



## Instatruck Sender Terms of Use

These Instatruck Sender Terms of Use (the **Agreement**) are a legally binding contract between you (**you** or the **Sender**) and Furry Dice Pty Ltd (ABN 20 606 806 517), registered at Unit 6, 663 Newcastle Street, Leederville, Western Australia 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 Sender 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 Sender; and
  - (ii) it facilitates the matching of Sender, as and when it requires the transport of goods (**Goods**), with drivers who are available to transport those Goods (**Drivers**),
- (collectively, the **Services**).
- (b) Sender acknowledges and agrees that Instatruck is a technology services provider and does not provide Transportation Services.

### 2 Sender accounts

- (a) To access and use the Services, Sender must have a registered sender account (**Sender Account**).
- (b) Instatruck has sole discretion as to whether to provide Sender with a Sender Account. Without limiting the foregoing, Instatruck will only activate a Sender Account if Sender has provided any information reasonably required by Instatruck, including payment details.
- (c) A Sender Account is personal to Sender and can only be accessed and used by Sender and/or appropriate Personnel.

- (d) Once a Sender Account has been activated by Instatruck, Sender will also be provided with Access Credentials. Sender must keep their Access Credentials secure and confidential, and only provide their Access Credentials to appropriate Personnel. Sender must not use another person's Access Credentials.
- (e) All activity, including activity in breach of the provisions of this Agreement, undertaken using Sender's Access Credentials will be deemed to be the activity of Sender.
- (f) Sender must notify Instatruck immediately if it becomes aware of any unauthorised use, or suspected unauthorised use, of the Sender Account.
- (g) Instatruck may suspend or deactivate a Sender Account in the following circumstances:
- (i) a material breach of the terms of this Agreement by Sender;
  - (ii) failure to make any payment due under this Agreement or for the provision of Transportation Services, including any payment for Completed Jobs or Cancellation Fees;
  - (iii) Sender fails to comply with the requirements set out in clause 3.5 in relation to damage and injury claims;
  - (iv) Sender receives negative ratings or reviews from a Driver which, upon investigation by Instatruck, demonstrate that Sender is or has been in breach of the terms of this Agreement; or
  - (v) Sender uses the Services to be matched to a Driver and then obtains or attempts to obtain Transportation Services independently of the App and/or Services, in order to circumvent the App, Sender's obligation to pay any amount for Completed Jobs or Cancellation Fees or for any other reason.
- (h) For clarity, a suspension or deactivation under clause 2(g)(ii) does not relieve Sender of the obligation to make any payment due under this Agreement.

### 3 Using the App

#### 3.1 Making Job Requests

- (a) When Sender wishes to commence a Job Request, Sender must provide the following information:
- (i) a description of the Goods, including the dimensions and weight of the Goods;
  - (ii) the pick-up location and contact details (if different from the contact details of Sender);
  - (iii) the Delivery Site(s) (and, if multiple Delivery Sites, the order in which Goods should be delivered to those locations);
  - (iv) whether Driver may delivery Goods to any Delivery Site which is unattended; and



(v) confirmation that the Goods are not classified as dangerous goods.

- (b) Sender represents and warrants that any information provided in accordance with clause 3.1(a) is accurate at the time of provision.
- (c) Depending on availability, Instatruck will provide a selection of Drivers who have represented that they are available and are able to transport the Goods as described by Sender.
- (d) Instatruck may provide additional information such as estimates of time from the current location of each of the Drivers to arrive at the pick-up location and an estimated cost for selecting each Driver to complete the Job Request.
- (e) Sender may select a Driver and request the provision of Transportation Services by that Driver (**Job Request**).
- (f) Sender is solely responsible for ensuring that the Driver selected meets the requirements of Sender.

### 3.2 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.
- (c) If a Driver declines the request, Sender may be provided with an opportunity to select another Driver if one is available.
- (d) Sender may cancel a Job Request at any time prior to it being accepted by a Driver.
- (e) Once accepted by a Driver, a Job Request will become a **Job** and further information as to the pick-up location, Delivery Site(s), special requests by Sender (such as the order of Delivery Sites) and any other relevant information will be provided to Driver by Instatruck.
- (f) Sender acknowledges and agrees that Sender (or, if Sender is not the consignor, the consignor) will enter into a separate agreement, which may or may not be in the form of a consignment note with Driver for the carriage of the Goods once they have been matched using the Services.
- (g) Sender acknowledges and agrees that any agreement or consignment note entered into with Driver pursuant to clause 3.2(f) will not be inconsistent with the terms of this Agreement.

### 3.3 Undertaking a Job

- (a) Driver will proceed immediately to the pick-up location for the Job. If 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) Sender must not cancel a Job once Driver has arrived at the pick-up location. Breach of this clause

3.3(b) shall be deemed a material breach of this Agreement.

- (c) 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) if the goods are hazardous, the provision by Sender of a Material Safety Data Sheet and any other requirements imposed by applicable Laws;
  - (iii) the provision of Transportation Services by Driver in accordance with the information provided by Sender pursuant to clause 3.1(a) or any Job Change that has been accepted by Driver pursuant to clause 3.3(g);
  - (iv) timely submission of all documentation required by Instatruck and Sender (including Proof of Delivery); and
  - (v) Instatruck providing notification, if necessary, to Sender of delivery of the Goods at each delivery location.
- (d) 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.
- (e) Notwithstanding this clause 3.3, Driver will be solely responsible for the provision of Transportation Services.
- (f) 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 a Driver reasonably considers that the goods are illegal or dangerous goods, a Driver is entitled to reject the Job and Sender will be charged a Cancellation Fee.
- (g) Sender may request that the Driver transport additional Goods or add an additional drop-off location (**Job Change**) once the Driver has arrived at the pick-up location. Additional fees may apply. Sender must not propose a Job Change if it would result in Sender breaching any provisions of this Agreement. Driver is under no obligation to accept any proposed Job Change. If the 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 Sender will be charged a Cancellation Fee.
- (h) The Truck used by Driver may be tracked using the global positioning system on the device used by Driver from the time a Job Request is accepted until Driver has submitted the final Proof of Delivery, and this information may be made available to Sender.
- (i) **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. To the extent permitted by Law, Instatruck disclaims any liability to Sender or any third party arising from or in connection with the provision of Transportation Services.**

- (j) Sender agrees and acknowledges that payment of a Cancellation Fee in accordance with clauses 3.3(a) or 3.3(f) is a genuine pre-estimate of the Loss suffered by Instatruck and/or Driver as a result of a breach by Sender of this Agreement. The payment of a Cancellation Fee does not derogate from any of Instatruck's rights under this Agreement and does not relieve Sender from any of its obligations and liabilities.

### 3.4 Completed Jobs

- (a) A Job will be completed at the final delivery point once the goods have been unloaded in accordance with clause 3.3(d). Driver must ensure that the receiver of the Goods (the **Receiver**) provides Proof of Delivery in order to finalise payment.
- (b) Sender is solely responsible for all directions or instructions given to Driver by Receiver (including any directions or instructions given in relation to unloading of Goods or delivery of Goods to unattended Delivery Sites).
- (c) If a Delivery Site is unattended, and 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 will deliver the Goods the following Business Day unless otherwise agreed between the Driver and the Sender. For clarity, Sender will remain responsible for all costs and expenses associated with redelivery.
- (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 Sender 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) Instatruck will issue the Sender by email with a tax invoice setting out the Job Calculation, any applicable Cancellation Fees, the Service Fee and details about the Driver and the Job (the **Invoice**).

- (g) Sender may dispute the Invoice within the Permitted Dispute Period. Sender must provide written notice of a disputed Invoice to Instatruck and set out the reasons for such dispute. Instatruck will use reasonable endeavours to resolve the dispute.
- (h) For clarity, clause 3.4(g) is not subject to the dispute resolution procedure set out in clause 24 and Instatruck is under no obligation to amend or withdraw an Invoice which has been disputed under clause 3.4(g). If the Invoice is not amended or withdrawn following the process set out in clause 3.4(g), the Job will become a Completed Job.
- (i) If the Invoice is not disputed within the Permitted Dispute Period, the Job will become a Completed Job.

### 3.5 Damage and injury claims

- (a) Sender 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 3.3(i), Sender 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 Sender will need to resolve any Claim directly with Driver or a third party (including any dispute over insurance coverage).**
- (c) Sender agrees to fully co-operate with the Driver and/or Instatruck to resolve damage or injury claims as quickly as possible.

## 4 Ratings

- (a) Sender may be given a rating by the Driver for each Job (**Sender Ratings**).
- (b) Sender will be requested to provide a rating for the Driver for each Completed Job (**Driver Ratings**).
- (c) Driver Ratings and Sender Ratings will be used by Instatruck to monitor and improve the standard of the Services.
- (d) Where Sender is dissatisfied with the Sender Rating provided by a particular Driver for a particular Job, Sender may contact Instatruck and the parties will engage in good faith discussions in order to resolve the issue. This clause 4(d) is not subject to the dispute resolution procedure set out in clause 24. Instatruck is under no obligation to amend or remove Sender Ratings following such discussions and will not do so where such amendment is contrary to Law, including the Australian Consumer Law.
- (e) If Sender consistently receives Sender Ratings considered unacceptable by Instatruck, Instatruck may, at its sole and absolute discretion, deactivate a Sender Account and/or terminate this Agreement without notice or liability to Sender.



## 5 Financial terms

### 5.1 Payment

- (a) The parties agree and acknowledge that Sender will be charged for Completed Jobs in accordance with the Job Calculation, and that Sender may be charged Cancellation Fees in accordance with clauses 3.3(a), 3.3(f) and 3.3(g).
- (b) Sender agrees to pay Instatruck the Service Fee for each Completed Job and any applicable Cancellation Fees.
- (c) Instatruck reserves the right to change the Service Fee at any time in Instatruck's discretion based upon local market factors, and Instatruck will provide Sender with notice in the event of such change. Continued use of the Services after any such change in the Service Fee calculation shall constitute Sender's consent to such change.
- (d) Subject to clause 3.4(g), Sender must pay all Invoices properly issued to Sender within 30 days of receipt.
- (e) Instatruck collects payment from Sender for Completed Jobs and Cancellation Fees as a collection agent for Driver.

### 5.2 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.

## 6 Use of App and Services

- (a) **(licence restrictions)** Sender 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)** Sender 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 Sender'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 Sender from accessing the App or the Services for any reason whatsoever.

## 7 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 of Sender to verify that Sender is complying with the terms of this Agreement (including the review of any licences, permits or other information required to comply with any applicable Law).
- (b) Each audit must be conducted during normal business hours and in a manner designed to not unreasonably interfere with Sender's ordinary business.



- (c) Instatruck will bear its own costs associated with any audit conducted under this clause 7.

## 8 Intellectual Property Rights

### 8.1 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 Sender.
- (b) (**licence**) Subject to clause 8.1(c) and Sender's compliance with the terms of this Agreement, Instatruck grants to Sender and its Personnel 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 to Sender of Transportation Services by Driver) only.
- (c) The licence granted under clause 8.1(b) does not include a right to sub-license or otherwise provide the App or Services to any third party.
- (d) Sender acknowledges and agrees that the availability of the App is dependent on the third party from which Sender obtains the App (the **App Store**). Each App Store may have its own terms and conditions which Sender agrees to comply with, and the licence granted under clause 8.1(b) is conditional on Sender's compliance with any such terms and conditions.

### 8.2 Feedback

- (a) Sender 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) Sender will ensure that any existing or future Intellectual Property Rights in any Feedback vest in Instatruck absolutely. Sender agrees to assign, and procure the assignment of, such Intellectual Property Rights in any Feedback to Instatruck immediately on their creation.

### 8.3 User Content

- (a) Sender 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) Sender 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.

### 8.4 Data and Derivative Materials

- (a) Sender 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) Sender agrees and acknowledges that Instatruck intends to use and/or aggregate the Data in conjunction with other information collected or obtained by Instatruck, and Sender agrees that Instatruck is permitted to make full use of, commercialise and exploit the Data for those purposes.
- (c) Sender will ensure that any existing or future Intellectual Property Rights in any Derivative Materials immediately vest in Instatruck absolutely. Sender 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, Sender agrees and acknowledges that Instatruck may disclose Data and Derivative Materials to any third party in its sole discretion.

## 9 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.

## 10 Confidentiality

### 10.1 Confidentiality

Subject to clause 10.2, 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.

### 10.2 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.

### 10.3 Publicity

- (a) Sender agrees that, notwithstanding this clause 10, Instatruck may:
  - (i) disclose to third parties the fact that Sender has entered into this Agreement with Instatruck; and
  - (ii) use de-identified information about Sender, 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 Sender's involvement with Instatruck, however Instatruck will only identify Sender in marketing material (including in case studies) with Sender's prior written consent.

### 11 Privacy

- (a) Instatruck may collect personal information about Sender or its Personnel in order to provide the Services and for other purposes set out in the Privacy Policy.
- (b) Sender agrees and acknowledges that personal information may be disclosed to third parties (including to Drivers to assist in the resolution of any dispute between Sender and a Driver), 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 Sender or its Personnel may access personal information, seek correction of personal information or complain about a breach of the Privacy Act.

### 12 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) Sender represents and warrants to Instatruck that:

- (i) Sender will enter into a separate consignment note with Driver for the carriage of Goods or, if the Sender is not the consignor of the Goods, it will procure the consignor to enter into a consignment note with Driver; and
- (ii) Sender 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).

### 13 Compliance

- (a) Sender must comply with all applicable Laws, including any Laws in relation to the use of heavy vehicles or in relation to fatigue management, speeding, restraint of goods, occupational health and safety and any other Laws that may impact upon a Sender's ability to comply with this Agreement.
- (b) Sender 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.

### 14 Updates

- (a) Instatruck may make Updates available to Sender from time to time. Sender 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 Sender has installed all Updates pursuant to this clause 14.

### 15 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.

## 16 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 Sender of any amendment to this Agreement in writing. Sender must accept the amended terms in order to continue its use of the Services. If Sender does not agree to the amended terms, Sender will be deemed to have exercised its right to terminate the Agreement pursuant to clause 17.2(e) below.

## 17 Term and termination

### 17.1 Term

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

### 17.2 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 17.2(a)(i), Instatruck may suspend Sender's access to the Services or terminate this Agreement with immediate effect if Sender breaches clauses 6 or 13 of this Agreement.
- (c) **(suspension or termination for unacceptable Sender Ratings)** Instatruck may suspend Sender's access to the Services or terminate this Agreement with immediate effect in accordance with clause 4(e).
- (d) **(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 Sender.

- (e) **(termination for refusal of new terms)** If Sender elects not to accept variations to these terms made pursuant to clause 16, Sender will be deemed to have terminated this Agreement with immediate effect.
- (f) **(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.

## 18 Consequences of termination

- (a) On termination of this Agreement for any reason:
  - (i) all rights granted to Sender under this Agreement shall cease;
  - (ii) any Sender Account will be deactivated and any User Content may be deleted;
  - (iii) Sender must cease all activities authorised by this Agreement; and
  - (iv) Sender must immediately delete or remove the App from all Devices, and immediately destroy all copies of the App in its possession.
- (b) Sender 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.

## 19 Accrued rights and remedies and survival

Without limiting any other provision of this Agreement, clauses 6 (Use of App and Services), 8 (Intellectual Property), 10 (Confidentiality), 11 (Privacy), 18 (Consequences of termination), this clause 19 (Accrued rights and remedies and survival), 20 (Disclaimer), 21 (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.

## 20 Disclaimer

Sender 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) without limiting clause 20(a) or 20(b), does not represent, warrant or accept any liability in relation to the information provided by Sender in the course of commencing a Job Request or information or estimates provided by Instatruck as part of the Services;
- (d) does not represent or warrant that the App or the Services will be available on an uninterrupted, timely or secure basis;



- (e) does not represent or warrant that the App or services will be free of viruses or other harmful code; and
- (f) 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.

## 21 Indemnities

### 21.1 Indemnity by Instatruck

Instatruck shall defend, hold harmless and indemnify Sender from and against any Loss suffered or incurred by Sender 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 Sender.

### 21.2 Indemnity by Sender

Sender 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 Sender or its Personnel;
- (c) any fraud (including intentional and/or fraudulent misrepresentation), criminal activity, negligence or wilful misconduct of Sender or its Personnel;
- (d) any Claim by any person (including Sender) 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 Sender) that is connected with use by Sender of the Services; or
- (f) any loss or damage to property arising out of or otherwise in connection with any wrongful act or omission of Sender.

## 22 Limitation of liability

- (a) To the extent permitted by Law, (including the Australian Consumer Law if applicable), and subject to clause 22(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 22(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 22 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 22(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.

## 23 Assignment

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

## 24 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 24, 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 24(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 24(c), except for the costs and expenses of the mediation, which will be borne by the parties equally.

## 25 Notices

### 25.1 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.





## 26 Relationship of the parties

Sender'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.

## 27 General

### 27.1 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.

### 27.2 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.

### 27.3 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.

### 27.4 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.

### 27.5 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.

### 27.6 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.

### 27.7 Costs and duty

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

## 27.8 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.

## 27.9 Counterparts

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

## 28 Definitions and Interpretation

### 28.1 Definitions

The following definitions apply unless the context requires otherwise.

**Access Credentials** means the necessary security measures provided by Instatruck to Sender to access its Sender 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 8.1(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 3.3(a), 3.3(f) or 3.3(g). 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.

**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 3.4(i).

**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 Sender 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 8.4, which are based on, or created or derived from, the Data.

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

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

**Driver** means a driver who is matched to Sender using the Services, and who provides Transportation Services for Sender.

**Driver Ratings** has the meaning given in clause 4(b).

**Feedback** has the meaning given in clause 8.2(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.

**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, semi-conductor 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 3.4(f).

**Job** has the meaning given in clause 3.2(e).

**Job Calculation** has the meaning given in clause 3.4(d).

**Job Change** has the meaning given in clause 3.3(g).

**Job Request** means a request by 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 by Sender 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.

**Permitted Dispute Period** means the period of time in which 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](http://www.instatruck.com.au/privacy), as amended from time to time.

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

**Receiver** has the meaning set out in clause 3.4(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 Sender.

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

**Sender Account** has the meaning given in clause 2(a).

**Sender Rating** has the meaning given in clause 4(a).

**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).

**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 17.

**Third Party Content** has the meaning given in clause 9.

**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 Sender or Receiver).

**Truck** means any vehicle used by a Driver to provide Transportation Services.

**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.

## 28.2 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.

