



Instatruck Driver Terms of Use

These Instatruck Driver Terms of Use (the **Agreement**) are a legally binding contract between you (**you** or the **Driver**) and Furry Dice Pty Ltd (ABN 20 606 806 517), registered at Unit 6,663 Newcastle Street Leederville, WA 6007 (**Instatruck**).

Instatruck helps to match Senders and Drivers for the transport of goods by providing a platform on which Senders can post details of job requests and independent Drivers can accept and complete those jobs. Instatruck only provides to Driver the Services as set out in this Agreement, and does not provide Transportation Services.

Please read the terms and conditions of this Agreement carefully. Certain features of the Services may be subject to additional guidelines, policies, terms or rules, which will be provided to you in conjunction with this Agreement. All such additional guidelines, policies, terms and rules are incorporated by reference into this Agreement.

In order to use the Services, you must agree to the terms of this Agreement. Upon your execution (electronic or otherwise) of this Agreement, you agree to be bound by the terms of this Agreement. If you do not agree with any of the terms and conditions of this Agreement, you must not use the App or the Services. We recommend that you print and keep a copy of this Agreement for future reference.

If you are entering into this Agreement on behalf of an entity or organisation, you represent and warrant that you have the full authority as at the time of entering into this Agreement to bind that entity or organisation to the terms of this Agreement. You will provide evidence of such authority on request by Instatruck.

You agree as follows.

1 Services

- (a) Instatruck provides the following services:
- (i) it makes available the App to Driver;
 - (ii) it facilitates the matching of entities (**Senders**) that need to transport goods (**Goods**) with Drivers who are available to transport Goods;
 - (iii) it may provide lead generation services to Drivers in the form of Job Requests made by Senders; and
 - (iv) it acts as a collection agent on behalf of Driver for the amount charged to Sender for the transport of Goods,
- (collectively, the **Services**).
- (b) Driver acknowledges and agrees that Instatruck is a technology services provider and does not provide Transportation Services.

2 Accounts and driver eligibility requirements

2.1 Driver Accounts

- (a) To access and use the Services, Driver must have a registered driver account (**Driver Account**).

- (b) Instatruck has sole discretion as to whether to provide Driver with a Driver Account. Without limiting the foregoing, Instatruck will only activate a Driver Account if:
- (i) one Driver is registered to the Driver Account;
 - (ii) Driver satisfies the Driver Eligibility Requirements; and
 - (iii) one or more Trucks have been registered to the Driver Account (each of which satisfies the Truck Eligibility Requirements).
- (c) A Driver Account is personal to Driver and can only be accessed and used by the individual registered to that account.
- (d) Once a Driver Account has been activated by Instatruck, Driver will also be provided with Access Credentials. Driver must keep their Access Credentials secure and confidential. Personnel are not permitted to use the Driver Account. Driver must not use another person's Access Credentials.
- (e) All activity, including activity in breach of the provisions of this Agreement, undertaken using Driver's Access Credentials will be deemed to be the activity of Driver.
- (f) Driver must notify Instatruck immediately if it becomes aware of any unauthorised use, or suspected unauthorised use, of the Driver Account.
- (g) Instatruck may suspend or deactivate a Driver Account in the following circumstances:
- (i) Driver accepts a Job Request and fails to proceed directly to the Job's pickup location;
 - (ii) Driver selects routes to attend to the pickup and drop-off locations that are considered unreasonable in the circumstances, having regard to traffic conditions;
 - (iii) Driver accepts a Job and proceeds to a Job with a Truck which is partially or fully laden with goods unrelated to the Job;
 - (iv) Driver accepts a Job and picks up loads unrelated to the Job during the course of the Job;
 - (v) Driver fails to proceed to the drop-off locations in the order specified by the Sender;
 - (vi) Driver's licence, truck registration or insurance expires, is revoked or suspended;
 - (vii) Driver no longer complies with Driver Eligibility Requirements or a Truck registered to their Driver Account no longer meets the Truck Eligibility Requirements;
 - (viii) Driver fails to inform Instatruck of any circumstances that may affect Driver's ability to comply with the Driver Eligibility Requirements or the Truck Eligibility Requirements, or that may require an amendment to any of the information required to be provided to Instatruck in order



for it to assess compliance with the Driver Eligibility Requirements or the Truck Eligibility Requirements;

- (ix) Driver receives negative ratings or reviews from a Sender which, upon investigation by Instatruck, demonstrate that Driver is or has been in breach of the Driver Eligibility Requirements, the Truck Eligibility Requirements or the terms of this Agreement;
- (x) Driver uses the Services to be matched to a Sender and then provides or attempts to provide Transportation Services independently of the App and/or Services, in order to circumvent the App or for any other reason;
- (xi) Driver fails to comply with the requirements set out in clauses 4.4(b) and 4.4(c) in relation to unattended Delivery Sites;
- (xii) Driver fails to comply with the requirements set out in clause 4.5 in relation to damage and injury claims; or
- (xiii) Instatruck or Sender receives negative feedback in relation to Driver from any member of the public, which, upon investigation by Instatruck, demonstrates that Driver is or has been in breach of the Driver Eligibility Requirements, the Truck Eligibility Requirements or the terms of this Agreement.

2.2 Driver Eligibility Requirements

- (a) Without limiting clause 2.1(b), in order for Driver to register for and retain a Driver Account, Driver must meet the Driver Eligibility Requirements. Instatruck has sole and absolute discretion to determine whether a Driver meets the Driver Eligibility Requirements.
- (b) The Driver Eligibility Requirements remain ongoing for the duration of Driver being registered to a Driver Account. Driver represents and warrants that:
 - (i) Driver meets the Driver Eligibility Requirements at the time of registration for a Driver Account, at the time of each login to the Driver Account and for the whole duration that Driver uses the Services; and
 - (ii) Driver will provide Instatruck with any updated information as and when it occurs that may impact Driver's ability to meet the Driver Eligibility Requirements, including informing Instatruck immediately upon becoming aware of any actual or potential changes:
 - (1) to Driver's health that may or does affect their ability to operate a vehicle;
 - (2) to the status (including loss of licence) or type of licence that Driver holds;
 - (3) to Driver's criminal record; or

- (4) to Driver's ability to operate a vehicle in accordance with any applicable Law.

- (iii) Driver will provide an updated medical certificate to Instatruck in accordance with applicable Law as and when required by Instatruck.

3 Truck Eligibility Requirements

- (a) Without limiting clause 2.1(b), Driver can only register a Truck to a Driver Account if the Truck meets the Truck Eligibility Requirements. Instatruck has sole and absolute discretion to determine whether a Truck meets the Truck Eligibility Requirements and whether it will allow a Truck to be registered to a Driver Account.
- (b) Driver must not select a Truck registered to their Driver Account if the Truck that they select for the purposes of utilising the Services does not meet the Truck Eligibility Requirements at that time.
- (c) Driver represents and warrants that at the time of registration and while remaining registered, including each time a Driver selects a Truck for the purpose of utilising the Services, that:
 - (i) each Truck registered to the Driver Account continues to meet the Truck Eligibility Requirements;
 - (ii) Driver is the owner or lessee, or is otherwise in lawful possession, of the Truck and has all necessary rights and Consents (as applicable) to provide Transportation Services; and
 - (iii) Driver will provide any information, as and when it occurs, including updated Service Records, updated changes to insurance or renewal of insurance details that may affect compliance with the Truck Eligibility Requirements.

4 Using the App, accepting Job Requests and undertaking and completing Jobs

4.1 Driver Status

- (a) Each time Driver sets the Driver Status to Online, Driver must select the Truck which Driver intends to use at that time.
- (b) Driver must not set the Driver Status to Online unless:
 - (i) Driver has completed the Instatruck Onboarding Process and provided all necessary documentation to Instatruck;
 - (ii) Without limiting clause 4.2(d), Driver is ready and willing to accept within the Permitted Timeframe any job that the nominated Truck is capable of carrying;
 - (iii) Driver is capable of proceeding directly to a job once matched to a Job Request;
 - (iv) The Truck selected by Driver is able to carry a full truck load if required;



- (v) The Truck selected by Driver has sufficient petrol to commence and complete a delivery located at least 75km away from the location at which Driver accepts a Job Request, without the need to stop and refill;
- (vi) Driver is compliant with any applicable Laws in relation to fatigue management; and
- (vii) Driver meets and continues to meet the Driver Eligibility Requirements and the Truck Eligibility Requirements for the duration of a Job.

- (c) In the event that Driver no longer satisfies the requirements in clause 4.1(b), Driver must set the Driver Status to Offline or log out of the App.
- (d) If Driver has set the Driver Status to Online, Driver must only use the Device in compliance with all applicable Laws (including in relation to the use of the Device while driving).

4.2 Job requests

- (a) If Driver is matched to a Sender, Driver will receive a Job Request setting out the approximate pick-up location of the Goods and the type of Goods.
- (b) Driver must accept or decline a Job Request within the Permitted Timeframe. If Driver does not respond to the Job Request within the Permitted Timeframe, it will be deemed to have declined the Job Request. Driver must not accept a Job Request if by doing so Driver will or is likely to breach any applicable Laws in relation to fatigue management.
- (c) Driver acknowledges and agrees that a Sender may cancel a Job Request at any time prior to it being accepted by Driver.
- (d) Driver is under no obligation to accept any Job Requests, and Instatruck is under no obligation to provide any minimum number of Job Requests to Driver.
- (e) Whilst Instatruck will attempt to only match Job Requests with Trucks that match the weight and dimensions of the Goods specified by Sender in the Job Request, Driver must only accept a Job Request if Driver reasonably believes its Truck is capable of carrying and restraining the types of Goods described in accordance with applicable Laws.
- (f) Once accepted by Driver, a Job Request will become a **Job** and further information as to the pick-up location, Delivery Site(s), special requests by the Sender (such as the order of Delivery Sites) and any other relevant information will be provided to Driver by Instatruck.
- (g) Driver acknowledges and agrees that Driver will enter into a separate agreement, which may or may not be in the form of a consignment note with Sender (or, if Sender is not the consignor, the consignor) for the carriage of the Goods once they have been matched using the Services.
- (h) Driver agrees and acknowledges that any agreement or consignment note entered into with Sender (or, if Sender is not the consignor, the consignor) pursuant to clause 4.2(g) will not be

inconsistent with the terms of this Agreement. Without limiting the foregoing, any conditions of carriage between Sender and Driver must not be inconsistent with Driver's obligations under clause 4.5 of this Agreement.

4.3 Undertaking a Job

- (a) Driver must proceed immediately to the pick-up location for the Job. If the Sender cancels a Job between the time Driver accepts a Job Request and the time Driver arrives at the pick-up location to undertake a Job, Sender will be charged a Cancellation Fee.
- (b) Undertaking a Job will typically include, but is not limited to:
 - (i) Instatruck providing notification, if necessary, to the Sender of arrival of the Truck at the pick-up location;
 - (ii) the provision of Transportation Services in accordance with the specified requirements of Sender and in a safe, direct and uninterrupted manner;
 - (iii) timely submission of all documentation required by Instatruck and the Sender (including Proof of Delivery); and
 - (iv) Instatruck providing notification, if necessary, to the Sender of delivery of the Goods at each delivery location.
- (c) Driver is not responsible for loading or unloading the Goods, unless they have the requisite equipment required for doing so and can do so in a safe and responsible manner which is compliant with all applicable Laws (including Laws in relation to occupational health and safety). Driver is responsible for ensuring the load is secure and that the load has adequate load restraint in accordance with applicable Laws.
- (d) Notwithstanding this clause 4.3, Driver will be solely responsible for the provision of Transportation Services. Driver agrees to provide the Transportation Services in relation to a Job and any failure by Driver to provide such Transportation Services will constitute a material breach of this Agreement.
- (e) Driver is solely responsible for all costs and expenses in relation to undertaking Jobs, including costs of fuel, applicable fees and Taxes, wages, any costs associated with use of the Device, licensing, insurance coverage, tolls and fines incurred in the course of providing Transportation Services.
- (f) Driver must not cause or permit any Goods to be transported by any other person, or any other mode of transport, than the Driver and Truck which have been matched for the Job.
- (g) If the dimension of the Goods and the payload weight of the Goods at the pickup location do not match the Goods described in the Job, and as a consequence the Goods exceed the permitted carrying capacity of the Truck, or Driver reasonably considers that the Goods are illegal or dangerous goods, a Driver is entitled to reject the Job and the Sender will be charged a Cancellation Fee. Driver



must promptly inform Instatruck of any incorrect description of Goods resulting in a need to cancel the Job in accordance with this clause 4.3(g).

- (h) If the Sender wants to add additional Goods or add an additional drop-off location (**Job Change**), Driver may choose to accept the Job Change following consultation and agreement with Instatruck. Driver must not accept the Job Change if it would result in Driver breaching any provisions of this Agreement.
- (i) Driver must contact Instatruck directly to discuss any proposed Job Changes by using the "Contact Instatruck" button on their App.
- (j) If Driver does not accept the Job Change, and Sender does not wish to continue with the Job, a Driver is entitled to reject the Job and the Sender will be charged a Cancellation Fee. Driver must promptly inform Instatruck of any rejected Job Change resulting in a need to cancel the Job in accordance with this clause 4.3(j).
- (k) The Truck used by Driver will be tracked using the global positioning system on the Device from the time a Job Request is accepted until Driver has submitted the final Proof of Delivery in accordance with clause 4.4(a). Driver agrees and acknowledges that Instatruck may ask for permission to access certain hardware or software features of the Device (such as location services). Instatruck will only access these features with the consent of Driver, and only for the purpose of enabling the particular functions of the App. If Driver does not consent, Driver may not be able to use or receive the benefit of some or all of the functionality of the App or the Services. Driver acknowledges and agrees that information collected about their location may be disclosed to third parties including the Sender for the relevant Job.
- (l) To the extent permitted by applicable Laws, traffic conditions, and loading and unloading times, Driver must not take any unnecessary breaks, or make any unauthorised stops, from the time Driver accepts a Job Request until Driver has submitted Proof of Delivery.
- (m) If Driver is required by Law to stop or take a break during the performance of a Job, Driver must alert Instatruck using the "Contact Instatruck" button on the App:
 - (i) at the commencement of the break; and
 - (ii) at the end of the break,to ensure that a Sender does not get charged any fees which are not attributable to the Job.
- (n) **Driver will be solely responsible for any and all liability which results from the provision of the Transportation Services, including any Loss, damage, injury or delay.**

4.4 Completed Jobs

- (a) A Job will be completed at the final delivery point, once the Goods have been unloaded in accordance with clause 4.3(c). Driver must ensure that the receiver of the Goods (the **Receiver**) provides Proof of Delivery in order to finalise payment.

- (b) If a Delivery Site is unattended, and only if the Sender or the Receiver has provided permission for the Goods to be delivered when the Delivery Site is unattended, Driver must deliver the goods, photograph the Goods, and alert Instatruck via the "Contact Instatruck" button on the App as the Proof of Delivery to complete the Job.
- (c) If a Delivery Site is unattended, and the Sender or Receiver has not provided permission for the Goods to be delivered to the Delivery Site when unattended, Driver must make reasonable efforts to contact the Sender and/or the Receiver in order to deliver the Goods. In the event that the Goods cannot be delivered or returned to the Sender, Driver must deliver the Goods the following Business Day unless otherwise agreed between Driver and the Sender. Driver must use the "Contact Instatruck" button to alert Instatruck to this course of action.
- (d) Once Driver has delivered the Goods and has obtained Proof of Delivery, Instatruck will calculate the cost of the Job (the **Job Calculation**) using an algorithm which will take into account:
 - (i) the type of Truck used during the course of the Job;
 - (ii) the time taken by Driver to complete the Job from acceptance of the Job Request to the issuance to Driver of Proof of Delivery;
 - (iii) the distance travelled by Driver to complete the Job;
 - (iv) all tolls properly incurred in the course of completing the Job; and
 - (v) the GST (if any) payable by Driver in respect of the Job.
- (e) The algorithm for the Job Calculation may also include the weight of the Goods and any other parameters considered relevant by Instatruck.
- (f) For the avoidance of doubt, the algorithm used for the Job Calculation may change from time to time, and Instatruck has the ability to change the final Job Calculation if there are any circumstances which require it to do so, including:
 - (i) an investigation of the route selection, which demonstrates that the route selection by Driver was unreasonable in the circumstances;
 - (ii) an investigation into the loading and unloading times;
 - (iii) subject to clause 4.3(m), if it is demonstrated that Driver did not spend the entire period from the time Driver accepts a Job Request until Driver has submitted Proof of Delivery carrying out the Job for Sender;
 - (iv) if there has been mechanical failure prior to the completion of the Job; or
 - (v) any other set of circumstances where it is reasonable to do so based on actions which are within the control of Driver.
- (g) On behalf of Driver, Instatruck will issue the Sender by email with a tax invoice setting out the Job



Calculation plus the Service Fee and any applicable Cancellation Fees plus the Service Fee, with details about Driver and the Job (the **Invoice**). Senders will be automatically charged the amount in the Invoice when the final Proof of Delivery has been submitted to Instatruck.

- (h) Sender will have an opportunity to dispute the Invoice. If the Invoice is not disputed within the Permitted Dispute Period, the Job will become a Completed Job.

4.5 Damage and injury claims

- (a) Driver will notify Instatruck of any damage to Goods or other property or injury caused or incurred in the course of providing Transportation Services as soon as practicable after the damage or injury occurs.
- (b) **Without limiting clause 4.3(n), Driver agrees and acknowledges that Driver will be responsible for any damage to Goods or other property or injury caused or incurred in the course of providing Transportation Services and will need to resolve any Claim directly with Sender or a third party (including any dispute over insurance coverage).**
- (c) Driver agrees to fully co-operate with the Sender and/or Instatruck to resolve damage or injury claims as quickly as possible.

5 Ratings

- (a) Driver may be given a rating by the Sender for each Completed Job (**Driver Ratings**).
- (b) Driver will be requested to provide a rating for the Sender for each Job (**Sender Ratings**).
- (c) Driver Ratings and Sender Ratings will be used by Instatruck to monitor and improve the standard of the Services.
- (d) Where Driver is dissatisfied with the Driver Rating provided by a particular Sender for a particular Job, Driver may contact Instatruck and the parties will engage in good faith discussions in order to resolve the issue. This clause 5(d) is not subject to the dispute resolution procedure set out in clause 26. Instatruck is under no obligation to amend or remove Driver Ratings following such discussions and will not do so where such amendment is contrary to Law, including the Australian Consumer Law.
- (e) If Driver consistently receives Driver Ratings considered unacceptable by Instatruck, Instatruck may, at its sole and absolute discretion, deactivate a Driver Account and/or terminate this Agreement without notice or liability to Driver.

6 Carriers

- (a) This clause 6 only applies to Carriers, but nothing in this clause 6 is intended to exclude the operation of any other clause of this Agreement.
- (b) In the event of a conflict, inconsistency or ambiguity between this clause 6 and any other provision of this Agreement, this clause 6 will prevail.

- (c) Carrier must procure that all Carrier Personnel who are intending to access the App or Services enter into and comply with this Agreement.
- (d) Carrier will be solely responsible for all Carrier Personnel who provide Transportation Services, including responsibility for wages, benefits, taxes and expenses, insurance and any other obligations under applicable Laws.
- (e) Carrier must ensure that all Carrier Personnel who have entered into this Agreement as Drivers comply, and continue to comply during the Term, with the Driver Eligibility Requirements.
- (f) Carrier must ensure that all Trucks that are registered to their Carrier Personnel comply, and continue to comply during the Term, with the Truck Eligibility Requirements.
- (g) Without limiting clause 6(c), Carrier must procure that all Carrier Personnel comply with clause 8.
- (h) Carrier must comply with all applicable Laws, including any Laws in relation to the use of heavy vehicles or in relation to the use of mobile phones while driving, fatigue management, speeding, restraint of goods, medical fitness, occupational health and safety and any other Laws that may impact upon a Driver's ability to comply with this Agreement.
- (i) Carrier must obtain and maintain all Consents necessary to enable it to perform its obligations under this Agreement without infringing any Law or the rights of any person.
- (j) Carrier shall defend, hold harmless and indemnify Instatruck and its Related Bodies Corporate and Personnel (the **Instatruck Indemnified Parties**) from and against any Loss suffered or incurred by the Instatruck Indemnified Parties arising out of or in connection with:
 - (i) any breach of this Agreement or any applicable Laws by Carrier or Carrier Personnel;
 - (ii) the death or injury of any person arising out of or otherwise in connection with any negligence or wrongful act or omission of Carrier or Carrier Personnel;
 - (iii) any fraud (including fraudulent misrepresentation), criminal activity, negligence or wilful misconduct of Carrier or Carrier Personnel;
 - (iv) any failure by Carrier to comply with clause 6(d);
 - (v) any Claim by any person (including Carrier) in connection with any Feedback, User Content or data used or disclosed by Instatruck in connection with this Agreement;
 - (vi) any Claim by any person (including Carrier) that is connected with use by Carrier Personnel of the Services;
 - (vii) any Claim by any person that is connected with the provision by Carrier or Carrier Personnel of Transportation Services; or



- (viii) any loss or damage to property arising out of or otherwise in connection with any wrongful act or omission of Carrier or Carrier Personnel.
- (k) Carrier must not transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, without Instatruck's prior written consent.
- (l) Instatruck's consent under clause 6(k) will not relieve Carrier of its obligations to Instatruck under this Agreement, and Carrier will be fully responsible to Instatruck for the acts or omissions of its sub-contractors, contractors, assigns and all their employees, as if it were the acts and omissions of Carrier.

7 Financial terms

7.1 Payment

- (a) The parties agree and acknowledge that Senders will be charged for Completed Jobs in accordance with the Job Calculation, and that Senders will be charged Cancellation Fees in accordance with clauses 4.3(a), 4.3(g) and 4.3(j).
- (b) Instatruck collects payment from Senders for Completed Jobs and Cancellation Fees as a collection agent for Driver.
- (c) In consideration of Instatruck's provision of the App and the Services under this Agreement, and Instatruck acting as the collection agent for Driver as per clause 7.1(b), Driver agrees to pay Instatruck the Onboarding Fee.
- (d) Instatruck shall electronically remit to Driver on at least a fortnightly basis any amounts collected on behalf of Driver under clause 7.1(b), less any amounts payable to Instatruck under clause 7.2.

7.2 GST

- (a) If GST is payable on a supply made under or in connection with this Agreement, the party providing the consideration for that supply must pay as additional consideration an amount equal to the amount of GST payable on that supply.
- (b) Unless otherwise stated, all amounts referred to in this Agreement are stated on a GST exclusive basis.
- (c) Any reference in this Agreement to value, sales, revenue or a similar amount is a reference to that amount exclusive of GST.
- (d) Where any indemnity, reimbursement or similar payment under this Agreement is based on any cost, expense or other liability, it shall be reduced by any input tax credit entitlement, or notional input tax credit entitlement, in relation to the relevant cost, expense or other liability.
- (e) If an adjustment event occurs in relation to a supply made under or in connection with this Agreement, the GST payable on that supply will be recalculated to reflect that adjustment and an appropriate payment will be made between the parties.

- (f) If required to provide an invoice, a party shall provide proper tax invoices if GST is applicable.
- (g) This clause will not merge upon completion and will continue to apply after expiration or termination of this Agreement.
- (h) Terms which have a defined meaning in the *A New Tax System (Goods and Services Tax) Act 1999* shall have that meaning in this Agreement.

8 Use of App and Services

- (a) **(licence restrictions)** Driver must:
 - (i) not copy the App except where such copying is incidental to normal use of the App;
 - (ii) not rent, lease, sub-license, loan, translate, merge, adapt, vary or modify the App;
 - (iii) not make alterations to, or modifications of, the whole or any part of the App, or permit the App or any part of it to be combined with, or become incorporated in, any other programs;
 - (iv) not disassemble, decompile, reverse-engineer or create derivative works based on the whole or any part of the App or attempt to do any such thing;
 - (v) not provide or otherwise make available the App in whole or in part (including object and source code), in any form to any person without the prior written consent of Instatruck; and
 - (vi) comply with all technology control or export laws and regulations that apply to the technology used or supported by the App.
- (b) **(acceptable use restrictions)** Driver must:
 - (i) not use the App or Services in any unlawful manner, for any unlawful purpose, or in any manner inconsistent with this Agreement, or act fraudulently or maliciously, for example, by hacking into or inserting malicious code, including viruses, or harmful data, into the App or any operating system;
 - (ii) not infringe Instatruck's Intellectual Property Rights or those of any third party in relation to Driver's use of the App or Services;
 - (iii) not transmit or submit using the App or Services any material or User Content that is defamatory, offensive or otherwise objectionable;
 - (iv) not use the App or Services in a way that could damage, disable, overburden, impair or compromise Instatruck's systems or security or interfere with other users; and
 - (v) not collect or harvest any information or data, or attempt to decipher any transmissions to or from the servers used by Instatruck.
- (c) Instatruck may, at any time and in Instatruck's sole discretion, prohibit, suspend or otherwise restrict Driver from accessing the App or the Services for any reason whatsoever.



9 Audit

- (a) During the Term and for 12 months after the end of the Term, Instatruck will have the right to, or engage an independent third party auditor to, conduct an audit (including spot checks) of Driver to verify that Driver is complying with the terms of this Agreement (including the review of any licences, permits or other information required to fulfil the Driver Eligibility Requirements, Truck Eligibility Requirements or any applicable Law).
- (b) Each audit must be conducted during normal business hours and in a manner designed to not unreasonably interfere with Driver's ordinary business.
- (c) Instatruck will bear its own costs associated with any audit conducted under this clause 9.

10 Intellectual Property Rights

10.1 App and Services

- (a) (**ownership**) The parties acknowledge that all rights, title and interest in the App and Services, including in any improvements to the App and Services (including any Intellectual Property Rights in the App and Services, and any improvements to them) remain with Instatruck and/or its licensors at all times and nothing in this Agreement is intended to transfer such right, title or interest to Driver.
- (b) (**licence**) Subject to clause 10.1(c) and Driver's compliance with the terms of this Agreement, Instatruck grants to Driver a non-transferable and non-exclusive licence to install, view, use and display the App on the Device during the Term for personal and business purposes (to the extent that the business purpose is solely and directly related to the provision by Driver of Transportation Services to Sender) only.
- (c) The licence granted under clause 10.1(b) does not include a right to sub-license or otherwise provide the App or Services to any third party.
- (d) Driver acknowledges and agrees that the availability of the App is dependent on the third party from which Driver obtains the App (the **App Store**). Each App Store may have its own terms and conditions which Driver agrees to comply with, and the licence granted under clause 10.1(b) is conditional on Driver's compliance with any such terms and conditions.

10.2 Feedback

- (a) Driver agrees and acknowledges that any feedback, suggestions, bug reports, system errors and other information or ideas in relation to the App or the Services (**Feedback**) may be used by Instatruck in any manner it deems appropriate (and will not be regarded as being confidential or proprietary information).
- (b) Driver will ensure that any existing or future Intellectual Property Rights in any Feedback vest in Instatruck absolutely. Driver agrees to assign, and procure the assignment of, such Intellectual Property Rights in any Feedback to Instatruck immediately on their creation.

10.3 User Content

- (a) Driver agrees and acknowledges that it is solely responsible for any User Content. To the extent permitted by Law, including the Australian Consumer Law, Instatruck will not be responsible for any User Content and provides no guarantees regarding the accuracy, currency, suitability or quality of any User Content.
- (b) Driver grants Instatruck a perpetual, worldwide, transferable, non-exclusive right to access, use, adapt, modify, reproduce, reformat, transform, process, commercialise and exploit, and create Derivative Materials from, User Content to the extent necessary to undertake such activities.
- (c) Instatruck may disclose User Content to third party service providers, if Instatruck merges with or is acquired by a third party, or to comply with applicable Laws. Instatruck may also use User Content to investigate or prevent any breach or potential breach of any applicable Law or this Agreement.

10.4 Data and Derivative Materials

- (a) Driver grants Instatruck a perpetual, worldwide, transferable, non-exclusive right to access, use, adapt, modify, reproduce, reformat, transform, process, commercialise and exploit, and create Derivative Materials from, the Data to the extent necessary to undertake such activities.
- (b) Driver agrees and acknowledges that Instatruck intends to use and/or aggregate the Data in conjunction with other information collected or obtained by Instatruck, and Driver agrees that Instatruck is permitted to make full use of, commercialise and exploit the Data for those purposes.
- (c) Driver will ensure that any existing or future Intellectual Property Rights in any Derivative Materials immediately vest in Instatruck absolutely. Driver agrees to assign, and procure the assignment of, such Intellectual Property Rights in any Derivative Materials to Instatruck immediately on their creation.
- (d) Without limiting the foregoing, Driver agrees and acknowledges that Instatruck may disclose Data and Derivative Materials to any third party in its sole discretion.

11 Third party content

The App and/or Services may contain links to third party websites, services or advertisements for third parties (**Third Party Content**). Those links are provided for convenience and may not remain current or be maintained. Unless expressly stated otherwise, Instatruck does not endorse and is not responsible for any Third Party Content and has no control over or rights in Third Party Content.

12 Confidentiality

12.1 Confidentiality

Subject to clause 12.2, a party must not disclose, or use for a purpose other than as contemplated by this Agreement, the



existence of and terms of this Agreement or any other Confidential Information.

12.2 Permitted disclosure

A party may disclose any Confidential Information:

- (a) to the other party to this Agreement;
- (b) under corresponding obligations of confidence as imposed by this clause, to persons which control or are controlled by the party within the meaning of the Corporations Act 2001 (Cth), and the employees, legal advisors or consultants of such persons;
- (c) which is at the time lawfully in the possession of the proposed recipient of the Confidential Information through sources other than the other party, or a Related Body Corporate of the other party, to this Agreement;
- (d) in enforcing this Agreement or in a proceeding arising out of or in connection with this Agreement;
- (e) if required under a binding order of a Governmental Agency or under a procedure for discovery in any proceedings;
- (f) if required under any Law or any administrative guideline, directive, request or policy whether or not having the force of law;
- (g) as required or permitted by this Agreement;
- (h) to its legal advisers, its insurers and its consultants; or
- (i) with the prior written consent of the other party to this Agreement.

12.3 Publicity

- (a) Driver agrees that, notwithstanding this clause 12, Instatruck may:
 - (i) disclose to third parties the fact that Driver has entered into this Agreement with Instatruck; and
 - (ii) use de-identified information about Driver, in any marketing or other material used by Instatruck.
- (b) For the avoidance of doubt, marketing material may include (but is not limited to) case studies regarding Driver's involvement with Instatruck, however Instatruck will only identify Driver in marketing material (including in case studies) with Driver's prior written consent.

13 Privacy

- (a) Instatruck may collect personal information about Driver (or, in the case of a Carrier, its Personnel including Drivers) in order to provide the Services and for other purposes set out in the Privacy Policy.
- (b) Driver agrees and acknowledges that personal information may be disclosed to third parties (including to Senders in accordance with clause 4.4(g) and to assist in the resolution of any dispute between Driver and Sender), and that the Privacy Policy sets out how Instatruck collects, uses, stores and discloses personal information and the consequences if that information is not provided.

- (c) The Privacy Policy sets out the manner in which Driver (or, in the case of a Carrier, its Personnel including Drivers) may access personal information, seek correction of personal information or complain about a breach of the Privacy Act.
- (d) Without limiting any other part of this clause 13, any information collected by Instatruck under this Agreement, including any information required to assess initial or ongoing compliance with the Driver Eligibility Requirements or the Truck Eligibility Requirements, will be collected, used and disclosed in accordance with the Privacy Policy.

14 Representations and warranties

- (a) Each party represents and warrants that:
 - (i) it has full power, authority and legal capacity to enter into this Agreement and perform its obligations under this Agreement;
 - (ii) execution and performance of this Agreement will not result in a breach of any terms or conditions of any instrument or agreement to which it is a party; and
 - (iii) it shall obtain and maintain all Consents applicable or necessary in order to perform its obligations under this Agreement.
- (b) Driver represents and warrants to Instatruck that, as at the time of entering this Agreement and for the duration of the Term:
 - (i) it has the required level of competency and professionalism expected of a professional truck driver to access the Services for the type of Truck or Trucks registered in the Driver Account in accordance with Law;
 - (ii) Driver does not have a criminal record or any pending criminal charges in any jurisdiction in Australia (including any offences in relation to drink-driving, drug possession or supply, fraud or theft);
 - (iii) each Truck used to provide Transportation Services is in good working condition and order and has been serviced in accordance with all applicable Laws;
 - (iv) Driver will take all reasonable steps to prevent breaches of any applicable Laws (including in relation to road transport mass, dimension, loading, speed compliance, work hours and occupational health and safety);
 - (v) it has the knowledge and capability to handle the types of goods which can be carried by the types of Trucks it intends to register, with care and diligence in a manner expected by a reasonable Sender; and
 - (vi) it has the knowledge and ability to liaise and interact with Senders and Receivers in a customer focused manner.

15 Compliance

- (a) Driver must comply with all applicable Laws, including any Laws in relation to the use of heavy vehicles or in relation to the use of mobile phones while driving, fatigue management, speeding,



restraint of goods, medical fitness, occupational health and safety and any other Laws that may impact upon a Driver's ability to comply with this Agreement.

- (b) Driver must obtain and maintain all Consents necessary to enable it to perform its obligations under this Agreement without infringing any Law or the rights of any person.

16 Updates

- (a) Instatruck may make Updates available to Driver from time to time. Driver must install any Updates as soon as reasonably practicable upon receipt. Once installed, Updates will be deemed to form part of the App.
- (b) To the extent permitted by Law (including the Australian Consumer Law if applicable), Instatruck shall not be liable for any failure of the App or the Services to operate in accordance with this Agreement, or to otherwise meet any warranties or representations set out in this Agreement or required under Law, unless Driver has installed all Updates pursuant to this clause 16.

17 Force Majeure

- (a) Subject to the requirement to give notice under this clause, if the performance by any party (**Affected Party**) of all or any of its obligations under this Agreement is prevented or delayed in whole or in part due to any Force Majeure Event, this Agreement will continue and remain in effect but the Affected Party will not be in breach of this Agreement for that reason only, and the Affected Party will be granted a reasonable extension of time to complete performance of its affected obligations.
- (b) The Affected Party must promptly after becoming aware of a Force Majeure Event, give written notice to the other party of the nature of the Force Majeure Event and the way and the extent to which its obligations are prevented or delayed and notify the other party of any material change in these matters and use its reasonable endeavours to limit the effects of the Force Majeure Event, and promptly carry out its obligations as soon as, and to the extent that, it is able to do so.
- (c) After 14 days (or earlier if agreed by the parties) of being given notice, either party may terminate the Agreement or negotiate to allow part fulfilment or deferment of the obligations of either party under this Agreement.

18 Variation

- (a) Instatruck may amend these terms and conditions from time to time to reflect changes in market conditions, changes in technology used to provide the products and services under this Agreement, changes in payment methods, changes in relevant Laws and regulatory requirements and changes in the capabilities of Instatruck's system.
- (b) Instatruck will notify Driver of any amendment to this Agreement in writing. Driver must accept the amended terms in order to continue its use of the Services. If Driver does not agree to the amended

terms, Driver will be deemed to have exercised its right to terminate the Agreement pursuant to clause 19.2(f) below.

19 Term and termination

19.1 Term

This Agreement commences on the Commencement Date and shall continue until terminated in accordance with its terms.

19.2 Termination

- (a) **(for cause)** Either party may terminate this Agreement with immediate effect by giving written notice to the other party at any time if the other party:
 - (i) breaches any warranty in this Agreement or any other provision of this Agreement which is incapable of being remedied, or where the breach is capable of being remedied, fails to remedy the breach within seven days after receiving written notice from the terminating party requiring it to do so; or
 - (ii) on the occurrence of an Insolvency Event.
- (b) **(termination for failure to comply with requirements)** Without limiting clause 19.2(a)(i), Instatruck may suspend Driver's access to the Services or terminate this Agreement with immediate effect if Driver breaches any of the Driver Eligibility Requirements or Truck Eligibility Requirements, or clauses 8 or 15 of this Agreement.
- (c) **(termination for misrepresentation as to compliance with requirements)** Without limiting clause 19.2(a)(i), Instatruck may suspend Driver's access to the Services or terminate this Agreement with immediate effect if Driver makes any intentional or fraudulent misrepresentation in connection with the Driver Eligibility Requirements or Truck Eligibility Requirements.
- (d) **(suspension or termination for unacceptable Driver Ratings)** Instatruck may suspend Driver's access to the Services or terminate this Agreement with immediate effect in accordance with clause 5(e).
- (e) **(termination for Regulatory Event)** If a Regulatory Event that, in the reasonable opinion of Instatruck, may affect the subject matter of this Agreement occurs or is likely to occur during the Term, Instatruck may immediately suspend the performance of this Agreement or terminate this Agreement without liability to Driver.
- (f) **(termination for refusal of new terms)** If Driver elects not to accept variations to these terms made pursuant to clause 18, Driver will be deemed to have terminated this Agreement with immediate effect.
- (g) **(termination for convenience)** Either party may terminate this Agreement for convenience and without incurring liability to the other party at any time by giving at least 30 days' written notice to the other party.



20 Consequences of termination

- (a) On termination of this Agreement for any reason:
- (i) all rights granted to Driver under this Agreement shall cease;
 - (ii) any Driver Account will be deactivated and any User Content may be deleted;
 - (iii) Driver must cease all activities authorised by this Agreement; and
 - (iv) Driver must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App in its possession.
- (b) Driver must, within 20 Business Days of termination, pay to Instatruck all fees incurred and/or owing under the Agreement up to and including the date of termination or expiry.

21 Accrued rights and remedies and survival

Without limiting any other provision of this Agreement, clauses 8 (Use of App and Services), 10 (Intellectual Property), 12 (Confidentiality), 13 (Privacy), 20 (Consequences of termination), this clause 21 (Accrued rights and remedies and survival), 22 (Disclaimer), 23 (Indemnities), and any other clauses which should by their nature survive termination of this agreement, survive termination or expiration of this Agreement for any reason.

22 Disclaimer

Driver agrees and acknowledges that, to the extent permitted by Law (including the Australian Consumer Law if applicable), Instatruck:

- (a) does not represent, warrant or accept any liability in relation to the accuracy, currency, reliability or quality of the App or the Services;
- (b) does not represent or warrant that the App or the Services are free from errors or omissions, or that they are exhaustive;
- (c) does not represent or warrant that the App or the Services will be available on an uninterrupted, timely or secure basis;
- (d) does not represent or warrant that the App or services will be free of viruses or other harmful code; and
- (e) disclaims any warranties, representations or endorsements, express or implied, with regard to the App or the Services, including all implied warranties of merchantability, fitness for a particular purpose, or non-infringement.

23 Indemnities

23.1 Indemnity by Instatruck

Instatruck shall defend, hold harmless and indemnify Driver from and against any Loss suffered or incurred by Driver arising out of or in connection with any Claim that the Services infringe any Intellectual Property Right or other right of any third party, except to the extent that such Loss is caused or contributed to by an act or omission of Driver.

23.2 Indemnity by Driver

Driver shall defend, hold harmless and indemnify Instatruck and its Related Bodies Corporate and Personnel (the **Instatruck Indemnified Parties**) from and against any Loss suffered or incurred by the Instatruck Indemnified Parties arising out of or in connection with:

- (a) any breach of this Agreement or any applicable Laws;
- (b) the death or injury of any person arising out of or otherwise in connection with any negligence or wrongful act or omission of Driver or its Personnel;
- (c) any fraud (including intentional and/or fraudulent misrepresentation), criminal activity, negligence or wilful misconduct of Driver or its Personnel;
- (d) any Claim by any person (including Driver) in connection with any Feedback, User Content or data used or disclosed by Instatruck in connection with this Agreement;
- (e) any Claim by any person (including Driver) that is connected with use by Driver of the Services;
- (f) any Claim by any person that is connected with the provision by Driver of Transportation Services, including a Sender or Receiver, arising out of or in connection with the provision by Driver of those Transportation Services; or
- (g) any loss or damage to property arising out of or otherwise in connection with any wrongful act or omission of Driver.

24 Limitation of liability

- (a) To the extent permitted by Law, (including the Australian Consumer Law if applicable), and subject to clause 24(d), in no event will the aggregate liability of Instatruck for any Loss, direct or otherwise, exceed the Liability Cap, regardless of the cause or form of action. For the avoidance of doubt, the limitation of liability under this clause 24(a) is cumulative and not per incident or Claim.
- (b) To the extent permitted by Law, (including the Australian Consumer Law if applicable), under no circumstances will Instatruck be liable for any Consequential Loss.
- (c) The limitations and exclusions in this clause 24 shall apply whether the action, claim or demand arises from breach of contract, tort (including negligence) or under any other theory of liability.
- (d) Clause 24(a) does not apply to, and shall not limit, any party's liability:
 - (i) for death or personal injury caused by that party or its Personnel;
 - (ii) for fraud (including fraudulent misrepresentation); or
 - (iii) under any indemnity given in this Agreement.

25 Assignment

- (a) The contract between Instatruck and Driver is binding on the parties and their respective successors and assigns.



- (b) Driver must not transfer, assign, charge, sub-contract or otherwise dispose of this Agreement, or any of its rights or obligations arising under it, without Instatruck's prior written consent.
- (c) Instatruck may transfer, assign, charge, sub-contract or otherwise deal with an Agreement, or any of its rights or obligations arising under it, at any time during the term of the Agreement.

26 Dispute resolution

- (a) Neither party may commence any court or arbitration proceedings relating to a Dispute unless it has complied with the provisions of this clause 26, except to seek urgent interlocutory relief.
- (b) A party claiming that a Dispute has arisen must promptly notify the other party in writing by giving details of the Dispute. The parties must use reasonable endeavours to resolve any Dispute.
- (c) If the parties are not able to resolve the Dispute in accordance with clause 26(b) within 20 Business Days from the date of notification, either party may immediately refer the Dispute to mediation and the parties will use reasonable endeavours to resolve the Dispute following the ACDC Guidelines. Each party must bear its own costs in relation to complying with this clause 26(c), except for the costs and expenses of the mediation, which will be borne by the parties equally.

27 Notices

27.1 Provision of notices

Any notice, demand, consent or other communication (a **Notice**) given or made under this Agreement:

- (a) must be in writing and signed by the sender or a person duly authorised by the sender;
- (b) must be addressed and delivered to the address, email address or fax number last notified by the intended recipient to the sender after the date of this Agreement; and
- (c) will be conclusively taken to be duly given or made when delivered, received or left at the above email address, fax number or address. If delivery or receipt occurs on a day that is not a business day in the place to which the Notice is sent or is later than 4pm (local time) at that place, it will be conclusively taken to have been duly given or made at the commencement of business on the next business day in that place.

28 Relationship of the parties

Driver's relationship with Instatruck under this Agreement is solely one of service provider and service recipient (including, as part of that relationship, a licensor and licensee relationship). Nothing in this Agreement constitutes a relationship of employer and employee, partnership, joint venture or agency and, except as stated in this Agreement, neither party has any authority or power to:

- (a) bind the other; or
- (b) create a liability against the other.

29 General

29.1 Further assurances

Each party agrees to do all things and execute all deeds, instruments, transfers or other documents as may be necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated by it.

29.2 Entire agreement

This Agreement contains the entire agreement between the parties with respect to its subject matter. It sets out the only conduct, representations, warranties, covenants, conditions, agreements or understandings (collectively **Conduct**) relied on by the parties and supersedes all earlier Conduct by or between the parties in connection with its subject matter. None of the parties has relied on or is relying on any other Conduct in entering into this Agreement and completing the transactions contemplated by it.

29.3 Waiver

No failure to exercise or delay in exercising any right, power or remedy under this Agreement operates as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.

29.4 Remedies cumulative

The rights, powers and remedies provided to a party in this Agreement are in addition to, and do not exclude or limit, any right, power or remedy provided by law or equity or any agreement.

29.5 No merger

The rights and obligations of the parties will not merge on the completion of any transaction contemplated by this Agreement. They will survive the execution and delivery of any assignment or other document entered into for the purpose of implementing a transaction.

29.6 Severability

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective as to that jurisdiction to the extent of the prohibition or unenforceability. That does not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

29.7 Costs and duty

Each party must bear its own costs arising out of the negotiation, preparation and execution of this Agreement.

29.8 Governing law and jurisdiction

This Agreement and, to the extent permitted by law, all related matters including non-contractual matters, is governed by the laws of Western Australia and of the Commonwealth of Australia applying there. In relation to such matters each party irrevocably accepts the non-exclusive jurisdiction of courts with jurisdiction there and waives any right to object to the venue on any ground.



29.9 Counterparts

This Agreement may be executed in any number of counterparts. All counterparts will be taken to constitute one agreement.

30 Definitions and Interpretation

30.1 Definitions

The following definitions apply unless the context requires otherwise.

Access Credentials means the necessary security measures provided by Instatruck to Driver to access its Driver Account.

ACDC means the Australian Commercial Disputes Centre Ltd (or, if that organisation ceases to exist, a similar organisation nominated by the party referring the Dispute to mediation).

ACDC Guidelines means ACDC Guidelines for Commercial Mediation (or if the ACDC ceases to exist, the guidelines for mediation of any similar organisation nominated by the party referring the Dispute to mediation) in force from time to time, the terms of which are incorporated into this Agreement.

App means the mobile application described as the "Instatruck App" (as updated from time to time) or any other application used to provide the Services.

App Store has the meaning given in clause 10.1(d).

Business Day means a weekday on which banks are open in Perth, Western Australia.

Cancellation Fee means the fees charged to a Sender in the circumstances set out in clauses 4.3(a), 4.3(g) and 4.3(j). The Cancellation Fee will be equal to the amount equivalent to the call out rate for the Truck from the time that Driver accepted the Job Request until the time that the Job has been cancelled.

Carrier means an individual or entity who employs, contracts, procures or makes other arrangements with Carrier Personnel in relation to their use of the App and the Services.

Carrier Personnel means Drivers who are employed by, contract with or make other arrangements with Carriers in relation to their use of the App and Services.

Claim means, in relation to a party, a demand, claim, action or proceeding made or brought by or against the party, however arising and whether present, unascertained, immediate, future or contingent.

Commencement Date means the date the parties enter into this Agreement.

Completed Job has the meaning given in clause 4.4(h).

Confidential Information means all information of a confidential nature, in any form whether tangible or not and whether visible or not, disclosed or communicated by a party to the other, or learnt or accessed by, or to which the other party is exposed as a result of entering into this Agreement and includes, without limitation, any information and material concerning the contractual or commercial dealings, financial details, products or services (current or proposed), customers, employees, internal policy, the Intellectual Property Rights of a party or dealings under this Agreement.

Consents means any licences, clearances, permissions, certificates, permits, authorities, declarations, exemptions, waivers, approvals or consents.

Consequential Loss means any:

- (a) loss of profits, loss of income or revenue, loss of data, loss of or damage to reputation, loss of or damage to goodwill, loss of business opportunities (including opportunities to enter into or complete arrangements with third parties), loss of management time, damage to credit rating, or loss of business; and
- (b) any loss, not arising naturally (that is according to the usual course of things), from the relevant breach, whether or not such loss is reasonably supposed to have been in the contemplation of both parties, at the time they made the Agreement, as the probable result of the relevant breach.

Data means data (excluding Personal Information) that Driver inputs into the App or provides to Instatruck or its Personnel by any other means or that is otherwise obtained by or on behalf of Instatruck or its Personnel via the App or by any other means.

Delivery Site means any physical location to which Goods must be delivered by Driver in order to complete a Job.

Derivative Materials means materials, data and insights derived or created by or on behalf of Instatruck or its Personnel in accordance with clause 10.4, which are based on, or created or derived from, the Data.

Device means the device provided and used by Driver to access the App.

Dispute means a dispute between the parties arising in connection with this Agreement.

Driver means a driver who is registered to a Driver Account, and who meets the Driver Eligibility Requirements.

Driver Account has the meaning given in clause 2.1(a).

Driver Rating has the meaning given in clause 5(a).

Driver Eligibility Requirements means the requirements set out in Schedule 1, as amended by Instatruck from time to time by written notice to Driver.

Driver Status means the feature within the App that allows Driver to set their availability as either Online or Offline.

Feedback has the meaning given in clause 10.2(a).

Force Majeure Event means an event or cause beyond the reasonable control of the party claiming force majeure. It includes each of the following, to the extent it is beyond the reasonable control of that party:

- (a) act of God, lightning, storm, flood, fire, earthquake or explosion;
- (b) strike, lockout or other labour difficulty;
- (c) act of public enemy, war (declared or undeclared), terrorism, sabotage, blockade, revolution, riot, insurrection, civil commotion, epidemic;
- (d) the effect of any applicable laws, orders, rules or regulations of any government or other competent authority;



- (e) embargo, power or water shortage, lack of transportation, lack of public or private telecommunications networks; and
- (f) breakage or accident or other damage to machinery.

Goods has the meaning given in clause 1(a)(ii).

Governmental Agency means any government or any governmental, semi-governmental or judicial entity or authority. It also includes any self-regulatory organisation established under statute or any stock exchange.

Insolvency Event means where:

- (a) a party ceases, suspends or threatens to cease or suspend the conduct of all or a substantial part of its business or disposes of or threatens to dispose of a substantial part of its assets;
- (b) a party becomes unable to pay its debts when they fall due, or stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (c) a party becomes or is (including under legislation) deemed or presumed to be insolvent;
- (d) a party has a receiver, manager, administrator, administrative receiver or similar officer appointed in respect of it or the whole or any part of its assets or business;
- (e) any composition or arrangement is made with any one or more classes of its creditors;
- (f) except for the purpose of solvent amalgamation or reconstruction, an order, application or resolution is made, proposed or passed for its winding up, dissolution, administration or liquidation;
- (g) a party enters into liquidation whether compulsorily or voluntarily; or
- (h) any analogous or comparable event takes place in any jurisdiction.

Instatruck Onboarding Process means the process undertaken by Driver to become familiar with the Services, the terms of this Agreement and any other guidelines, terms, policies or rules which are applicable to Driver.

Intellectual Property Rights means all industrial and intellectual property rights of any kind including but not limited to copyright (including rights in computer software), trade mark, service mark, design, patent, trade secret, semiconductor or circuit layout rights, trade, business, domain or company names, moral rights, rights in Confidential Information, know how or other proprietary rights (whether or not any of these are registered and including any application, or right to apply, for registration) and all rights or forms of protection of a similar nature or having equivalent or similar effect to any of these which may subsist anywhere in the world.

Invoice has the meaning given in clause 4.4(g).

Job has the meaning given in clause 4.2(f).

Job Calculation has the meaning given in clause 4.4(d).

Job Change has the meaning given in clause 4.3(h).

Job Request means a request by a Sender to transport Goods which has been matched with Driver, and which can be accepted or declined by Driver using the App.

Law means all laws including rules of common law, principles of equity, statutes, regulations, proclamations, ordinances, by-laws, rules, regulatory principles, requirements and determinations, mandatory codes of conduct, writs, orders, injunctions and judgments.

Liability Cap means the amount equal to the fees paid to Driver in the preceding six month period from the time the event occurred that gave rise to the Claim.

Loss means any loss, liability, Claim, damage, cost, charge, expense or diminution in value, however arising, and whether present or future, fixed or unascertained, actual or contingent.

Offline means Driver is not available to accept any Job Requests.

Onboarding Fee means the fee paid by Driver to Instatruck in accordance with clause 7.1(c), in the amount notified by Instatruck to Driver, as notified by Instatruck to Driver from time to time.

Online means Driver is available to accept Job Requests.

Permitted Dispute Period means the period of time in which a Sender may dispute the Job Calculation, as notified by Instatruck to Driver and Sender from time to time.

Permitted Timeframe means the period of time in which Driver may accept or decline a Job Request once it has been notified to Driver, as notified by Instatruck to Driver from time to time.

Personal Information means "personal information" as defined in the Privacy Act that either party has collected, received or otherwise has access to in connection with this Agreement.

Personnel means in respect of a person any employee, contractor, servant, agent, or other person under the person's direct or indirect control and includes any sub-contractors.

Privacy Act means the Privacy Act 1988 (Cth).

Privacy Policy means the privacy policy of Instatruck available at www.instatruck.com.au/privacy as amended from time to time.

Proof of Delivery means the proof of delivery document signed by the Receiver or the Sender. For the avoidance of doubt, this proof of delivery document includes an electronic version of the document signed by the Receiver or the Sender on the Device.

Receiver has the meaning set out in clause 4.4(a).

Regulatory Event means:

- (a) an amendment, repeal or change in Law, the enactment of a new Law, or a change in the interpretation or application of a Law (including Privacy Laws); or
- (b) a direction, notice or order of a Governmental Agency which is binding on Instatruck or Driver.

Related Body Corporate has the meaning given in the Corporations Act 2001 (Cth).

Sender has the meaning given in clause 1(a)(ii).

Sender Rating has the meaning given in clause 5(b).

Service Fee means the amount calculated as a fixed percentage of the amount of the Job Calculation exclusive of



GST, or the GST-exclusive amount charged for the Cancellation Fee (as applicable). The Service Fee is charged to the Sender and is in addition to the Job Calculation. For clarity, the Driver has no recourse to the Service Fee for any reason whatsoever.

Service Records means the records or other documents which set out the servicing history of the Truck.

Tax includes any tax, levy, impost, deduction, charge, rate, duty, compulsory loan or withholding that is levied or imposed by a Governmental Agency, and any related interest, penalty, charge, fee or other amount.

Term means the period described in clause 19.

Third Party Content has the meaning given in clause 11.

Transportation Services means the on-demand transportation of Goods by Driver for Sender (including, if applicable, the loading and unloading of the Goods under the instruction of the Sender or the Receiver).

Truck means any vehicle registered to a Driver Account by Driver, and which meets the Truck Eligibility Requirements.

Truck Eligibility Requirements means the requirements set out in Schedule 2 as amended by Instatruck from time to time by written notice to Driver.

Update means any update or upgrade to the App issued by Instatruck from time to time.

User Content means any and all information, data and other content that a Driver or Sender submits to, or uses with, the App or Services.

30.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) headings are for convenience only and do not affect interpretation;
- (b) the singular includes the plural, and the converse also applies;
- (c) nothing in this Agreement is to be interpreted against a party solely on the ground that the party put forward this Agreement or a relevant part of it;
- (d) if a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- (e) a reference to a person includes a corporation, trust, partnership, unincorporated body or other entity, whether or not it comprises a separate legal entity;
- (f) a reference to a clause or Schedule is a reference to a clause of, or Schedule to, this Agreement;
- (g) a reference to an agreement or document (including a reference to this Agreement) is to the agreement or document as amended, supplemented, novated or replaced, except to the extent prohibited by this Agreement or that other agreement or document;
- (h) a reference to a party to this Agreement or another agreement or document includes the party's successors, permitted substitutes and permitted assigns (and, where applicable, the party's legal personal representatives);
- (i) a reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it;
- (j) a reference to writing includes any method of representing or reproducing words, figures, drawings or symbols in visible or tangible form;
- (k) a reference to conduct includes an omission, statement or undertaking, whether or not in writing;
- (l) a reference to an *agreement* includes any undertaking, deed, agreement and legally enforceable arrangement, whether or not in writing, and a reference to a *document* includes an agreement (as so defined) in writing and any certificate, notice, instrument and document of any kind;
- (m) mentioning anything after *includes, including, for example,* or similar expressions, does not limit what else might be included;
- (n) a reference to *dollars* and \$ is to Australian currency or such other currency set out in the relevant Order; and
- (o) a *month* means a calendar month.



Schedule 1 - Driver Eligibility Requirements

The Driver Eligibility Requirements are:

- (a) **LICENCE:** Driver must hold and carry the licence type required to operate each and every truck type and truck size registered in the Driver Account and provide Instatruck with a valid copy of such Driver's licence;
- (b) **LICENCE CHECK:** Driver must provide Instatruck with the authority required to carry out checks of their licensed status with the relevant authorities (such as NSW Road and Maritime Services);
- (c) **POLICE CHECK:** If requested by Instatruck, Driver must provide a current police check to Instatruck and provide any further police checks as instructed. These police checks must be provided at Driver's own cost and expense.
- (d) **MEDICAL CERTIFICATE:** Driver must be medically fit and able to operate a vehicle in accordance with any applicable Laws and in the reasonable opinion of Instatruck. Driver must provide, at their own cost and expense, a current medical report produced for the purpose of demonstrating that they meet the medical requirements under any applicable Laws;
- (e) **REGISTERED FOR GST:** Driver must be registered for GST and must give written notice to Instatruck of Driver's ABN. Driver must also give written notice to Instatruck if Driver ceases to be registered for GST;
- (f) **PERSONAL DETAILS:** Driver must provide personal details to Instatruck including name, address, business details, email address, bank information and any other information that may be reasonably requested by Instatruck from time to time; and
- (g) **SKILL:** Driver must be able to demonstrate that Driver has the required skill to carry out Transportation Services, which includes demonstrating Driver holds the appropriate licences, accreditation or certification required to operate the Truck registered to Driver's account.
- (h) **PPE:** Driver must carry a minimum of gloves, hardhat and high visual shirt as personal protective equipment with them at all times.

Schedule 2 - Truck Eligibility Requirements

The Truck Eligibility Requirements are:

- (a) **SERVICE RECORDS AND VEHICLE SAFETY CHECKS:** Each Truck must be, and must be maintained in, good working condition and order at all times. At a

minimum a Truck must be serviced in accordance with the relevant Laws. If requested, Driver must provide Service Records for each Truck registered or proposed to be registered to Driver's Driver Account and must permit Instatruck or its Personnel to carry out safety inspections of each Truck, including at the time of registration to confirm that Truck matches the Truck described in the registration and Service Records. The cost and expense of a Truck safety inspection may be charged back to the Driver, at Instatruck's sole discretion and either wholly or partially.

- (b) **SPECIFIC TRUCK REQUIREMENTS:** Each Truck must meet the specific requirements for its truck type classification:
 - (i) **VANS:** Any Truck classified as a van must be a cargo carrying van and must have a fitted cargo barrier.
 - (ii) **UTES:** Any Truck classified as a utility vehicle must be capable of carrying a minimum of two pallets and must be capable of carrying a payload of 800kg or more.
 - (iii) **CURTAINSIDERS:** Any Truck classified as a curtainsider must have a functional curtain free of tears and wears, with fitted straps and ratchets.
 - (iv) **CRANE TRUCK:** Any Truck classified as a crane truck must have a fully operational and well maintained crane compliant with all applicable Laws to ensure safe operation when in use.
- (c) **INSURANCE REQUIREMENTS:** Each Truck must have a minimum of \$5,000 load insurance, \$20,000,000 of third party liability insurance and any other insurance required by applicable Laws. On request by Instatruck, Driver must produce a certificate of currency provided by the insurer. Driver acknowledges that it may be required to inform its insurers of the provision of Transportation Services and Driver will ensure that the insurance policy provides adequate coverage for such Transportation Services.
- (d) **EQUIPMENT REQUIREMENTS:** Each Truck must contain sufficient equipment that a reasonable person would expect to have on board a Truck to be able to move the types of goods that may be reasonably matched to a Truck of its classification and size, as evidenced by a visual inspection of the equipment by Instatruck or its Personnel as part of the Truck safety inspection. At a minimum (and without limiting the foregoing):
 - (i) each Truck must have a mounted hands free, which must not inhibit Driver's vision;
 - (ii) each Truck must at all times have a mobile phone power bank or charger;



- (iii) each Truck classified as a ute, pantech, flatbed, crane truck, or curtainsider must carry a sufficient number of 2.5 tonne graded restraints and ratchets in their trucks for the size of the Truck and the types of goods that the Truck may be reasonably requested to move. All trucks must have a minimum of two 2.5 tonne graded restraints per pallet that can be moved by a Truck of its size;
 - (iv) each Truck classified as a van must carry a sufficient number of rated tie downs for the types of goods that the Truck may be reasonably requested to move;
 - (v) any Truck classified as a flatbed or crane Truck must carry a sufficient number of hardwood gluts on board the Truck at all times that would reasonably be expected for a truck of its size;
 - (vi) any Truck classified as a flatbed or a crane truck must have either gates or side pins fitted on the Truck;
 - (vii) any Truck classified as a pantech or curtainsider that nominates that it has a tail lift must maintain and ensure that the tail lift is fully operational;
 - (viii) any Truck classified as a pantech or van must carry a reasonable number of moving blankets on board;
 - (ix) any Truck classified as a van, utility vehicle or pantech must carry hand held trolleys on board; and
 - (x) any Truck that lists its equipment as side pins must have a locking mechanism on board such as a tractor clip or bolt.
- (e) Driver must ensure that each Truck maintains and carries appropriate equipment on board the Truck at all times for the purposes of moving the types of goods that may fit into a Truck of its classification.

