’s consignment note and vice versa.
- 6.3 Only one Claim, being the first Claim received by MXE with respect to a consignment, may be made by a Customer in respect of that consignment.
- 6.4 Further to be eligible for consideration:
- (1) the Claim Form must be accompanied by documentary evidence reasonably acceptable to MXE as proof of amount of loss or damage done to the Claim Goods (such as receipt or tax invoice issued at time of acquisition or valuation of the cost price of the Claim Goods); and
  - (2) where the Claim relates to damage or deterioration of the Claim Goods, the residual value (as hereinafter defined) of the Claim Goods; and
  - (3) the Claim Form must also be accompanied by documentary evidence reasonably acceptable to MXE of the ownership of or interest in the Claim Goods of the party nominated by the Customer in accordance with 6.9(2) below; and
  - (4) where the Claim arises from a claim made against the Customer by the Owner, documentary evidence of the existence and the quantum of that claim.



- 6.5 With respect to a Claim referred to in 6.4(4) above:
- (1) the Customer shall not make any admission to the Owner as to liability for loss or damage prior to lodging a Claim with MXE and shall not make any such admission pending receipt of MXE's decision regarding the Claim;
  - (2) any admission made by the Customer in contravention of sub-clause (1) hereof shall not in any way or to any extent be binding upon MXE and the Customer shall indemnify and hold harmless MXE from and against any adverse consequence to MXE from such an admission;
  - (3) any contravention of sub-clause (1) hereof shall entitle MXE at its discretion to consider the Indemnity Cover relating to the Claim void ab initio and reject the Claim accordingly;
  - (4) subject to sub-clause (3) hereof, the liability of MXE arising from such a Claim shall not under any circumstances be greater than that calculated in accordance with these Conditions and the Customer shall indemnify and hold harmless MXE from and against any claim or action brought against it by an Owner or any other party seeking recovery of an amount or any remedy other than the amount of such liability so calculated.
- 6.6 The amount recoverable pursuant to a valid Claim shall be the lesser of:-
- (1) the Indemnified Amount; and
  - (2) the amount of loss or damage caused to the Customer by the loss or damage to the Claim Goods after deduction of the value (if any) of the Claim Goods in their condition following the damage giving rise to the Claim (the Claim Goods in that condition and their value being hereinafter referred to as "salvage" and "residual value" respectively) less the Excess Amount.
- 6.7 GST and freight charges relating to the consignment the subject of the Claim shall not be claimable by or refundable to the Customer as part of or in addition to any amount payable to the Customer pursuant to any valid Claim PROVIDED HOWEVER that such freight charges may be included for consideration in a Claim based on complete failure of delivery on the part of MXE as referred to in 6.1(3) above.
- 6.8 When moneys are payable to the Customer pursuant to a valid Claim and the Customer is indebted to MXE, MXE shall be entitled in its absolute discretion to pay the moneys directly to the Customer or to apply all or part of those moneys in or towards repayment of that indebtedness.
- 6.9 (1) Where MXE agrees to pay moneys pursuant to a valid Claim made by a Customer asserting full beneficial ownership of the Claim Goods and where the residual value of the Claim Goods has been assessed as zero, then if it sees fit MXE shall be entitled:
- (a) to elect to take ownership and possession of the salvage and to require the Customer to do such acts and things as are necessary or appropriate to transfer possession and ownership of the salvage to MXE; and
  - (b) to make acceptance of the Claim conditional upon the Customer agreeing:
    - (i) to transfer ownership and possession of the salvage to MXE; and
    - (ii) to indemnify MXE from and against any all liability to a third party (including an Owner) arising from acceptance of transfer of ownership and possession of the salvage and any consequential action by MXE in respect of the salvage.
- (2) In the event that MXE makes an election in accordance with sub-clause (1)(a) hereof, it shall give written notice to the Customer requiring the Customer to enter into a written agreement in the form supplied by MXE transferring ownership and possession of the salvage as well as giving an indemnity referred to in sub-clause (1)(b)(ii) hereof and making acceptance of the Claim conditional upon the Customer entering into that agreement.
- (3) MXE shall be entitled to postpone acceptance and settlement of the Claim pending receipt of the completed form of agreement from the Customer.
- 6.10 (1) In making a Claim the Customer agrees to thereby undertake and covenant with MXE that either the Customer or another party nominated by it in the Claim Form is absolutely and unconditionally entitled to full beneficial ownership of the Claim Goods and to the proceeds of that Claim.



- (2) Where another party is so nominated by the Customer, the Customer shall submit to MXE such evidence as MXE reasonably requires as to the ownership or other interest in the Claim Goods of that other party and either:
    - (a) the written consent of that other party to MXE accounting to the Customer for such proceeds; or
    - (b) the written direction of the Customer to MXE to account to that other party for such proceeds
  - (3) The Customer shall completely and irrevocably indemnify MXE from and against any liability to any other party arising from breach of undertakings and covenants set forth in sub-clause (1) hereof or any action taken by MXE in reliance thereon.
7. MXE will not be liable for and shall be absolutely and forever released from any Claim made in one or more of the following circumstances:-
- (1) MXE reasonably assesses the amount of loss or damage to Claim Goods as less than the Excess Amount;
  - (2) MXE exercises the discretion to consider the Indemnity Cover void pursuant to 6.5(3) above;
  - (3) the Customer has failed to submit the Claim within the relevant time limit prescribed by these Conditions;
  - (4) the Claim contains any false or misleading statements (including, but not limited to, beneficial ownership of the Claim Goods and entitlement to proceeds of the Claim);
  - (5) MXE is in possession of a copy of a consignment note or similar document evidencing receipt of the Claim Goods without any notation regarding loss of or damage to the Goods (except where such loss or damage was not reasonably apparent to the receiver at the time of receipt in which event the time limit prescribed by 6.1(1) above shall apply);
  - (6) where the Claim Goods are Dangerous Goods of any class (as defined by the Australian Code for the Transport of Dangerous Goods in force at the time of the alleged loss or damage) or are any of the following:
    - (a) furniture;
    - (b) household and personal effects;
    - (c) white goods;
    - (d) items containing glass;
    - (e) wrought or unwrought metals;
    - (f) antiques;
    - (g) works of art (including painting and sculpture);
    - (h) jewellery, gems and other precious stones;
    - (i) ceramics, pottery and items containing stone, granite or corian;
    - (j) weapons;
    - (k) drugs (legal or illegal);
    - (l) cigarettes, tobacco and tobacco products;
    - (m) living animals or plants;
    - (n) refrigerated or perishable goods and all foodstuffs;
    - (o) Australian legal tender or other currencies;
    - (p) negotiable instruments, share scrip, bonds, debentures, mortgages and other types of securities;
    - (q) any other documents valuable intrinsically or extrinsically;PROVIDED HOWEVER that the exclusion imposed by these provisions shall not apply to other Claim Goods covered by the same Claim and not described in this sub-clause (6);
  - (7) where MXE in its reasonable opinion considers the packaging or wrapping or other form of protective cover - and/or containment to be inadequate for transportation;
  - (8) where MXE reasonably determines the Claim Goods to have been damaged or defective prior to transportation;
  - (9) where damage (including mechanical failure or other operational defect) to or loss of the Claim Goods could not in the reasonable opinion of MXE have been caused by transportation;
  - (10) where MXE fails, delays or is unable to carry out its contractual obligations to the Customer in regard to the transportation due to strikes and/or lockouts (whether of MXE's own employees or agents or those of others and whether or not MXE could have avoided any such incident by agreeing to the claims or demands of those employees or agents responsible for such action), acts of God, war, terrorism, fire, flood, embargo, litigation, acts of government or any statutory or regulatory authority, or



- any cause reasonably beyond the control of MXE;
- (11) where the Claim Goods are not made available for inspection by MXE (if it gives notice to the Customer of its intention to do so) at the location of the Claim Goods shown in the Claim Form PROVIDED HOWEVER that:
    - (a) for such notice by MXE to be valid it must:-
      - (i) be given in writing to the Customer within 14 days from the date MXE receives the ClaimForm and at least 3 clear working day before the inspection date specified; and
      - (ii) specify a time and date for such inspection (on a normal working day between the hours of 9.00am and 4.00pm); and
    - (b) in the event that a notice is not given in accordance with (a) hereof the exclusion imposed by the provisions of this sub-clause (11) shall not apply;
  - (12) where the Claim Goods have allegedly been returned to MXE but have not been scanned into MXE's depot by the time of receipt of the Claim Form;
  - (13) where MXE or its authorised agent was not responsible for the complete transportation of the Claim Goods prior to the alleged loss or damage having occurred;
  - (14) where the address at which the Claim Goods were delivered is otherwise than that nominated by the Customer (such as some other address nominated by the Consignee with or without the concurrence of the Customer);
  - (15) where the Claim Goods have been consigned by way of a prepaid satchel supplied by MXE unless prior alternative arrangements have been made in writing between MXE and the Customer.
8. (1) It will be at the discretion of MXE (reasonably exercised) whether, consequential upon a Claim being rejected pursuant to Clause 7, all or any part of the Indemnity Fees are refunded to the Customer.
- (2) In exercising that discretion MXE may have regard to such criteria as it considers appropriate including, but not limited to, the time involved in processing, considering and responding to the Claim, the nature and extent of any delay, malfeasance or other impropriety committed by the Customer, and any costs or expenses incurred by MXE as a result of such conduct.
9. (1) Where any provision of these Conditions is repugnant to or inconsistent with MXE's Standard Terms and Conditions of Contract for Transport Services, then to the extent but only to the extent of such repugnancy or inconsistency the former shall prevail.
- (2) Except to the extent of such repugnancy or inconsistency, the Customer shall be bound by the provisions these Conditions as well as MXE's Standard Terms and Conditions of Contract for Transport Services in consequence of placing the *e-go* booking.