



# TruckSafe®

## Business Rules and Code of Conduct

Version 2.3-09032018



## Contents

	Before you read this document	3
1.0	TruckSafe Business Rules and Code of Conduct	4
2.0	TruckSafe Decision Making Bodies and Definitions	5-7
3.0	Purpose	7
4.0	How the Rules will be amended	7
5.0	Introduction	8
6.0	Entry to the Program	8
7.0	TruckSafe Fees	9
8.0	Criteria for Assessing Application for Accreditation	10
9.0	Audits	11
10.0	Auditors	14
11.0	Compliance Statements	15
12.0	Conditional Accreditation	16
13.0	Identification of Accredited Vehicles	16
14.0	Trade Mark of TruckSafe Logo	17
15.0	Maintaining Accreditation	23
16.0	Complaint Investigation, Sanctions, Termination or Suspensions, Appeals, and Exit from the Program	23-26
	Attachment A (Code of Conduct)	27



## BEFORE YOU READ THIS DOCUMENT

This disclaimer governs the use of the TruckSafe Operator Business Rules and Code of Conduct.

The TruckSafe Operator Business Rules and Code of Conduct and related documents contains information. The information is not advice, and should not be treated as such. You must not rely on the information in the Manual as an alternative to legal, or other advice from an appropriately qualified professional. If you have any specific questions about any matter contained herein you must consult an appropriately qualified professional.

Without prejudice, we do not represent, warrant, undertake or guarantee:

- that the information in the Manual is correct, accurate, complete or non-misleading;
- that the use of guidance in the Manual will lead to any particular outcome or result; or
- in particular, that by using the guidance in the material provided you have sufficient information to be fully informed of all information about the TruckSafe Accreditation Program. Therefore you are encouraged to seek the requisite professional advice for your own protection.

The limitations and exclusions of liability in this disclaimer govern all liabilities in relation to the Program, including liabilities arising in contract, in tort (including negligence) and for breach of statutory duty.

We will not be liable to you in respect of any losses arising out of any event or events beyond our reasonable control.

We will not be liable to you in respect of any business losses, including without limitation loss of or damage to profits, income, revenue, use, production, anticipated savings, business, contracts, commercial opportunities or goodwill.

We will not be liable to you in respect of any special, indirect or consequential loss or damage.

This disclaimer will be governed by and construed in accordance with Australian law, and any disputes relating to this disclaimer will be subject to the Courts or other Authority in the jurisdiction of the Australian Capital Territory. Note: In this disclaimer, "we" means (and "us" and "our" refer to) TruckSafe, a business name registered in Australia.



## 1.0 TRUCKSAFE OPERATOR BUSINESS RULES AND CODE OF CONDUCT

1.1 These documents and the TruckSafe Standards, specify the requirements for:

1.1.1 Applying to participate in the TruckSafe Industry Accreditation Program.

1.1.2 The terms and conditions for participation in the TruckSafe Program.

By signing the TruckSafe membership application form and agreeing to pay the Membership Fees as and when they fall due, your organisation agrees to be bound by:

- The key principles of this program of "Safety" and "Professionalism";
- The terms of the Business Rules, and
- The Code of Conduct and the TruckSafe standards.

1.2 Once the TruckSafe membership application form is signed, please return the originals to TruckSafe for review of your application. Copies of these forms will be taken and returned to you upon acceptance.

1.3 TruckSafe will then send you an invoice for your Initial Membership which must be paid before your application can be processed and your entry audit is organised.



## **2.0 TRUCKSAFE DECISION MAKING BODIES AND DEFINITIONS**

### **2.1 The TruckSafe Board**

The TruckSafe Board of Directors is an independent body that meets regularly to:

- Approve the development of the TruckSafe five mandatory Core Modules and Voluntary Modules.
- Establish and deliver audit standards and guidelines,
- Approve sanction models and business rules,
- Evaluate auditor performance,
- Oversee the accreditation body (TIAC), and
- Report to the Management of ATA Board on a regular basis.

The Board can be made up of, but is not limited to, representatives from:

- A Chairperson appointed by the ATA
- Three Operator Representatives
- ATA Chief Executive Officer
- A Distribution Channel Representative
- An Insurance Representative
- A Community / Customer Representative
- Two Livestock Representatives
- A Core Provider Representative

### **2.2 TruckSafe Industry Accreditation Council (TIAC)**

The TruckSafe Industry Accreditation Council (TIAC) is an independent body that meets regularly for the purposes of:

- Reviewing and approving applications for accreditation of operators,
- Reviewing and approving audit reports undertaken of the operator's systems,
- Assist in the reviewing of policy and principles of the TruckSafe Program to maintain and enhance the rigor and credibility of the program.

This Council is made up of representatives from:

- Industry
- Government
- Community
- Livestock

### **2.3 Australian Trucking Association Council & Board of Management**

Both bodies review and approve recommendations from the TruckSafe Board of Directors.



## 2.4 TruckSafe Secretariat

The TruckSafe secretariat is responsible for the day-to-day administration and management of the Program.

## 2.5 TruckSafe Definitions

2.5.1 **The TruckSafe Board** refers to the independent body responsible for the operation, viability and strategic development of the TruckSafe program and products.

2.5.2 **TruckSafe Industry Accreditation Council (TIAC)** refers to the independent body involved in TruckSafe as described in 2.2.

2.5.3 **TruckSafe Program** refers to all of the accreditation documents relating to the accreditation process and includes: business rules and code of conduct, TruckSafe standards and guidance materials.

2.5.4 **ATA Council** refers to the members that make up the Australian Trucking Association (ATA) and who provide direction on ATA Policies.

2.5.5 **ATA Board of Management (BoM)** refers to the Directors of the ATA who are responsible for all ATA activities.

2.5.6 **TruckSafe Secretariat** refers to the salaried staff and contractors of the ATA responsible for daily management of the TruckSafe Program.

2.5.7 **Core Provider** refers to ATA member organisations authorised to deliver ATA programs.

2.5.8 **Operator** refers to an adult individual, partnership or business entity involved in a trucking operation.

2.5.9 **Accredited Operators** refers to those trucking companies who have successfully achieved their TruckSafe accreditation.

2.5.10 **External Auditor** refers to an independent qualified auditor authorised to conduct entry and compliance audits on behalf of TruckSafe. Such auditors must be qualified and registered with Exemplar Global as a Heavy Vehicle Auditor under the NHVAA scheme, and also hold current Professional Indemnity Insurance. Auditors also need to be registered as an NHVAS auditor.

2.5.11 **TruckSafe Logo** refers to the registered trademark of the ATA that relates to the TruckSafe Program and can be displayed as outlined in Section 14.

2.5.12 **TruckSafe Vehicle Label** refers to the label or sticker that identifies the TruckSafe accredited operator, as outlined in 14.1.1 and 14.1.2.



2.5.13 **Applicant** refers to the operator making an application for participation in the TruckSafe Program

2.5.14 **Road Transport Law** refers to all law relating to road transport Australia wide.

2.5.15 **TruckSafe Fee** refers to the fees applicable for membership of the TruckSafe program.

2.5.16 **Internal Review and Quarterly Compliance Review** refers to a process where the operator conducts a self-audit to verify that the policy and procedures that they have in place are working and are being followed.

2.5.17 **TruckCare** refers to the voluntary TruckSafe module that is available for livestock industry operators.

2.5.18 **NHVR** refers to National Heavy Vehicle Regulator, Australia's government regulator for all vehicles over 4.5 tonnes gross vehicle mass.

2.5.19 **NHVAS** refers to the National Heavy Vehicle Accreditation Scheme, a government accreditation scheme administered by the NHVR.

2.5.20 **WAHVA** refers to the Western Australia Heavy Vehicle Accreditation scheme, an accreditation scheme that is operated by the Western Australian government.

2.5.21 **Vehicle** refers to powered vehicle and trailing equipment.

### 3.0 PURPOSE

The purpose of this document is to set out the rules and requirements for operating under the TruckSafe Accreditation Program.

### 4.0 HOW THE RULES WILL BE AMENDED

The TruckSafe Board of Directors in its sole discretion may amend these rules from time to time. When this occurs, operators will be informed of the amendment(s) via TruckSafe Update. The latest version of the Operator Business Rules will be available for download on the TruckSafe website.



## 5.0 INTRODUCTION

5.1 The TruckSafe Accreditation Program is a voluntary program built around five core modules in the areas of:

- Management,
- Maintenance,
- Training,
- On-road Compliance,
- Fitness For Duty & Driver Health;

and the Voluntary module;

- TruckCare (livestock)

TruckSafe Accreditation is verified through an external audit process leading to certification by the "TruckSafe Industry Accreditation Council" (TIAC).

5.2 Ongoing compliance to these standards is required to maintain accreditation. This is achieved by Operators conducting internal reviews, quarterly compliance statements as well as successful completion of ongoing external audits.

5.3 Any accreditation of the Operator in other schemes does not exempt participants in the TruckSafe Program from the requirements of the TruckSafe Program or any Road Transport Law.

## 6.0 ENTRY TO THE PROGRAM

6.1 An Operator may apply for accreditation to the program.

6.2 Applicants must complete and sign the acceptance form and the prescribed application forms and use of trademark form.

6.3 An applicant must include **all** powered vehicles **and** trailing equipment in their fleet in the equipment details section. This shall include the number and identity of the powered vehicles as well as other pieces of equipment to be included in the TruckSafe Program. Only the vehicles included on the operator's nominated equipment list are eligible to be included in any TruckSafe audit. Any changes to those details (including purchase or disposal) **must** be forwarded to the TruckSafe secretariat within 14 days of the change taking place. This includes any registration number changes.

6.4 Applicants must pay a one off Initial Membership Fee, this includes the cost of the Application Fee and 2 x Audits (Entry Audit and first Compliance Audit). An Annual Membership Fee will apply thereafter.





6.5 Applicants who successfully complete an entry audit and are subsequently approved by the TIAC are referred to as "Accredited Operators". They are then issued with an accreditation letter, including an accreditation number, and an accreditation certificate in accordance with the rules of the program. Accredited Operators are also eligible to display the TruckSafe logo.

6.6 All vehicles included in the application for membership to TruckSafe would normally be vehicles owned by the Operator making the application.

In cases where vehicles are coupled with Operator vehicles, but may be owned by another entity, proof must be supplied to the TIAC to demonstrate that the Operator making the application has full and total control and accepts total responsibility for, but not limited to, the following:

- Maintenance of vehicles being carried out in the same way as Operator vehicles.
- Drivers receive appropriate training as required for in the TruckSafe Standards.
- Drivers undergo the TruckSafe medical as required for all Operator drivers.
- Such vehicles are included in all TruckSafe Audits and are managed in accordance with the Business Rules Agreement and Code of Conduct.

6.7 In cases of an application for membership to TruckSafe, where the Operator does not provide powered vehicles, but does operate a fleet of trailing equipment, the Operator must be able to meet the requirements of section 6.6.

## **7.0 TRUCKSAFE FEE STRUCTURE**

The current TruckSafe Fee Structure is displayed on the TruckSafe website:

<http://www.trucksafe.com.au>

The TruckSafe Management reserves the right to amend the TruckSafe schedule of fees at any time. Where an amendment is made all Operators and service providers of the TruckSafe program shall be made aware prior to the implementation of the change.



## 8.0 CRITERIA FOR ASSESSING APPLICATIONS FOR ACCREDITATION

8.1 The TIAC have the responsibility of ensuring that the integrity of the TruckSafe Accreditation Program is maintained at all times by ensuring that the audit process, including assessment of audit reports and any applications for accreditation, are reviewed and appropriately scrutinised.

8.2 The TIAC will only accredit an Operator if in the opinion of the TIAC, both the following conditions have been met:

- The Operator has appropriate systems in place to meet the TruckSafe Standards, and
- The Operator has agreed to, and complies with, the Business Rules and Code of Conduct.

8.3 In assessing an application for accreditation, the TIAC may use any or all of the following criteria to decide whether to:

- approve accreditation
- approve accreditation subject to conditions outlined in section 13, or
- not approve accreditation.

These criteria are:

- External audit report on compliance to the TruckSafe Standards.
- Secretariat analysis of auditors report.
- Operator's recent past history of compliance to Road Transport Law.
- Information obtained from state transport agencies (where applicable).
- Complaints received by the TIAC about the Operator prior to entering the TruckSafe Program.
- Any other information considered by the TIAC to be relevant.

8.4 The TIAC also reserves the right to request the Operator supply additional information before approving accreditation where, the TIAC has concerns over the Operator's ongoing ability to meet the TruckSafe Standards, and/or conditions of the Business Rules Agreement and Code of Conduct.

## 9.0 AUDITS

### 9.1 Entry Audit

9.1.1 To successfully gain accreditation, an internal review (self audit) must be conducted by the Operator seeking accreditation. Following this the Operator shall request TruckSafe to conduct an entry audit by an external auditor.

9.1.2 Prior to the entry audit being conducted, the Operator must ensure the following requirements have been met:

- All powered vehicles and trailing equipment must have undergone a roadworthy within the last 12 months. (A “C” service / 200,000km service conducted by a suitably qualified mechanic will be accepted)
- At least 4 weeks of records need to have been kept. Records include daily checks, vehicle services, medicals, fault recording and reporting etc.
- At least 50% of drivers have undergone a TruckSafe medical (an RTA or DG medical that is less than 3 years old for drivers aged 49 and under, or less than 12 months for drivers aged 50 years and older is acceptable)
- A policy and procedures manual has been created which covers all aspects of the TruckSafe system. A sample manual is available online in the member’s portal of the TruckSafe website.

**Note: If, after you have submitted an audit application form and requested an auditor, it is found that you have not met the requirements in 9.1.2 when the auditor arrives, a fee may be charged to you for the auditor’s time and any associated costs if an audit is not able to be conducted.**

9.1.3 Training in the areas of vehicle daily checks and fault recording and reporting must also be conducted prior to entry audit. Records must be kept as specified in the Training Standard and consistent with the Corporation Act (2001) and the Privacy Act (1988).

9.1.4 The TIAC reserves the right to use a range of information as detailed in 8.1 in addition to the external audit report in reviewing an accreditation application. If an Operator fails to meet the TIAC criteria for approving accreditation, conditional accreditation may be imposed on the Operator as outlined in section 12.

9.1.5 In addition to the above, the TIAC must be satisfied that the powered vehicles and trailing equipment has been certified roadworthy by a person qualified in the inspection and certification of heavy vehicles for roadworthiness in the state or territory in which the vehicle(s) is/are registered.



9.1.6 Upon completion of a successful Entry Audit and TIAC approval, accreditation is given.

## 9.2 Compliance Audit

9.2.1 To maintain your accreditation, compliance to the standards and membership acceptance criteria must be maintained.

9.2.2 A compliance audit may also be in the form of a triggered audit. Refer 9.3.

9.2.3 The Operator must undergo their first compliance audit at a period not exceeding six months, or shorter time at the TIAC's discretion, from the initial accreditation date.

A second compliance audit is required at a period not exceeding 2 years after the first compliance audit's due date, or shorter time at the TIAC's discretion. After that, an Operator is required to undergo further compliance audits at a period not exceeding 2 Years from the date of the previous compliance audit's due date, or at a shorter time at the TIAC's discretion.

9.2.4 A compliance audit assesses the effectiveness of the Operator's system by examining and measuring the level of compliance achieved over a given period.

Note: TruckSafe will make all efforts to align the audit dates of other schemes the Operator may also be involved with. The Operator needs to apply in writing to the TIAC for a variation of their audit due date is required.

9.2.5 The TIAC may also take into account any information that comes available about the Operator's history of compliance including but not limited to:

- Compliance with Road Transport Law,
- Complaints received about an Operator applying for accreditation.

**Note: Costs for the 2 yearly scheduled single site audits will be included in the annual fee. Additional sites or any extra audits requested or required by the Operator will be at their expense (including travel costs). All fees need to be paid prior to any audits taking place. Non-payment of fees may result in suspension of accreditation.**



9.2.6 If, after review of the compliance audit report, the TIAC considers an accredited Operator's performance is not satisfactory, the TIAC may decide to:

1. Vary the conditions of accreditation,
2. Terminate or suspend the member's accreditation.

If this course of action is taken the accredited Operator shall be advised of the reasons why and will be provided 28 days to show cause why accreditation should not be terminated or suspended as described in section 16.

### **9.3 Triggered Audits**

9.3.1 A triggered audit can be conducted following a complaint or as a result of other circumstances that are brought to the attention of the TIAC as described in section 16 of this agreement.

9.3.2 If, at the conclusion of the triggered audit, the Operator is found not to be complying with the TruckSafe standards and acceptance criteria, or is in contravention of this agreement, sanctions may be applied as described in section 16 of this agreement.

9.3.3 A triggered audit may be conducted on part or all of the TruckSafe standards as directed by the TIAC.

9.3.4 If an Operator is found to have not complied with the TruckSafe Standards, Acceptance criteria, Business Rules Agreement or Code of Conduct during the triggered audit, the cost of this and subsequent audits will be at the Operator's expense.

9.3.5 If, after review of the triggered audit, the TIAC considers an accredited Operator's performance is not satisfactory, the TIAC may decide to terminate or suspend the Operator's accreditation. If this course of action is taken the accredited Operator shall be advised of the reasons why and be provided 28 days to show cause why accreditation should not be terminated or suspended as described under the complaints process in section 16.

### **9.4 Random Audits**

9.4.1 At the request of the TIAC, a random audit may be conducted at any time, for any reason after accreditation has been granted. This audit can be conducted provided a minimum of 3 days notice is given to the Operator.



9.4.2 If at the conclusion of the random audit, the Operator is found:

- not to be complying with the TruckSafe standards or acceptance criteria, or
- is in contravention of this agreement,

sanctions may be applied as described in section 16 of this agreement.

9.4.3 A random audit may be conducted on the entire or any part of the TruckSafe standards as directed by the TIAC.

9.4.4 If, after review of the random audit, the TIAC considers an accredited Operator's performance is not satisfactory, the TIAC may decide to terminate or suspend the member's accreditation and participation in the programme. If this course of action is taken the accredited Operator shall be advised of the reasons why and be provided 28 days to show cause why accreditation should not be terminated or suspended as described under the sanctions process in section 16.

## 9.5 Audit Timing

9.5.1 After the first compliance audit, the TruckSafe system is subject to one scheduled compliance audit every accreditation period, and can be carried out within the last six months of the accreditation period.

## 10 AUDITORS

10.1 A TruckSafe auditor is a person who:

- a) Is chosen by TruckSafe, and
- b) Holds a qualification as a heavy vehicle auditor with Exemplar Global, and
- c) Holds current Professional Indemnity insurance, and
- d) Is registered with the NHVR as an NHVAS auditor

10.2 The appointment of auditors to conduct any TruckSafe audit is at the discretion of the TruckSafe Secretariat. Except in exceptional cases, the secretariat will not appoint the same auditor to conduct more than 2 consecutive TruckSafe audits for the same operator.

10.3 Auditors who are system providers or consultants (either as an individual or a company) that establish or maintain an operators TruckSafe system cannot conduct any TruckSafe audit for that operator until they have ceased any services with that operator for at least 2 years.

10.4 When conducting an audit, an auditor must ensure that the findings of the audit of procedural and systems documentation are verified by observation of processes, inquiry of personnel, and/or physical inspection of vehicle(s) and facilities.



## 11 COMPLIANCE STATEMENTS

As a part of the accreditation standards, accredited Operators are to complete a quarterly compliance statement and retain it as a record. The TIAC reserves the right to request copies of statements be forwarded to the TIAC. Such requests must be actioned without delay.

## 12 CONDITIONAL ACCREDITATION

12.1 Where the TIAC has concerns about an Operator's ability to meet the ongoing requirements of the TruckSafe Standards or acceptance criteria, it may decide to accept the application for accreditation subject to any or all of the following conditions being met within a nominated time frame as set by the TIAC.

- a) Increased surveillance of the Operator during the conditional period in the following ways:
  - Random Compliance checks
  - Random audit
  - Compliance audits
  - Triggered audits
- b) Require the Operator to send the TIAC quarterly compliance statements.
- c) Request further information from the Operator to verify the standards are being met.
- d) Request further information be obtained by the Operator from state transport agencies and/or the relevant state police department to verify on road performance and on road behavior record.
- e) Require a random audit be conducted within a certain period of time
- f) Restrict use of TruckSafe logo and ID Labels until the conditional period has expired or until the TIAC is satisfied the Operator can meet the TruckSafe Standards, acceptance criteria and terms of the Business Rules Agreement and Code of Conduct.
- g) Decide to refuse conditional accreditation to the TruckSafe Program at any stage during conditional accreditation and terminate the Operator's application for accreditation. All monies paid up to that date are ineligible for refund.
- h) Any other condition considered by the TIAC to be appropriate.



## 13 IDENTIFICATION OF ACCREDITED VEHICLES

13.1 All accredited Operators may display the TruckSafe Identification (ID) labels on all powered vehicles. The labels are to remain visible and legible and are to be affixed to the vehicle in the following locations:

- Powered vehicles (e.g. trucks and prime movers) - Right Hand (RH) side quarter glass or window or in some other prominent position on the driver's side of the cabin.

13.2 The TruckSafe logo may also be displayed on trailing equipment, stationery, uniforms, company websites and promotional advertising material.

**Note: The TruckSafe logo is a registered trademark and unauthorised use, or misuse, is prohibited. See section 14.**

13.3 Accredited Operators may only display the TruckSafe vehicle labels as supplied and authorised by the TIAC or the TruckSafe secretariat. Unauthorised use of the TruckSafe trademark constitutes an infringement of trademark and may result in legal action.

13.4 If accreditation is terminated or suspended for any reason, ALL use of the TruckSafe logo or ID label must cease immediately. Upon termination or suspension the Operator must provide written advice that all identification items, including vehicle ID labels and reference on stationary etc, have been removed from use and or destroyed along with the accreditation certificate and the letter of accreditation.

13.5 An Accredited Operator is required to use reasonable efforts to account for all official vehicle ID labels issued. Operators falsely claiming accreditation through the use of the logo or other means may be subject to legal action. Accredited Operators must inform the TruckSafe secretariat immediately when they become aware of any unauthorised use of the TruckSafe logos, ID labels or name.



## 14 TRADEMARK OF TRUCKSAFE LOGO AGREEMENT

### SCHEDULE 2

Goods and Services

The Goods to which this Agreement relates are:

- Identification labels and
- Stationery
- Digital artwork
- Any other TruckSafe Decals

The Services to which this Agreement relates are: NIL

### SCHEDULE 3

Territory: AUSTRALIA

### SCHEDULE 4

Term: Until the date of renewal of accreditation.

### SCHEDULE 5



Trade Mark:



## 14.1 Definitions

### 14.1.1 Definitions in this Agreement:

- (1) "Agreement" means this document.
- (2) "Business Day" means any calendar day excluding Saturday, Sunday or any other day which may be a public holiday or a bank holiday where an act is to be performed or a payment is to be made;
- (3) "Goods" means the goods described in Schedule 2;
- (4) "Services" means the services described in Schedule 2;
- (5) "Term" means the period described in Schedule 4;
- (6) "Territory" means the territory described in Schedule 3; and
- (7) "Trade Marks" means the trademarks described in Schedule 5.

## 14.2 Interpretation

### (1) Reference to:

- (a) One gender includes the others;
  - (b) The singular includes the plural and the plural includes the singular;
  - (c) A person includes a body corporate;
  - (d) A party includes the party's executors, administrators, successors, and permitted assigns;
  - (e) A statute, regulation or provision of a statute or regulation ("Statutory Provision") includes:
    - (i) That Statutory Provision as amended or re-enacted from time to time; and
    - (ii) A statute, regulation or provision enacted in replacement of that Statutory Provision; and
  - (f) Money is Australian dollars, unless otherwise stated.
- (2) "Including" and similar expressions are not words of limitation.
- (3) Headings are for convenience only and do not form part of this Agreement or affect its interpretation.



(4) A provision of this Agreement must not be construed to the disadvantage of a party merely because that party was responsible for the preparation of the Agreement or the inclusion of the provision in the Agreement.

#### 14.3 Parties

(1) If a party consists of more than 1 person, this Agreement binds each of them separately and any 2 or more of them jointly.

(2) An obligation, representation or warranty in favor of more than 1 person is for the benefit of them separately and jointly.

(3) A party that is a trustee is bound both personally and in its capacity as a trustee.

#### 14.4 License

14.4.1 The Owner grants to the Licensee a non-exclusive license to use the Trade Marks in relation to the demonstration of compliance to the standards of accreditation as set by the Owner throughout the Territory.

#### 14.5 Term

14.5.1 This Agreement commences on the date of the Agreement and continues for the Term unless terminated earlier in accordance with the provisions of clause 14.9.

#### 14.6 The Licensee's Obligations

14.6.1 The Licensee must use the Trade Marks only in relation to the Goods and Services within the Territory.

14.6.2 The Licensee must permit the Owner or their authorised representative at all reasonable times to have full access to the premises where the Services are provided to make a full inspection of those Services and of any advertising or other materials or things bearing the Trade Marks.

14.6.3 The Licensee must not use the Trade Marks in any way or do anything that is likely to adversely affect the Owner's reputation, the registration of the Trade Marks or the Owner's rights in the Trade Marks during the Term or afterwards.

#### 14.7 Infringement of the Trade Marks

14.7.1 The Licensee must notify the Owner immediately in writing of any actual, suspected or anticipated infringement of the Trade Marks of which it becomes aware.

14.7.2 The Licensee must co-operate fully with the Owner in stopping any infringement of the Trade Marks.



14.7.3 The Owner may institute and prosecute an action against any infringement of the Trade Marks at its discretion.

14.7.4 The Licensee must give to the Owner, at the Owner's request, all assistance in relation to the proceedings.

14.7.5 The proceeds from any judgment or settlement made by the Owner in relation to the infringement must be used to reimburse the Licensee for all expenses incurred by it in assisting the Owner and to pay the Owner's costs and expenses. The Owner and the Licensee must share the remainder of the proceeds equally.

#### 14.8 Licensee's Indemnity

14.8.1 The Licensee indemnifies the Owner against:

- All losses incurred by the licensee;
- All liabilities incurred by the Licensee ; and
- All legal costs (on a solicitor and own client or full indemnity basis, whichever is greater) and other expenses incurred by the Owner in connection with a demand, action, arbitration or other proceeding (including mediation, compromise, out of court settlement or appeal); arising directly or indirectly as a result of or in connection with the promotion of the Goods or the Services or any unauthorised use by the Licensee of the Trade Marks.

14.8.2 The Licensee must pay to the Owner all liabilities, costs and other expenses referred to in clause 14.8.1, whether or not the Owner has paid or satisfied them.

#### 14.9 Termination

14.9.1 The Owner may terminate this Agreement at any time during its Term immediately by written notice to the other party if:

(1) The Licensee commits or allows to be committed a breach of any provision of this Agreement and fails to rectify the breach within 14 days after receipt of written notice from the other party specifying the nature of the breach and requiring the party in default to remedy the breach;

(2) The Licensee:

- (a) Becomes an externally administered body corporate under the Corporations Law;
- (b) Steps are taken by any person towards making it an externally administered body corporate;
- (c) A controller (as defined in section 9 of the Corporations Law) is appointed of any of the property of it or any steps are taken for the appointment of such a person;
- (d) It is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Law; or



(e) A resolution is passed for the reduction of capital of it or notice of intention to propose such a resolution is given, without the other party's prior written consent;

(3) The Licensee's accreditation under the TruckSafe Program is suspended or terminated;

(4) The Licensee sells or otherwise disposes of the business providing the Goods or Services in relation to which the Trade Marks are being used; or

(5) The Licensee does not use the Trade Marks in relation to the Goods or Services for a period of 3 or more consecutive months.

14.9.2 On the expiration or termination of this Agreement, the Licensee must cease to use the Trade Marks, take down or destroy all signs of the Trade Marks, withdraw all advertising that refers to the Trade Marks and deliver up to the Owner or destroy all things, including, but not limited to, the Goods, packaging, stationery and advertising materials on which the Trade Marks are referred to or appear.

14.9.3 Termination of this Agreement does not prejudice any cause of action or claim of any party arising out of a breach of this Agreement by the other party.

#### 14.10 Assignment

14.10.1 The Licensee may not assign or otherwise deal with this Agreement without the prior written consent of the Owner. The Owner is not required to give consent or to justify the withholding of consent.

#### 14.11 Variation

14.11.1 An amendment or variation to this Agreement is not effective unless it is in writing and signed by the parties.

#### 14.12 Waiver

14.12.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

14.12.2 The exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.

14.12.3 A waiver is not effective unless it is in writing.

14.12.4 Waiver of a power or right is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.



## 14.13 Governing Law

14.13.1 The law of the Australian Capital Territory governs this Agreement.

14.13.2 The parties submit to the exclusive jurisdiction of the courts of Australian Capital Territory and the Federal Court of Australia and agree that any lawsuit must be heard in those Courts.

## 15 MAINTAINING ACCREDITATION

15.1 The maintenance of accreditation is dependent upon the accredited Operator's history of compliance, not only with the terms and conditions of the program, but also with all aspects of Road Transport Law.

15.2 Performance is monitored by:

- Compliance Audits
- Complaint investigation
- Random Compliance Checks
- Random Audits
- Triggered Audits
- Exchange of information between road authorities and TruckSafe, the TIAC and TruckSafe secretariat (where applicable).

## 16 COMPLAINT INVESTIGATION, SANCTIONS, TERMINATIONS or SUSPENSION, APPEALS, AND EXIT FROM THE PROGRAM

16.1 In order to maintain accreditation, the Operator consents to the TIAC using information reported to it for the purpose of substantiating a complaint that has been made. The information will not be used by the TIAC to identify any individual and is limited to substantiating complaints against the registered owner of the vehicle(s).

16.2 Where information received suggests that there is reasonable suspicion that an Operator is acting contrary to the TruckSafe standards or this Agreement or the Code of Conduct, the TIAC may direct, at its discretion, a triggered audit to be conducted.

16.3 The TIAC has the right to investigate complaints received, however it reserves the right not to investigate or respond to mischievous or anonymous complaints.

16.4 Without in any way limiting its discretion, the TIAC may take any or all of the following actions:

- Investigate complaints without informing the Operator.
- Request an explanation from an Operator to substantiate or refute a complaint.
- Request the Operator show cause why a partial or full Triggered Audit should not be conducted.
- Request the Operator show cause why accreditation conditions should not be altered.
- Alter accreditation conditions (i.e. period between compliance audits)
- Request the Operator show cause why accreditation should not be suspended or terminated.
- Immediate termination.



16.5 If, in the opinion of the TIAC, the accredited Operator fails to show just cause, then the TIAC will advise the Operator within 14 days that accreditation is terminated or suspended.

16.6 When determining the sanction to apply to a substantiated non-compliance, consideration will be given to the severity of the case and any mitigating circumstances.

16.7 Sanctions that may be imposed on an accredited Operator may include any or all of the following:

- Counselling.
- Written warning notice.
- Notice to take remedial action within a specified period.
- Variation on terms or conditions of accreditation.
- Require the Operator to send to the TIAC quarterly compliance statements.
- Request further information from the Operator to verify the standards are being met.
- Request further information be obtained by the Operator, from state transport agencies and/or the relevant state police department to verify on road performance and on road behavior record (where applicable)
- Require a random audit be conducted within a certain period of time.
- Restrict use of the TruckSafe logo and ID Labels until a conditional period has expired or until the TIAC is satisfied the Operator can meet the TruckSafe Standards, acceptance criteria, terms of the Business Rules Agreement and Code of Conduct.
- Decide to refuse continued membership to the TruckSafe Program at any stage during conditional accreditation and terminate the Operator's application for accreditation. All monies paid up to that date are not eligible for refund.
- Show cause why accreditation should not be suspended.
- Show cause why accreditation should not be cancelled.
- Immediate suspension or cancellation of accreditation.

16.8 All show cause notices must be responded to within 28 days from date of postage.

16.9 The TIAC will consider all information provided and make a decision.

16.10 The Operator will be notified in writing of the TIAC's decision within 14 days of receiving the Operator's reply to a show cause notice. The Operator has the right of appeal to the TruckSafe Board who in turn will report its findings back to the TIAC.

16.11 Any sanction imposed by the TIAC is in addition to any penalties incurred for the breach of Road Transport Law.





16.12 Providing false or misleading information may be in breach of law and may be grounds for cancellation of accreditation.

16.13 Termination or suspension can result from the following circumstances:

- Failure to meet the TruckSafe Standards or acceptance criteria at either compliance, triggered or random audit.
- Failure to meet random compliance checks or requirements.
- Contravention of Road Transport Law, but not limited to, any State or Territory motor traffic legislation.
- Breach of any of the terms of this Agreement or the Code of Conduct.
- Breach of Terms of Trade.

16.14 The Operator acknowledges that upon termination or suspension of TruckSafe accreditation, the TIAC reserves the right to notify state and federal government departments and road transport authorities.

16.15 This may be done in writing or by public notice of the suspension or proposed termination.

**Note: While an Operator is suspended from the accreditation program, whether the suspension is a result of a request by the Operator for voluntary suspension or the result of a TIAC imposed sanction, the Operator's status within the database will be maintained and will therefore continue to be charged annual fees during the period of suspension.**

16.16 If an accredited Operator wishes to contest a decision made by the TIAC, in reference to sections 16 they must lodge an appeal to the TruckSafe Board within 28 days of notification from the TIAC. Sanctions will remain in place until the TIAC is satisfied with the Operator's response and course of action.

16.17 An accredited Operator may leave the program or give up membership at any time.

This shall require the Operator to:

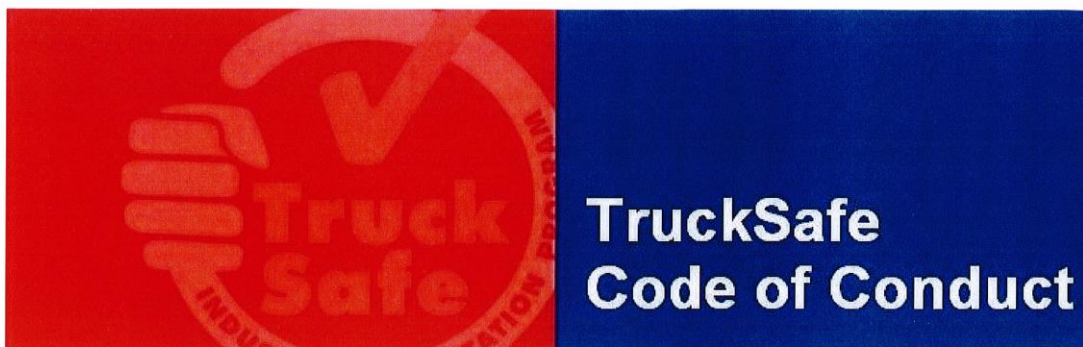
- Advise the TruckSafe secretariat in writing that they wish to do so.
- Destroy/remove all identification items within 14 days and advise the TruckSafe secretariat accordingly.
- Remove the TruckSafe logo and all statements about TruckSafe membership from its website within 14 days.
- Discontinue using any stationery, business cards or other material with the TruckSafe logo or statements about TruckSafe membership within 30 days.



16.18 Any Operator electing to withdraw from the scheme at any time after signing the membership application and becoming a TruckSafe member is **not** entitled to a refund of fees paid.

16.19 Where an Operator requires to exit from the program the Operator remains liable for all outstanding fees and charges up to and including the date of receipt of written notification of withdrawal to TruckSafe and shall remain liable until all debts are cleared.

## ATTACHMENT A



### Roadworthiness

1. All nominated vehicles operated by the accredited operator must be maintained in a safe and roadworthy condition as outlined in the TruckSafe standards and the Vehicle Standards Regulations.

### Regulations

2. All vehicles are to be maintained in compliance to the appropriate Australian Vehicle Standards and Design Rules (AVSRs and ADRs).
3. No driver shall be required to drive a mechanically unsafe vehicle at any time.

### Driver Health

4. All drivers are to participate in the health screening program as detailed in the standards.
5. Drivers identified, as "Not Fit to Drive" must not be allowed to continue driving.

### Training

6. The accredited operator must maintain commitment to ongoing training as outlined in the standards.

### Management

7. The accredited operator must conduct all business in a safe, professional and legal manner.

8. An accredited operator as well as their employees must be familiar with and address their respective duty of care requirements in accordance with the applicable state/territory Work Health and Safety legislation.

9. Drivers must be afforded sufficient time to conduct trips in a legal, compliant and safe manner.

10. Vehicle's speed limiters shall be maintained to the legal requirement as specified by ADR 65/00 and must in no way be tampered with.

11. Vehicles shall not be, in any manner knowingly overloaded.

12. Prime contractors must not, by their actions or requirements, knowingly force or coerce subcontractors to break the law.

### Driver Specific

13. Drivers must notify their employer if they are not fit for duty prior to commencing their shift.

14. Drivers are expected at all times to obey Road Transport Laws.

15. Drivers are expected to obey the applicable driving hours specific to the state/s of operation in accordance with legislation and take all reasonable steps to manage their fatigue and not drive with high levels of drowsiness.

16. Drivers, where practical, must practice and maintain safe load restraint practices.

17. As the ambassadors of the road transport industry, drivers shall operate their vehicle in a safe and professional manner with consideration to all other road users.

18. Drivers agree to notify their employer or operator immediately should the status or conditions of their driver's license change in any way.



TruckSafe is the trucking industry's business and safety management solution.  
For more information contact TruckSafe on 02 6253 6900 or visit [www.trucksafe.com.au](http://www.trucksafe.com.au)



© TruckSafe 2018  
This work is copyright,  
TruckSafe operators, approved consultants and auditors,  
may reproduce this material for their own use.  
All other rights are reserved, apart from uses permitted under the  
*Copyright Act 1968.*