

## STANDARD TRADING CONDITIONS

All and any business undertaken by Fracht Australia Pty Limited will be subject to the terms and conditions of this Agreement which are as follows:

### 1. Definitions and interpretation

1.1 In this Agreement, the following terms have these meanings:

**Agreement** means this document, together with any attachments and variations in writing signed by both parties.

**Company** means Fracht Australia Pty Ltd ABN 85 003 404 091, its employees, servants, agents, subsidiaries and/or associated entities.

**Connected Party** means in relation to the Goods, the Owner, exporter, importer, supplier, purchaser, carrier or any agent of any of the aforementioned parties, other than the Company

**Customer** means the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed.

**Dangerous Goods** means any Goods which are or may become noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods, persons, plants or animals or to any thing including that in which the Goods are carried, handled or stored.

**Fees** means the Company's quoted charges for Services calculated under its rates schedule or other agreed rates, including goods and services tax ("GST") levied directly on a transaction or supply under these conditions.

**Further Term** means each period of 30 days after the Initial Term, or a term otherwise agreed in writing by the parties.

**Goods** means the chattels, articles or things tendered for carriage, bailment, storage or other services by the Customer and will include the pallets packaging, containers or unit load devices which are the subject of the Services.

**Government Authority** means any government agency, authority, department or body, exercising jurisdiction in any nation, state, port or airport.

**Initial Term** means the period one year, unless the Company and Customer otherwise agree in writing, commencing on the day after Trial Period.

**Inwards Receipt** means a receipt issued by the Company upon receipt of the Goods.

**Law** means any law, regulation, rule or international convention.

**Loss** means any loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind, (including legal costs on an indemnity basis) and whether actual, prospective or contingent and whether ascertained or unascertained.

**Maximum Waiting Time** means, in relation to Goods being collected or delivered:

(a) where the Goods total 1-5 pallet spaces, 30 minutes; or

(b) where the Goods total 6 or more pallet spaces, 60 minutes.

**Owner** means the owner or importer of the Goods, or a person authorised to act on behalf of the owner or importer of the Goods.

**Perishable Goods** means Goods that will be in fact or law liable to deteriorate in quality and/or value and will include, but not be limited to, fruits, vegetables, dairy products, meat, etc.

**POD** means a written record of delivery of the Goods which may be stored in an electronic form.

**PPSA** means the Personal Property Securities Act 2009 (Cth).

**SBC Contract** means a contract that is either a "small business contract" or a "consumer contract" as defined in section 23(3) of Schedule 2 to the *Competition and Consumer Act 2010* (Cth), but does not include:

(a) a contract of marine salvage or towage;

(b) a charter party of a ship;

(c) a contract for the carriage of goods by ship; or

(d) a "small business contract" where the Customer does not employ fewer than 20 persons.

**Services** means the storage/warehousing, carriage, transport, movement, packing, handling, clearance and/or any other service performed or arranged by the Company pursuant to, or ancillary to, this Agreement with the Customer including preparing any documentation or providing any information to a Government Authority.

**Term** means either the Initial Term or any Further Term.

**Trial Period** in relation to any quotation of agreed Fees means the 30 day period commencing:

(a) where the Services relate to the storage of Goods, on the day the first delivery of Goods from the Customer are received for storage in the Warehouse; or for other Services

(b) when the Customer first delivers Goods into the possession of the Company or its Subcontractors;

whichever is the earlier.

**Subcontractor** means a third party (and their employees, agents and contractors) engaged to provide all or part of the Services.

**Valuables** means bullion, coins, precious stones, jewellery, antiques, or works of art.

**Warehouse** means the premises where the Goods will be stored, whether owned by the Company or not, at the discretion of the Company.

1.2 Words importing the singular include the plural and vice versa and words importing a person include firm, corporation or other entity where appropriate.

## 2. Services

2.1 Services are provided by the Company subject to this Agreement.

2.2 The Customer must send a request for services to the Company by email to [insert address], fax or EDI upload. These instructions must contain all information to enable the Company to provide the Services.

2.3 Without limitation to other methods of acceptance, by instructing the Company to provide the Services the Customer agrees to be bound by this Agreement.

2.4 The Company is not a common carrier and accepts no liability as such.

2.5 The Goods are at the risk of the Customer at all times.

2.6 Any instructions given by the Customer must be in writing in English and be legible.

2.7 The Company has the discretion to refuse to accept the Customer's instructions.

2.8 At least 24 hours' notice of a pick-up, inwards delivery or release must be given by the Customer to the Company. If insufficient notice is given and the Company attempts to adopt the Customer's instructions, the Company is not deemed to have accepted the instructions.

2.9 If the Company accepts the Customer's instructions on one occasion, the Company will not be bound by those instructions when providing Services in the future.

2.10 If the Company accepts the Customer's instructions to perform the Services in a particular way, it will give priority to that method, but may depart from that method at its absolute discretion.

2.11 The Customer authorises the Company to open any package containing Goods, and do any other thing in order to inspect or weigh the Goods or as necessary to perform the Services.

2.12 The Company's delivery obligations are satisfied if the Company, at its absolute discretion, delivers the Goods either:

(a) to the delivery address instructed by the Customer, or a person purporting to be the Customer or their agent or employee, and a person at that address provides an Inwards Receipt to the Company or signs a delivery docket;

(b) if authorised by the Customer, the Goods are left at the delivery address without obtaining a receipt or signed delivery docket; or

2.13 If a person at the delivery address cannot or refuses to take delivery of the Goods, or the Goods cannot be delivered for any other reason, the Customer authorises the Company to deal with the Goods at the Company's absolute discretion, including storing, disposing of, or returning the Goods.

2.14 Dates specified for completion of carriage or any other Service are estimates only and the Company will not be liable for failure to complete carriage or any other Service on such date or dates.

- 2.15 If the Customer, Owner or consignee of the Goods is insolvent, placed under external administration, bankrupt or deceased, the Company is authorised to return any Goods to the Shipper, exporter or Supplier of those Goods, where the Company has not received authority from the Shipper, exporter or Supplier of the Goods to release the Goods to the Customer, Owner or consignee.
- 2.16 The Customer irrevocably appoints the Company with the power and authority to take any action and execute any document in the name of and on behalf of the Customer as required by the Company to provide the Services.
- 2.17 The Customer agrees that the Company may receive and retain for its own account allowances, brokerages and commissions from shipping and forwarding agents, shipping lines, insurance brokers, airlines and any other person with whom the Company deals and that the Company is not required to disclose the receipt and retention of such amounts to the Customer, even, without limitation, if acting as agent for the Customer.
- 2.18 A charge of 2.5% of the gross value of each transport invoice will be added if the Customer instructs the Company to track and collect POD on the Customer's behalf and supply this to the Customer with the Company's invoice in respect of those Goods. This charge will not apply where the Customer opts to receive POD via email or access this information from [website domain].

## **Warehousing**

- 3.1 At the absolute discretion of the Company the Goods may at any time be warehoused or otherwise held at any place at the Customer's expense and risk.
- 3.2 If the Company stores the Goods, the Company may require that the Customer remove the Goods from storage by giving notice delivered to an address provided by the Customer to the Company.
- 3.3 All Goods will be tallied out of the Company's register upon delivery by the Company. If the Customer or their representative is not present at the time of delivery, or otherwise does not object to the Company's tally, the Company's tally will be accepted as final.
- 3.4 The Company's Fees for warehousing Services are calculated at the rates attached to this document. The Company may amend its warehousing rates by providing the Customer with written notice.
- 3.5 Invoices for warehousing Services will be calculated by reference to 30-day periods (or part thereof).
- 3.6 The Company will be entitled to enter the Warehouse at any time and destroy or otherwise deal with Goods which in the Company's reasonable opinion are or are liable to become Dangerous Goods without notice or compensation to the Customer, and without prejudice to the Company's right to any Fees.
- 3.7 The Company may take any action which in its reasonable opinion is required to protect or safeguard the Goods including the removal of all or part of the Goods to another premises, without notice to the Customer.
- 3.8 The Customer will be liable for the costs of storage arising due to delays not caused by the Company. The costs will be charged according to the schedule of rates.
- 3.9 The Customer must provide at least one week's written notice if the Customer wishes to deliver Goods to the Warehouse. Goods must be delivered to the Warehouse before noon on business days, unless otherwise agreed by the Company.
- 3.10 The Customer must provide written notice to the Company before 2.00pm the previous business day if the Customer wishes to retrieve Goods from the Warehouse.
- 3.11 The Customer may only retrieve Goods from the Warehouse between the hours of 8.30am and 4.00pm, unless otherwise agreed by the Company.
- 3.12 The Company may agree to dispose of the Customer's packaging material. The rate of the disposal services will be calculated at \$150/tonne, with a minimum charge of \$80, or as otherwise agreed in writing by the parties.
- 3.13 If the Company is required to hire equipment in order to receive or return the Customer's Goods, the Company will invoice the Customer for all costs associated with hiring the equipment, plus 15% in respect of administrative costs.
- 3.14 The Company may permit the Customer to access Warehoused Goods. The Fee for access to Warehoused Goods is \$50 per hour at a minimum of four hours or as otherwise agreed in writing by the parties.
- 3.15 The Company will not accept Goods if:

- (a) the combined height of Goods and the pallet on which they are stored exceeds 1.6m; or
  - (b) the weight of the Goods and the pallet on which they are stored exceeds one tonne.
- 3.16 The Company will provide the Customer with an inventory update within 72 hours of Services being provided to the Customer.
- 3.17 An Inwards Receipt will not constitute a document of title to the Goods. The Company will not be bound to recognize any other person than the person recorded by the Customer as the owner of the Goods unless specifically provided for.
- 3.18 A shrinkage provision of 0.5% calculated on the average number of pallets stored per annum is to be applied per year and carried forward if not fully utilized in a prior year.
- 3.19 The Company will provide the Services to the Customer for the Term.
- 3.20 The Company may at any time terminate the Term by written notice to the Customer.
- 3.21 If the Company terminates the Term, the Customer must collect the Goods within 14 days of the Company giving the Customer written notice to do so, or within such other period otherwise specified in the notice.
- 3.22 The Company may require the Customer to surrender an Inwards Receipt and any relative warrant as a condition precedent to the release of any Goods from the Warehouse.
- 3.23 If the Customer does not collect the Goods from the Company within the period set out in a notice issued under clause 3.20, the Company may destroy or sell the Goods.

#### **4. Agency/Subcontracting**

- 4.1 The Customer authorises the Company to:
- (a) subcontract all or part of the Services to a Subcontractor; and / or
  - (b) as the agent of the Customer, contract with a third party service provider on behalf of the Customer on any terms whatsoever, including terms that limit or exclude the liability of the third party service provider.
- 4.2 The Customer authorises a Subcontractor to subcontract all or part of the Services.
- 4.3 All exclusions or limitations on the liability of the Company in this Agreement extend to protect:
- (a) all Subcontractors;
  - (b) the agents, employees and servants of any Subcontractor or the Company; and
  - (c) any person engaged to provide all or part of the Services.
- 4.4 The Customer undertakes that it will not make any claim against, or impose any liability upon, any Subcontractor in connection with the provision of the Services or the Goods.
- 4.5 The Customer undertakes that it will indemnify any Subcontractor from and against any Loss if a claim is made against a Subcontractor by any party (including the Customer) in connection with the provision of the Services or the Goods.
- 4.6 For the purpose of clauses 4.3 and 4.5, the Company acts as trustee on behalf of and for the benefit of any Subcontractor, and to this extent each Subcontractor is deemed to be a party to this Agreement.

#### **5. Customer Obligations and Warranties**

- 5.1 The Customer will provide the Company with all assistance, information and documentation necessary to enable the Company to provide the Services, and punctually comply with any Law or request from a Government Authority.
- 5.2 The Customer is under a continuing obligation to provide any information which may materially affect the capacity of the Customer to perform its obligations under this Agreement.
- 5.3 The Customer will keep confidential the Company's Fees or charges and any waiver, discount, release or indulgence provided by the Company in relation to the provision of the Services.
- 5.4 The Customer (on behalf of itself, the Owner, and any Connected Parties) warrants to the Company that:
- (a) it is the Owner of the Goods or otherwise has the authority of the Owner to complete and sign documentation related to the Goods and Services including the Company's letter of instruction;

- (b) it enters into the Agreement on its own behalf, or in its capacity as the authorised agent of the Owner of the Goods;
- (c) it owns the Goods free from any encumbrance, charge, lien or interest;
- (d) all information and documentation provided by the Customer and Connected Parties to the Company is accurate and complete, and neither it nor a Connected Party has omitted to provide any requested material information;
- (e) in engaging the Services from the Company it will not procure the Company to perform any act in breach of any Law;
- (f) the Goods are packed to endure the ordinary risks of handling, storage and the Services, having regard to the nature of the Goods;
- (g) the Goods are adequately and accurately marked, labeled or branded so as to allow recognition without opening;
- (h) it and all Connected Parties have complied with all Laws relating to the Goods, including the nature, condition, packaging, handling, storage and carriage of the Goods;
- (i) it and all Connected Parties will observe all Laws and requirements of Government Authorities;
- (j) the Goods are not Dangerous Goods, Perishable Goods or Valuables unless the Company has agreed in writing to provide the Services in respect of those particular Dangerous Goods, Perishable Goods or Valuables, and in which case, warrants that it has made full disclosure to the Company of Dangerous Goods, Perishable Goods or Valuables and such Goods are distinctly marked.

## 6. Liability and indemnities

- 6.1
- (a) To the extent permitted by Law, the Company will not be liable in respect of any claim against the Company and/or Subcontractors howsoever caused or arising:
    - (i) including without limitation, liability for fundamental breach of contract, or a negligent, unlawful, reckless or willful act or omission;
    - (ii) resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods subject of any Service.
  - (b) The Company excludes from this Agreement all conditions, warranties, terms and consumer guarantees implied by Laws, general law or custom except any the exclusion of which would contravene any Laws or cause this condition to be void (**Non-Excludable Condition**).
  - (c) The Company's liability for any breach of a Non-Excludable Condition is limited, at the Company's option, to supplying the Services again, or the cost of supplying the Services again.
  - (d) The Company will not be liable for omitting to inspect or take any other action in respect of Goods where Goods have been damaged or pillaged, unless the Customer provides the Company with written instructions to take that action in relation to those Goods and the Company accepts those instructions.
  - (e) No declaration of value or liability will be made which might extend the liability of the Company beyond that stated herein. The Goods will be forwarded / dealt with at the Customer's risk unless express written instructions to the contrary are given by the Customer, accepted in writing by the Company and extra charge paid if required.
  - (f) Where the liability of the Company has not been, or cannot be, excluded by this Agreement the liability of the Company is limited to the lesser of:
    - (i) AUD\$2,000;
    - (ii) the value of the Goods at the time the Goods were received by the Company;
    - (iii) providing supply of the Services again; or
    - (iv) payment of the cost of having the Services supplied again.
  - (g) The Company will not be liable for any Loss suffered by the Customer or be in breach of any of its obligations to the Customer arising from or connected with the

Company's compliance with any Law, including without limitation disclosing confidential information to a Government Authority.

- (h) The Customer's right to compensation for any claim for loss or damage will only be maintained provided:
  - (i) notice of any claim is received by the Company within 7 days of the earlier of the date of delivery of the Goods or the date Services are or should have been completed, whichever date occurs first; and
  - (ii) legal proceedings are brought against the Company in the state of New South Wales within 6 months from the earlier of the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered.
- 6.2 If an Event causes a delay in the performance of a Company's obligation exceeding 10 days, the Company may terminate the provision of the Services by notice to the Customer.
- 6.3 The Customer indemnifies the Company from and against (and must pay on demand for) all Loss arising directly or indirectly from or in connection with the Goods or the performance of the Services (including Consequential Loss), including Loss in connection with a breach of contract, or a negligent, unlawful, reckless or willful act or omission by the Company or its employees, agents and contractors.
- 6.4 Without limitation to clause 6.3 the Customer indemnifies the Company from and against (and must pay on demand for) any Loss arising from
  - (a) the Customer's or Owner's failure to return any container or transport equipment involved in the performance of the Services by the date required under any Contract between the Company and the supplier of that container or transport equipment;
  - (b) any claim against the Company by a person who claims to have an interest in the Goods;
  - (c) breach of this Agreement, including any warranty provided by the Customer; and
  - (d) any claim for general average and will provide any security requested by the Company for the release of any Goods that are the subject of a claim for general average.
- 6.5 The Customer indemnifies the Company from and against (and must pay on demand the amount of) all duty, GST, and any other fees and taxes incurred in connection with the Goods payable to a Government Authority.
- 6.6 The Customer indemnifies the Company from and against (and must pay on demand for) all costs payable to third parties in relation to the carriage, storage, treatment or entry of the Goods.
- 6.7 The indemnities in clauses 6.3, 6.4, 6.5 and 6.6 continue whether or not the Goods are pillaged, stolen, lost or destroyed.
- 6.8 Without limiting the generality of the foregoing, the Customer will remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents, Subcontractors or any other party or authority.

## **7. Loading and Unloading on and from Transportation Vehicle**

- 7.1 The Customer will be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- 7.2 The Customer will provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- 7.3 The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection or complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer will have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

## **8. Insurance**

- 8.1 On request by the Customer, the Company at its absolute discretion may arrange insurance in respect of the Goods.

- 8.2 The Company will not arrange insurance in respect of the Goods unless the Customer provides:
- (a) written instructions to the Company to arrange insurance; and
  - (b) a written declaration of the value of the Goods;
- before the Goods are delivered to the Company.
- 8.3 Any insurance will be at the expense of the Customer and the Company may charge the Customer a fee for arranging the insurance.
- 8.4 Any insurance arranged by the Company is subject to the exceptions and conditions of the insurer or underwriter taking the risk.
- 8.5 When arranging insurance in respect of the Goods, the Company has the absolute discretion to name the Customer as the insured.
- 8.6 If a dispute arises relating to liability under an insurance policy arranged by the Company, the Customer will have recourse against the insurer or underwriter only.
- 8.7 The Company will not be liable for any insurance arranged in relation to the Goods.

## **9. Quotations**

- 9.1 Any information contained in a quotation provided by the Company in relation to the Fees applies to the specific consignment or item, weight and volume quoted, designated Services and standard of Services, and is only valid until the earlier of 30 days after being provided, the quote being withdrawn or the quote expiring.
- 9.2 A quotation may change based on changes to freight, insurance, warehousing, fees, fuel charges, and any other charges, with or without notice to the Customer.
- 9.3 At the end of the Trial Period, the Company may amend its quotations / Fees.
- 9.4 Quotations are based on the Maximum Waiting Time. Where the Maximum Waiting Time is exceeded, the Company's Fees in respect of those Services will include demurrage fees, charged per hour or each part thereof.
- 9.5 Unless otherwise stated, the Company's Fees are exclusive of goods and services tax.

## **10. Discretion in performance**

- 10.1 The Company is authorised by the Customer to choose the method for performance of the Services at the Company's absolute discretion.
- 10.2 The Company may refuse to transport Goods where the combined weight of the Goods and the pallet on which they are loaded exceeds one tonne. The Company may at its absolute discretion unload and repack such loads, at the Customer's cost.
- 10.3 Without limitation to clause 14, the Company may at its absolute discretion:
- (a) at any time, deem that certain Goods are Dangerous Goods, Perishable Goods or Valuables;
  - (b) destroy or otherwise deal with any Goods the Company considers are Dangerous Goods, Perishable Goods or Valuables without notice or compensation to the Customer.

## **11. Responsibility for Fees**

- 11.1 The Company's Fees are in AUD unless otherwise indicated.
- 11.2 The Company's Fees are earned on the earlier of the commencement of the performance of the Services (or part thereof), or when the Goods are delivered to the Company or its subcontractors.
- 11.3 The Company's Fees may include any disbursements and other amounts that the Company is required to pay third parties in connection with the Services. The Company at its absolute discretion may vary its Fees if the amount of any such disbursements change.
- 11.4 The Customer is responsible for any amount incurred by the Company in relation to the Company supplying pallets.
- 11.5 The Customer remains responsible for the payment of Fees:
- (a) even where an arrangement is made for the fees to be paid by another person; or
  - (b) whether or not the Goods are delivered or damaged or the Services performed as instructed.
- 11.6 The Company's Fees must be paid:
- (a) within 30 days of an invoice;

- (b) within 14 days of the end of the month; or
  - (c) within 30 days of the termination of the Term;
- whichever comes first (the **Due Date**).
- 11.7 The Company at its absolute discretion may determine its Fees, including by weight, measurement or value.
  - 11.8 The Company may re-weigh, re-measure or re-value the Goods at any time, and amend its Fees at its absolute discretion.
  - 11.9 The Customer must ensure that containers, packaging and pallets conform to standard transport and packaging requirements, and is responsible for any expense incurred due to a failure to conform.
  - 11.10 Where the Company agrees to provide the Services for a fixed Fee, the Customer will remain responsible for payment of the amount of any cost increases beyond the Company's control.
  - 11.11 The Customer agrees that it will not defer, set off or withhold payment of any amount payable to the Company by reason of any claim it has or alleges against the Company.
  - 11.12 If Fees are not paid in full within 7 days of the Due Date the Company may suspend the provision of credit to the Customer at the Company's absolute discretion.
  - 11.13 The Company may charge interest as liquidated damages on any overdue Fees at the Westpac Trading Bank published overdraft rate plus 5%.

## **12. Lien**

- 12.1 The Company has:
  - (a) a particular and general lien on all Goods and any documents relating to the Goods or Services in respect of all sums payable by the Customer to the Company; and
  - (b) the right to sell those Goods by auction or private sale (at the Company's absolute discretion) and direct the proceeds of sale to payment of any amounts owed to the Company and remit any balance remaining (if such exists) to the Customer.
- 12.2 The lien will also cover the Company's costs and expenses relating to the exercise of its lien and right of sale, including the Company's reasonable legal fees.
- 12.3 For the purposes of the lien, the Company will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods. The Company is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.

## **13. Registration/Personal Properties Security Act**

- 13.1 Terms used in clause 13 that are defined in the PPSA have the same meaning as in the PPSA.
- 13.2 The Customer agrees that this Agreement constitutes a security agreement for the purpose of the PPSA.
- 13.3 Without limitation to other rights of the Company, from the time the Goods are in the possession of the Company or a Subcontractor, the Goods are subject to a continuing security interest in favour of the Company for the payment of all amounts due and owing by the Customer under the Agreement.
- 13.4 The Customer acknowledges and consents to the Company's registration and perfection of the Company's security interest under the Agreement for the purposes of the PPSA.
- 13.5 The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.
- 13.6 To the extent permitted by law, the Customer irrevocably waives any right it may have to:
  - (a) receive notices or statements under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d) 132(4) and 135 of the PPSA;
  - (b) redeem the Goods under section 142 of the PPSA;
  - (c) reinstate this Agreement under section 143 of the PPSA; and
  - (d) receive a verification statement.
- 13.7 The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under this Agreement or comply with any reasonable request by the Company in connection with the PPSA.



## 14. Sale and Disposal of Goods

- 14.1 The Company and its Subcontractors will be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:
- (a) Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee or for any other reason; and
  - (b) any Perishable Goods which in the reasonable opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

## 15. SBC Contracts

The Company does not exclude or limit the application of any compulsory applicable Laws, including Schedule 2 of the Competition and Consumer Act 2010 (Cth), where to do so would contravene those Laws or cause any part of this Agreement to be void.

If the Agreement is a SBC Contract, then:

- 15.1 The definition of "Loss" is amended to mean any actual or ascertainable loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind (including legal costs on an indemnity basis).
- 15.2 The Company will not be liable for Consequential Loss or indirect Loss, unless the Company had actual knowledge that such loss might be incurred.
- 15.3 Clauses 2.9, 2.11, 2.12, 3.1, 8.1, 8.5, 10.1, 10.2, 10.3, 11.3, 11.6, 11.7, 11.9, and 12.1 are amended so that "absolute" is replaced with "reasonable".
- 15.4 Clauses 4.4 and 4.5 are modified, so that the Customer:
- (a) may make a claim against or impose liability upon any Subcontractor; and
  - (b) is not required to indemnify any Subcontractor from and against any Loss, to the extent that the claim, liability or Loss was directly caused by, or in connection with, a grossly negligent, unlawful, or willful act or omission by the Subcontractor.
- 15.5 Clauses 6.1(a) and 6.1(b) are modified so that the Company's liability is not excluded to the extent that it was directly caused by or in connection with a grossly negligent, unlawful, or willful act or omission by the Company or its employees, agents and contractors.
- 15.6 Clause 6.1(f) is modified so that the Company's liability is limited to the lesser of the actual loss suffered by the Customer or the value of the Goods at the time the Goods were received by the Company.
- 15.7 Clause 6.1(h) does not apply, and, without limitation to any other clause of the Agreement, the Company will be discharged from liability in relation to any claim:
- (a) where the loss to the Customer results from the act of a Subcontractor; and
    - (i) the Company's right to make a claim against that Subcontractor is subject to time limitations; and
    - (ii) the Customer does not make its claim against the Company within a period reasonably sufficient to allow the Company to make a corresponding claim against the Subcontractor within any applicable time limitation period, or
  - (b) in all other cases, where the Customer does not make its claim within 2 years from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.
- 15.8 The Customer is not required to indemnify the Company under clause 6.3 or 6.4(b), unless the Loss was caused by or in connection with a breach of contract, or a negligent, unlawful reckless or willful act or omission by the Customer or its employees, agents and contractors.
- 15.9 If a variation to a quote or fee under clauses 9.2, or 11.8 is material, where it is reasonably practical, the Company shall give notice to the Customer of that variation.
- 15.10 Clause 12.1(b) is modified so that the Company may only exercise its right of sale under a lien over:
- (a) Goods (other than Perishable Goods) after the Company has given 21 days' notice in writing to the Customer of its intention to do so;

- (b) Perishable Goods after giving such notice as is reasonable in the circumstances.
- 15.11 Clause 16.4 is modified so that the governing law is the law of the Australian State or Territory in which the Agreement is made and the Customer submits to the exclusive jurisdiction of the Courts of that State or Territory and the Federal Court of Australia.
- 15.12 Clause 16.7 is modified, so that neither party may assign its obligations under the Agreement without the written consent of the other party, which consent must not be unreasonably withheld.
- 15.13 Clause 16.8 is modified so that the words "The Company" are replaced with "a party".

## **16. General**

- 16.2. This Agreement takes priority over and replaces all previous agreements about its subject matter and constitutes the entire agreement between the parties. The use of the Customer's own form is no derogation from this Agreement.
- 16.3 A variation of this Agreement will only be valid if in writing and signed by each party or signed by a person with the authority to bind each party.
- 16.4 The Customer will exercise all reasonable care and comply with all applicable laws, Government regulations/directions and industry standards including those relating to the packing, carriage, storage, customs clearance, delivery, inspection or other Services in respect of the Goods, and will provide such information and documents as may be necessary to exercise such care and comply with such laws, regulations and standards. The Company will not be liable to the Customer or any other party for loss or expense due to the Customer's failure to comply with this provision and will indemnify the Company for any expense, damage or liability incurred by the Company in so complying.
- 16.5 The Agreement is governed by the laws of New South Wales, Australia. The Company and the Customer submit to the jurisdiction of the courts of New South Wales and of the Federal Court of Australia.
- 16.6 By signing the letter of instruction or otherwise accepting these conditions, the Customer agrees that it did not rely on any representation, promise, warranty or condition of the Company or its Subcontractor not expressly made (in writing) part of this contract.
- 16.7 The Company may assign its rights and obligations under this Agreement without the Customer's consent. The Customer must not assign its rights and obligations under this Agreement without the Company's written consent.
- 16.8 The Company will not be liable for any breach, loss or damage caused to the Goods or otherwise due to any circumstance, matter or thing beyond its reasonable control ("force majeure"). The Company will be excused and released from such obligations or liability to the extent that the obligation could not be performed, or liability would otherwise exist, due to a Force Majeure event.
- 16.9 Any notices under these Terms and Conditions must be in in English and in writing.
- 16.10 All rights, indemnities and limitations of liability contained in this Agreement will have their full force and effect, despite:
- (a) any breach of term or condition of this Agreement, or any collateral agreement by the Company;
  - (b) the performance or non-performance of the Services; or
  - (c) the delivery or non-delivery of the Goods.
- 16.11 If a condition or part of a condition of this Agreement is unenforceable, it must be severed from and does not affect the rest of the Agreement.
- 16.12 The Company is not bound by any waiver, discharge or release of a condition or any Agreement which purports to change this Agreement, unless it is in writing and signed by or for the Company.
- 16.13 A reference in this Agreement to any law includes any statutory modification, substitution or re-enactment of it.
- 16.14 The Customer agrees that the Company retains all copyright and intellectual property subsisting in all documents and things created by, or for, the Company in connection with the performance of the Services, including copyright and intellectual property that now exists or that later comes into existence.
- 16.15 The Customer must notify the Company of a change in the Customer's ownership or address within 14 days of the change.