



Kennerley Transport

ACCOUNT APPLICATION

SECTION 1. THE CUSTOMER

Trading name:

Legal entity (if different):

ACN:

ABN:

Type of entity: Company Partnership Sole trader Other If Other, please specify

Postal address:

Postcode:

Delivery address:

Postcode:

SECTION 2. CONTACTS

Accounts payable contact person:

Telephone:

Email address:

Operations contact person:

Position:

Telephone:

Email address:

SECTION 3. AGREED PRICING

Agreed Pricing for the Customer:

SECTION 5. SIGNATURES OF THE CUSTOMER AND THE CARRIER

The parties agree to be bound by the Account Application Terms and Conditions set out below and the Kennerley Transport - General Terms and Conditions attached.

Customer (if a company) Customer (if an individual or partnership)

Executed by the Customer in accordance with section 127(1) of the Corporations Act 2001 (Cth):

- ☐ I have read and agree to the Kennerley Transport Terms and Conditions.
- ☐ I confirm I am authorised to enter into this agreement on behalf of the applicant.

Signature of director 1:	Name (print)
	Date:

Signature of director 2/ secretary:	Name (print)
	Date:

Carrier

Executed for and on behalf of the Carrier (being Kennerley Transport Pty Ltd ACN 661 300 321) by its authorised representative:

Signature of authorised representative:	Name (print)
	Date:

ACCOUNT APPLICATION TERMS AND CONDITIONS

1. Definitions and interpretation

- (a) Any capitalised terms used in these Account Application Terms and Conditions and/or the Account Application Form have the meaning given in the Kennerley Transport Pty Ltd General Terms and Conditions (Conditions).
- (b) The "General" provisions in clause 18 of the Conditions are incorporated into (and form part of) these Account Application Terms and Conditions.

2. Account application

2.1 Application

To open an account with the Carrier and to enable the Carrier to assess the Account Application, the Customer must complete the Account Application Form and provide it to the Carrier, along with such other documents and information as the Carrier may request (in the format required by the Carrier).

2.2 Acceptance of application

The Carrier may, in its absolute discretion, accept or reject the Account Application. To the maximum extent permitted by law, the Carrier is under no obligation to provide reasons for any such rejection.

3. Warranties

3.1 Representations and warranties

The Customer represents and warrants to the Carrier that as at the date of the Account Application and as at each day that an account is maintained for the Customer by the Carrier, the contents of the Account Application Form completed by or on behalf of the Customer (and any documents and information provided by the Customer to the Carrier), are complete, true and correct in every particular and are not misleading or deceptive in any way.

3.2 Notification by Customer

The Customer must immediately notify the Carrier in writing as soon as it becomes aware of any matter or thing which renders or may render any item in the Account Application Form (or any other information or document given by the Customer to the Carrier) incomplete, untrue, incorrect, misleading or deceptive.

4. Binding contract

On the Carrier agreeing to open an account for the Customer, the Conditions apply to the Customer and constitute a binding contract between the Customer and the Carrier.

DIRECTOR'S GUARANTEE

I/We, the undersigned directors of the Applicant, personally guarantee payment of all monies owing by the Applicant to Kennerley Transport Pty Ltd.

If the Applicant fails to pay any amount owing, I/We agree to pay that amount immediately upon demand. This guarantee is continuing and remains in force until all amounts owing have been paid in full.

Signature of director 1:	Director 1 Name: (print)
	Date:

Signature of director 2/ secretary:	Director 2 Name(print)
	Date:

KENNERLEY TRANSPORT GENERAL TERMS AND CONDITIONS

1. Definitions

In these Conditions, unless the context requires otherwise:

- (a) Account Application Form means the Kennerley Transport Pty Ltd Account Application in such form as provided by the Carrier to the Customer from time to time;
- (b) Account Application Terms and Conditions means the account application terms and conditions of the Carrier included with or attached to the Account Application Form;
- (c) ACL means the Australian Consumer Law as set out in Schedule 2 of the Competition and Consumer Act 2010 (Cth);
- (d) Administration Fee means an account administration fee of \$1.99 per week in relation to the administration of a Customer's account with the Carrier (if any);
- (e) Agreed Pricing means the prices and charges shown on the Account Application Form (or if there is none, as set out in the Proposal provided to the Customer) that the Customer will be charged by the Carrier in respect of the provision of the Services (as amended from time to time in accordance with clause 7(c)), together with the Administration Fee and such other fees as notified by the Carrier to the Customer from time to time;
- (f) Carrier means Kennerley Transport Pty Ltd ACN 661 300 321 (Further known as KENTRANS);
- (g) Conditions mean these KENTRANS General Terms and Conditions;
- (h) Contract means the agreement between the Customer and the Carrier in relation to the Services (as evidenced by the Account Application Form (if completed by the Customer and accepted by the Carrier), any Proposal, the Account Application Terms and Conditions and these Conditions);
- (i) Customer means the party that signs the Account Application Form or that otherwise requests the Carrier to provide Services;
- (j) Force Majeure Event means an event or occurrence that is beyond the reasonable control of the Carrier;
- (k) Goods means the goods, property or merchandise in relation to which the Customer engages the Carrier to provide the Services;
- (l) GST means a tax, levy, duty, charge or deduction (together with any related additional tax, interest, penalty, fine or other charge) imposed by or under the GST Act;
- (m) GST Act means A New Tax System (Goods and Services Tax) Act 1999 (Cth);
- (n) Non-Regulated Contract means a contract that is not a Regulated Contract;
- (o) Regulated Contract means a "consumer contract" within the meaning of section 23(3) of the ACL or a "small business contract" within the meaning of section 23(4) of the ACL;
- (p) Privacy Act means the Privacy Act 1988 (Cth);
- (q) Proposal means any proposal, quote or similar document provided by (or on behalf of) the Carrier to the Customer in relation to the provision of Services by (or on behalf of) the Carrier to the Customer; and
- (r) Services has the meaning given in clause 4(a).

2. Application of these Conditions

- (a) Unless otherwise agreed in writing, these Conditions apply to all Services provided by (or on behalf of) the Carrier to the Customer.
- (b) The Customer is taken to have acknowledged and accepted these Conditions by doing any one or more of the following:
 - (i) submitting an Account Application Form;
 - (ii) requesting the Carrier to provide Services; (ii) requesting the Carrier to provide Services;
 - (iii) making and/or facilitating payment to the Carrier in respect of Services; or
 - (iv) agreeing to any other document provided by the Carrier that incorporates these Conditions by reference (including by way of an online acceptance facility).
- (c) The Contract constitutes the whole agreement and understanding between the Carrier and the Customer in relation to the Services (and covers all Goods carried and Services performed by the Carrier for the Customer).

3. Not a common carrier

- (a) The Carrier is not a common carrier and accepts no liability as a common carrier. The Carrier reserves the right to accept or refuse the carriage of any Goods or the provision of any Services (whether

before or after the carriage of the Goods has commenced) at its absolute discretion and will not be required to provide any reason for the refusal.

- (b) The Customer acknowledges and agrees that the Carrier has the right to open and inspect any document, envelope, box, package or other container that contains any Goods to:

- (i) ensure that the Customer has complied with these Conditions; or
- (ii) assist in identifying the owner of the Goods where any consignment note or identifying document is lost, damaged or destroyed.

4. Services

- (a) The Carrier will provide to the Customer such courier, freight and storage services in relation to the Goods as is agreed between the Carrier and the Customer from time to time (Services).
- (b) The method of undertaking the Services will be at the sole discretion of the Carrier, and the Customer authorises the Carrier to adopt any method to provide the Services.

5. Delivery

- (a) The Customer must provide adequate and accurate instructions to the Carrier in relation to the Carrier's collection of the Goods and delivery of the Goods.
- (b) The Carrier must use reasonable endeavours to deliver the Goods in accordance with any timeframe agreed with the Customer.
- (c) If the Carrier is unable to deliver the Goods for any reason (including failure on the part of a receiver to take delivery within a reasonable time), then the Carrier will be entitled to handle and store the Goods at the Customer's cost and risk, and in such manner as the Carrier may in its discretion determine. The Customer must pay the Carrier the rates or amounts specified in the Agreed Pricing (plus any reasonable additional charges) in respect of such handling and/or storage, and for each attempted delivery, until the delivery is accomplished.
- (d) Where the Customer has provided the Carrier with an "authority to leave" authorisation in relation to any Goods, the Carrier will be taken to have delivered the Goods to the recipient if the Carrier obtains from any person present at the place of delivery confirmation of receipt of the Goods (including a signature on the delivery driver's manifest or scanner), which confirmation will be binding on the Customer.
- (e) The Carrier will not be liable in any way to the Customer in respect of any pallets, including liability for lost, stolen or damaged pallets, pallets taken into custody, pallet hire fees or pallet exchange. The Carrier will not exchange or credit pallet charges from amounts owing by the Customer, and the Customer must not transfer any of the Carrier's pallets to any account the Customer may have with the relevant pallet hirer. The Customer must comply with all reasonable instructions and directions of the Carrier in relation to the handling, storage and return of, and payment for, all pallets used in relation to the Services.

6. Representations and warranties

- (a) The Customer represents, warrants and undertakes to the Carrier that:
 - (i) the Customer has fully and adequately described the Goods, their nature, weight and measurements, and has at all times complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail, the Civil Aviation Regulations and the International Maritime Dangerous Goods Code) relating to the notification, classification, description, labelling, transport, nature, condition and packaging of the Goods; (ii) before the Goods are collected by the Carrier, the Goods are packed appropriately by the Customer for the nature of the Goods in a proper way to withstand the ordinary risks of transport, storage and handling;
 - (iii) the Customer will not tender for carriage with the Carrier any explosive, flammable or otherwise dangerous or damaging Goods without presenting a full and accurate description of the Goods to the Carrier before the Goods are collected by the Carrier; and
 - (iv) the Customer is either the owner of the Goods or the authorised agent of the person(s) that own the Goods, and the Customer enters into the Contract on its own behalf or as authorised agent of that person or persons.

(b) The Customer indemnifies the Carrier from and against all expenses, charges and losses sustained by the Carrier in complying with the requirements of any law or otherwise incurred as a result of a breach of any of the warranties in this clause 6.

(c) The Carrier will comply with all statutory obligations that apply to the provision of the Services (including occupational health and safety laws and any applicable road transport laws).

(7. Agreed Pricing, invoicing and payment

(a) The Customer must pay the Carrier for the Services at the rates or amounts specified in the Agreed Pricing. All of the Carrier's fees and charges (other than any Administration Fee) will be taken to have been earned by the Carrier as soon as the relevant Goods are loaded onto a vehicle driven by any of the employees, agents or contractors of the Carrier.

(b) If the Customer has an account with the Carrier, the Carrier may also charge the Administration Fee to the Customer for each week (or part week) during which the Customer has an account with the Carrier.

(c) The Carrier may, in its absolute discretion, increase the Agreed Pricing (including the Administration Fee) by providing the Customer with written notice of that increase (Pricing Notice). Any new Agreed Pricing will be taken to have been accepted by the Customer and will become effective 14 days (or, where the Contract is a Regulated Contract, 30 days) after the date that the Carrier delivers the Pricing Notice to the Customer, but acknowledging that the Customer may elect to terminate the Contract in accordance with clause 17.

(d) The Carrier may reweigh any Goods collected from the Customer to verify the weight and dimensions stated by the Customer at the time of booking the Services for those Goods. The Carrier reserves the right to change the originally quoted fees and charges based on the actual weights and dimensions of the relevant Goods.

(e) The Customer must pay to the Carrier all proper expenses and charges incurred by the Carrier in providing the Services (and which are outside the scope of activities contemplated by the Agreed Pricing), including rates, expenses and charges incurred by the Carrier:

- (i) in order to comply with any law or regulation; and
- (ii) in respect of any customs or excise duty, taxes or other payments.

(f) The Carrier will issue tax invoices to the Customer setting out the fees and charges payable by the Customer. The Customer must pay all tax invoices issued under this clause 7(f) within 7 days from the invoice date.

(g) If any tax invoices remain unpaid on or after the due date for payment, then without limiting the Carrier's other rights and remedies, the Carrier is entitled to charge the Customer a administration fee of \$15 per week, per invoice until the amounts have been paid in full.

(h) The Customer agrees to pay any costs and legal expenses of the Carrier arising from the collection of any overdue moneys from the Customer.

8. Insurance on goods in transit/storage

(a) The Carrier does not provide insurance for any of the Services (including in relation to any Goods in transit or in storage). It is the responsibility of the Customer to arrange any insurance it requires to cover all or any of the Goods and the provision of the Services by the Carrier in relation to those Goods.

(b) The Carrier has no responsibility to ascertain whether such insurance has been effected by the Customer.

9. Subcontracting

(a) The Carrier may arrange for one or more other persons or companies to undertake some or all of the Services and each such person or company and their officers, employees, agents and contractors (each a Third Party Carrier) will be entitled to the benefit of these Conditions to the same extent as the Carrier.

(b) For the purpose of clause 9(a), the Carrier enters into the Contract in its capacity as agent for the Third Party Carriers (as well as in the Carrier's own capacity) and, despite the fact that the Third Party Carriers are not parties to the Contract, the Carrier may enforce the obligations corresponding to the Third Party Carriers' rights and benefits as agent for, and for the benefit of, the Third Party Carriers.

10. Carrier's liability

(a) The Goods will at all times be at the sole risk of the Customer and, to the maximum extent permitted by law, the Carrier accepts no responsibility, and will not be liable in tort (including negligence), contract, statute, or as bailee, for any damage, injury (including death), delay, incorrect delivery, mis-delivery, non-delivery or loss of any nature in respect of the Goods, or arising out of or incidental to the provision of the Services, including any direct, indirect, incidental, special or consequential loss or damage, loss of profits or anticipated profits, economic loss, or loss of business opportunity, howsoever caused or arising, or whether as a result of an authorised or unauthorised act under the Contract, and whether caused by the negligence, recklessness or misconduct of the Carrier's related entities, employees, agents, contractors or otherwise.

(b) Notwithstanding any other provision in the Contract, but subject always to clause 10(a), if any liability is found to attach to the Carrier or any subcontractor, then the Carrier's liability will be limited (at the Carrier's option) to:

- (i) supplying the relevant Services again; or
- (ii) payment of the cost of supplying the relevant Services again.

(c) The Customer indemnifies the Carrier from and against all claims, liabilities, costs (including legal costs on a full indemnity basis), damage, payments, fines, expenses, duties, taxes, imposts and other outlays arising in connection with:

- (i) any person other than the Customer being found to have any interest in the Goods; or
- (ii) any breach of the Contract by the Customer.

11. Exclusion of implied warranties

Any representation, warranty, guarantee, condition or undertaking that would be implied in the Contract by legislation, common law, equity, trade, custom or usage is excluded to the maximum extent permitted by law.

12. Security and title

The Carrier will have a general lien on the Goods and any related documents (and on any other goods of the Customer in the possession of the Carrier and any related documents) for all sums payable by the Customer to the Carrier, whether under the Contract or otherwise. For this purpose, and without limiting the Carrier's other rights and remedies, the Carrier has the right to sell any such goods by public auction or private treaty without notice to the Customer if those sums are not paid to the Carrier by the due date.

13. Personal data privacy

(a) For the purposes of the account application and administering the Contract, the Customer consents to the Carrier collecting, using and disclosing personal information of or relating to the Customer in accordance with the Contract and the Privacy Act.

(b) The Customer agrees to the Carrier obtaining a credit report relating to the Customer to assist the Carrier in deciding whether to allow the Customer to open an account with the Carrier and to assist the Carrier collecting any overdue payments from the Customer in respect of any account it has with the Carrier.

(c) The Customer acknowledges and agrees that the Customer's personal credit information may be used and retained by the Carrier for any one or more of the following purposes (and any other purposes agreed between the Customer and the Carrier from time to time or otherwise required or permitted by law):

- (i) the supply of Services by the Carrier;
 - (ii) the marketing of Services by the Carrier;
 - (iii) analysing, verifying and/or checking the Customer's credit worthiness, payments and/or status in relation to the supply of and payment for the Services;
 - (iv) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and
 - (v) enabling the daily operation of the Customer's account with the Carrier and/or the collection of amounts outstanding in that account.
- (d) The Carrier may give information about the Customer to a credit reporting agency to obtain a credit report about the Customer and to allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

(e) The information given to a credit reporting agency may include:

- (i) personal particulars (including the Customer's name, sex, address, previous address, date of birth, name of employer and driver's licence number);
- (ii) details in or relating to any Account Application Form submitted by the Customer;
- (iii) details concerning any overdue account or other outstanding moneys owing which are overdue by more than 30 days; and
- (iv) advice that the Customer's overdue account or any other outstanding moneys are no longer overdue in respect of any default that has been reported.

14. Force Majeure

If any failure or delay by the Carrier in the performance of its obligations under the Contract is caused, directly or indirectly, by a Force Majeure Event, then the Carrier is not liable for that failure or delay and the Carrier's obligations under the Contract are suspended, to the extent to which they are affected by the relevant Force Majeure Event, for the duration of the Force Majeure Event.

15. Restraint

(a) During the Restraint Period, the Customer must not, in any capacity including on its own account or as a member, shareholder, unitholder, director, partner, joint venturer, employee, trustee, beneficiary, principal, agent, adviser, contractor, consultant, manager, associate, representative, financier or in any other way or by any other means solicit, canvas, encourage or induce (or try to do so) any person who is a director, employee, agent, associate, contractor or adviser of the Carrier to:

(i) leave the office, employment or agency of, or association with the Carrier; or

(ii) carry out any work or perform any Services for the Customer independently of the Carrier.

(b) In this clause 15, Restraint Period means the following periods separately:

(i) for the duration of the Contract plus 1 year;

(ii) for the duration of the Contract plus 6 months;

(iii) for the duration of the Contract plus 3 months; and

(iv) for the duration of the Contract.

c) Each covenant in clause 15(a) and each paragraph of the Restraint Period definition in clause 15(b) is a separate and independent covenant of the Customer. They can be combined and each combination is a separate covenant and restriction, although they are cumulative in effect.

d) If the Customer breaches any of the covenants in this clause 15, then the Customer must pay the Carrier the higher of the sum of \$10,000 and the amount equal to the Carrier's loss suffered as a result of that breach. The Customer acknowledges and agrees that the \$10,000 figure in this clause 15(d) is a reasonable pre-estimate of the training, recruitment and other costs that the Carrier will suffer as a result of a breach of this clause 15 by the Customer.

16. GST

16.1 Definitions

In this clause 16:

(a) the expressions Recipient, Supply, Tax Invoice and Taxable Supply have the meanings given to those expressions in the GST Act; and

(b) Supplier means any party treated by the GST Act as making a Supply under or in connection with the Contract.

16.2 Consideration is GST exclusive

Unless otherwise expressly stated, all prices (including the Agreed Pricing), charges, fees or other sums payable under or in connection with the Contract are exclusive of GST.

16.3 Payment of GST

(a) If GST is imposed on any Supply made under or in connection with the Contract, the Recipient of the Taxable Supply must pay to the Supplier an additional amount equal to the GST payable on or for the Taxable Supply, subject to the Recipient receiving a valid Tax Invoice in respect of the Supply.

(b) Payment of the additional amount must be made at the same time and in the same way as payment for the Taxable Supply is required to be made in accordance with the Contract.

17. Termination and cancellation of account

(a) Either the Customer or the Carrier may terminate the Contract by giving written notice to the other (Termination Notice), in which case the Contract will terminate on the date that is 30 days after the Termination Notice is given.

(b) A Termination Notice given by the Customer under this clause 17 is effective only if all amounts due and payable to the Carrier at that time have been fully paid.

(c) On termination of the Contract, any account held by the Customer with the Carrier will be automatically cancelled.

(d) If any account held by the Customer is cancelled as a result of termination of the Contract under this clause 17 or otherwise, then no Administration Fee will be payable to the Carrier from the calendar month following that account cancellation.

18. General

(a) Headings are used for convenience only and do not affect the interpretation of the Contract.

(b) Any notice to be given by the Carrier to the Customer under the Contract may be given personally, by post, by fax or by email.

(c) Words importing natural persons include partnerships, bodies corporate, associations, governments, and governmental and local authorities and agencies.

(d) A reference to either the Carrier or the Customer includes their respective executors, administrators, successors and permitted assigns.

(e) Wherever "include" or any form of that word is used, it must be construed as if it were followed by "(without being limited to)".

(f) If any provision of the Contract is or becomes invalid, void, illegal or unenforceable, then the validity, existence, legality and enforceability of the remaining provisions will not be affected.

(g) References to any legislation includes:

(i) any regulation, rule, by-law, ordinance, proclamation or judgment made under that legislation; and

(ii) that legislation as amended, consolidated, supplemented, re enacted or replaced.

(h) A failure or delay by the Carrier in exercising any right conferred on the Carrier under the Contract does not operate as a waiver of the right.

(i) The Customer must not transfer, assign, create an interest in or deal in any other way with any of its rights under the Contract without the prior written consent of the Carrier.

(j) An obligation, covenant, warranty or representation given or entered into by more than one person binds them jointly and severally.

(k) The Contract is governed by and must be construed in accordance with the laws in force in Victoria. The Customer submits to the exclusive jurisdiction of the courts of that State and the Commonwealth of Australia in respect of all matters arising out of or relating to the Contract.