



EMPEROR GROUP STANDARD TERMS AND CONDITIONS

1. DEFINITIONS

The headings herein are for ease of reference only and will not affect the interpretation or construction of this Agreement. In this Agreement unless the context otherwise requires the following words shall have the following meanings:

- 1.1 **Agreement** means the agreement between the Company and the Customer for the provisions of Goods and Services, whether pursuant to the Terms contained herein, together with any quotation, Order, invoice, credit application, or other document or amended and expressed to be supplemental to this agreement.
- 1.2 **Carriage** means the whole of the operations and Services undertaken by the Company or any person on behalf of the Company in respect of the Goods (whether gratuitously or not), including but without limiting the generality of this definition, loading, unloading and Storage of the Goods and the towing of a trailer.
- 1.3 **Carrier** means any operator who transports the Goods by road, rail, sea or air.
- 1.4 **CCA** means the *Competition and Consumer Act 2010 (Cth)*.
- 1.5 **Company** means Miteria Pty Ltd ACN 672 664 710, its subsidiaries (including but not limited to, Emperor 3PL ACN 672 664 729), its successors and assigns, its servants, directors and officers, agents, Sub-Contractors, and/or any person acting on behalf of and with the authority of the company.
- 1.6 **Confidential Information** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, consignment notes, airway bills, manifests, or any other forms as provided by the Company to the Customer, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, agreements, pricing details.
- 1.7 **Consignee** shall mean the person to whom the Goods are to be delivered by way of the Company's Services.
- 1.8 **Container** means any container, trailer, wagon, transportable tank, pallet, flat rack, or another unit device used to consolidate the Goods.
- 1.9 **CoR Laws** means any laws in relation to safety concerning the Carriage of Goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness and maintenance and including the *Heavy Vehicle National Law and Regulations and Road Traffic (Vehicles) Act 2012 (Qld)*.
- 1.10 **Corporations Act** means the *Corporations Act 2001 (Cth)*.
- 1.11 **Credit Facility** means the granting of credit by the Company to the Customer subject to clause 7 and in accordance with the terms of a credit application by the Customer which is approved by the Company.
- 1.12 **Customer** means the person, firm, company, or any person acting on behalf of and with the authority of the customer with whom the Agreement is made, or on whose behalf this Agreement is entered into, by requesting the Company to provide the Services as specified in any proposal, quotation, Order, invoice, or other documentation.
- 1.13 **Dangerous Goods** means Goods or cargo which is volatile or explosive or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which are likely to cause damage or injury to persons, other Goods, or property.
- 1.14 **Delivery Date** means the agreed-upon date between the Customer and the Company, by which the Company undertakes to deliver the Goods, to their designated destination or recipient.
- 1.15 **Force Majeure Event** means any event beyond the reasonable control of the Company including acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, labour disputes and other industrial disturbances, any road closure or congestion of roads, any quarantine or customs restriction, epidemic or pandemic, cyber warfare,

- cyberattacks, ransomware attacks, cyber sabotage, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, machinery or equipment.
- 1.16 **Goods** means the property accepted by the Company from, or at the request of the Customer for Carriage and includes any Container or packaging to be supplied by or on behalf of the Customer, to be transported or stored, by way of the Company's Services.
- 1.17 **GST** means the Goods and services tax imposed by or under the GST Act.
- 1.18 **GST Act** means Goods and Services Tax as defined within the "*A New Tax System (Goods and Services Tax) Act 1999*" (Cth).
- 1.19 **Intellectual Property Rights** shall mean, for the purposes of this Agreement, any of the Company's registered or unregistered trademarks, copyright, designs, trade names, services names, rights in computer software, database rights, trade secrets and/or patents or patent applications created or used in the planning or execution of the Goods and/or Services.
- 1.20 **Law** includes:
- (a) principles of law or equity established by binding court decision; and
 - (b) applicable statutes, regulations, orders, bylaws, requirements and approvals.
- 1.21 **Order** means each order for the Goods which the Customer places with the Company.
- 1.22 **Personal Information** means information including but not limited to, name, address, D.O.B, occupation, driver's license details, contact details, credit applications and credit history.
- 1.23 **PPSA** means the Personal Property Securities Act 2009 (Cth).
- 1.24 **Price** means the cost of the Services (exclusive of GST) as agreed between the Company and the Customer subject to clause 4 of this Agreement.
- 1.25 **Privacy Act** means the *Privacy Act 1988* (Cth).
- 1.26 **Privacy Law** means the Privacy Act, the Australian Privacy Principles and any other applicable privacy legislation, common law privacy obligations and any industry code (whether voluntary or not) by which a party is bound.
- 1.27 **Privacy Policy** means the Company's privacy policy in relation to the collection, use, storage, security, destruction, de-identification and/or disclosure of personal information.
- 1.28 **Related Entity** means in respect of the Company, its subsidiaries, parent or body corporate, any related or affiliated entities, and each of their successors and assigns, servants, directors and officers, agents, Sub-Contractors, and/or any person acting on behalf of and with the authority of the Company.
- 1.29 **Services** means all services supplied by the Company to the Customer, including, but not limited to, anything done or to be done in relation to the Goods, Carriage of the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel, or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto including offering of any advice or recommendations.
- 1.30 **Storage** means the temporary placement and safekeeping of Goods at designated facilities or locations under the custody and control of the Company.
- 1.31 **Sub-Contractor** means and includes:
- (a) any person, firm or company with whom Company may arrange for the Carriage of any Goods the subject of this Agreement;
 - (b) railways operated by the Commonwealth of Australia, or any State or Territory thereof or any other person; and
 - (c) any person who is now or later a servant, agent, employee, or sub-contractor of any other persons referred to in (a) and (b) above.
- 1.32 **Taxable Supply** means any Supply (as defined under the GST Act) under this Agreement in respect of which the Company is or may become liable to pay GST.
- 1.33 **Terms** means these terms and conditions of carriage (unless the context otherwise requires) includes any special terms agreed in writing between the parties.

2. APPLICATION AND ACCEPTANCE OF THESE TERMS

- 2.1 These Terms apply to all transactions between the Customer and Company relating to the provision of Goods and Services.
- 2.2 These Terms shall be governed by and construed in accordance with the laws of Queensland, Australia.
- 2.3 In the event of any inconsistency between the Terms of this Agreement and any other prior document or schedule that the parties have entered into, the Terms of this Agreement shall prevail.
- 2.4 These Terms are to be read in conjunction with the Company's quotation, consignment note, agreements, airway bills, manifests, or any other forms as provided by the Company to the Customer. If there are any inconsistencies between these documents, then the Terms contained in this Agreement shall prevail.
- 2.5 All of these Terms shall apply to the supply of both Goods and Services except where application to one or the other is specified.
- 2.6 Where more than one Customer has accepted these Terms and/or entered into this Agreement with the Company, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.7 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these Terms if the Customer places an Order to purchase the Goods or Services, or accepts Carriage provided by the Company.
- 2.8 Upon acceptance of these Terms by the Customer, the acceptance is irrevocable and can only be rescinded in accordance with these Terms or with the written consent of the Company.

3. THE COMPANY IS NOT A COMMON CARRIER

- 3.1 The Customer acknowledges the Company:
 - (a) is not a common carrier and accepts no liability as such;
 - (b) reserves the right to open and weigh all the Customer's Goods and do any other thing necessary in order to inspect all Goods at its discretion (including to determine the weight, nature, condition, ownership or end-destination of the Goods) and at the Customer's expense;
 - (c) may refuse at its sole and absolute discretion to accept the Carriage or transport of Goods for any person, corporation or body, and the Carriage or transport of any class of Good; and
 - (d) uses third party Carriers and the Customer must comply with any applicable terms and conditions of that third party Carrier with regard to provision of the Services.

4. ORDERS

- 4.1 The Order shall only be deemed to be accepted when the Company issues written or oral acceptance of the Order or commenced the provision of any Services.
- 4.2 Every Order by the Customer for the provision of Goods or Services must be submitted in writing (unless otherwise agreed).
- 4.3 An Order will only be deemed to be placed by the Customer if the Order clearly identifies the Goods or Services ordered and the Companies quoted Price. Any costs incurred by the Company in reliance on incorrect or inadequate information provided by the Customer in an Order may result in the imposition of an additional charge.
- 4.4 Orders must be signed by an authorised representative of the Customer and must specify the required Delivery Date.
- 4.5 The Company may in its absolute discretion refuse to provide Goods or Services where:
 - (a) Goods are unavailable for any reason whatsoever; or

- (b) the Company has not received payment for Goods previously provided to the Customer, or its affiliates or any party which the Company reasonably considers to be associated with the Customer, has not been received by the Company.
- 4.6 An Order cannot be cancelled without the prior written consent of the Company. Where an Order is cancelled, the Customer indemnifies the Company against any losses incurred by the Company as a result of the cancellation. This includes, but is not limited to, loss of profit from other orders foregone as a result of the scheduling of the Order which is subsequently cancelled.

5. SERVICES

- 5.1 The Customer engages the Company to provide, and the Company agrees to provide, the Services specified in this Agreement in consideration for the payment of the Price on the Terms of this Agreement.
- 5.2 In performing the Services the Company must use reasonable endeavours to:
 - (a) perform the Services in a competent and professional manner and in accordance with all applicable Law;
 - (b) act in accordance with the Customer's reasonable instructions and directions, subject to clause 9; and
 - (c) adequately safeguard and secure the Goods whilst they are in the Company's possession or control in a manner reasonably sufficient to minimise the risk of loss or damage to the Goods.
- 5.3 The Company may engage a Subcontractor to perform all or any part of the Services pursuant to clause 7. The Company is deemed to have entered into the Agreement as agent for any Subcontractor engaged by the Company.
- 5.4 The Customer will comply with Company's pallet policy.

6. PRICE AND PAYMENT

Price

- 6.1 At the Company's sole discretion the Price shall be either:
 - (a) as indicated on the invoice provided by the Company to the Customer in respect of Services supplied; or
 - (b) the Price as at the Delivery Date of the Goods according to the Company's current price list; or
 - (c) the Company's quoted Price (subject to clause 6.2 & 6.3);
- 6.2 The Company reserves the right to change the Price if:
 - (a) a variation to the Company's quotation is requested or;
 - (a) to reflect any increase in the cost to the Company's beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, or increases in taxes, poor weather conditions, limitations to accessing the site, customs duties, insurance premiums, or warehousing costs).
- 6.3 The Company may charge freight by weight, measurement, or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.

Invoicing and Payment

- 6.4 The Company may issue an invoice for the Services any time after the commencement of the Services.
- 6.5 The Company may issue an invoice for the Storage of Goods any time after the commencement of the Goods being stored.
- 6.6 Except otherwise agreed between the parties, the Company shall invoice the Customer for the Services at a frequency determined by the Company.
- 6.7 At the Company's sole discretion payment:

- (a) shall be due on, or before, delivery of the Goods;
 - (b) shall be due on the date specified on any invoice or other form as being the date for payment;
 - (c) for approved Customers, shall be made by instalments in accordance with the Company's payment schedule;
 - (d) for Customers with a Credit Facility in accordance with clause 7; or
 - (e) for approved Customers, shall be due on seven (7) days following the end of the month in which a statement is posted to the Customer's address or address for notices.
- 6.8 Time for payment for the Services shall be of the essence and will be stated on the invoice, if no time is stated, then payment shall be due in thirty (30) days following the date of the invoice.
- 6.9 At the Company's sole discretion, a deposit may be required at any time prior to the delivery of the Goods to the Customer.
- 6.10 Receipt by the Company of any form of payment shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised and until then the Company's ownership or rights in respect of the Services, and this Agreement, shall continue.

Payment method

- 6.11 The Customer must make payment of invoiced amounts by electronic funds transfer or, at the Company's discretion, by cheque, credit card, direct debit, or any other method of payment.
- 6.12 Where the Customer makes payment by cheque, the payment will not be considered to be made unless and until the cheque has been honoured and the funds received unconditionally by the Company.
- 6.1 Further to any other rights or remedies the Company may have under this Agreement, if the Customer has made payment to the Company by credit card, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 6 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Agreement.

Variations

- 6.2 The Customer may request that an Order be varied by providing a request in writing to the Company. A request for a variation must be agreed to in writing by the Company in order to have effect.
- 6.3 Where the Customer requests a variation to an Order, the Company reserves the right to vary the relevant invoice or costs payable by the Customer to account for variations in the Price and additional charges.
- 6.4 The Customer acknowledges that a variation request of the Order may result in a delay in delivery of acquisition of the Goods.

Late payment, set-off or deduction

- 6.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.6 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 6.7 The Company may recover from the Customer all costs and expenses, incurred by the Company in recovering or attempting to recover any outstanding invoices or other monies owed to the Company by the Customer (including but not limited to internal administration fees, legal costs on a solicitor and own Customer basis, the Company's contract default fees, bank dishonour fees, charges).

GST

- 6.8 The Price shall be increased by the amount of any GST and other taxes and duties which may be applicable, except to the extent that such taxes are expressly included in the tax invoice.
- 6.9 Where any taxable supply for GST purposes is made under the Agreement by the Company to the Customer, the Customer shall, on receipt of a valid GST invoice form, pay the Company such additional amounts in respect of GST as are chargeable on the supply of the Services or Goods at the same time as payment is due for the supply of the Services or Goods.

7. CREDIT FACILITY CONDITIONS

Trade Credit

- 7.1 The parties acknowledge that this clause 7 (**Credit Conditions**), and any referred to credit under these Terms, apply in respect of Customers which are supplied any Goods from the Company on trade credit.
- 7.2 The Customer's acknowledge and agree that any credit to be provided to the Customer by the Company is to be applied wholly or predominately for commercial purposes.
- 7.3 The Customer acknowledges and agrees that clause 32 applies to this clause 7.

Acceptance and Provision of Credit Facility

- 7.4 In order to obtain a Credit Facility arrangement with the Company, the Customer must make a credit application to the Company and must supply, where applicable, a Guarantee and Indemnity (provided in Schedule 1 of the credit application form) signed by the directors and/or shareholders, or other party where approved by the Company, of the Customer (**Guarantors**).
- 7.5 The Company may, in its absolute discretion, accept or reject the application for credit made by a Customer and, if accepted, impose any conditions which it sees fit to ensure compliance with these Terms (including imposing credit limits).
- 7.6 The Customer agrees that it is not entitled to any credit unless and until it receives notice in writing from the Company that the supply of the Goods on credit has been approved. Until such time, any Goods or Services that are to be supplied to the Customer by the Company will only be provided on a cash in advance basis and are subject to clause 6.
- 7.7 The Company may prevent the Customer from lodging an Order should the Customer fail to satisfy the conditions of the credit supplied by the Company or these Terms.

Credit – Orders and Payment

- 7.8 In addition to the provisions of clause 6, the Customer acknowledges that:
- (a) the Customer must make payments to the Company in accordance with any tax invoice or agreement which is provided by the Customer for the Order;
 - (b) the credit, and the delivery of Goods or provision of Service, by the Company to the Customer, may be suspended if payment is not made when due;
 - (c) if the Customer defaults in making any payment when due or the credit is terminated, then all money payable to the Company by the Customer becomes immediately due and payable;
 - (d) the Company may charge interest in accordance with clause 6.6 on all amounts due to it from the Customer which remain unpaid, from the due date for payment until the date payment is received;
 - (e) a dishonour fee of \$25.00 is payable by the Customer in respect of any cheque received by the Company which is not honoured upon presentation;
 - (f) the Customer is liable for all costs, charges and expenses incurred by the Company in recovering any outstanding monies including debt collection agency fees, administration fees and legal costs (on a full indemnity basis). Such amounts must be paid by the Customer on demand;
 - (g) the credit granted to the Customer may be reduced, suspended until further notice, or terminated at any time by the Company by written notice to the Customer;

- (h) the Company may, at any time, impose as a condition precedent to the granting of any further credit or the maintenance of the existing credit limit, the requirement that the Customer gives or procures such security or additional security as is required by the Company in its absolute discretion. The Company is entitled to withhold the supply of Goods or Services until such security or additional security is provided;
 - (i) the Company, in its absolute discretion, may suspend the provision of Goods and Services by the Company to the Customer at any time if the Company believes that the Customer is unable or unwilling to pay an amount to the Company when due;
- 7.9 the Company may amend or replace Credit Conditions in its absolute discretion by providing prior written notice to the Customer, which notice may be endorsed on or accompany an invoice, statement, correspondence or other document provided to the Customer. The amended or replacement of the Credit Conditions apply with effect from the date stipulated in the notice (which must be no earlier than the date the notice is given to the Customer) and do not affect accrued rights and obligations

General Credit Terms

- 7.10 The Customer represents and warrants to the Company that:
- (a) it is not aware of any information, notice or court proceedings that may result in the appointment of a trustee in bankruptcy, administrator, controller or managing controller, receiver or receiver manager or liquidator to it or any of its property;
 - (b) it does not intend to enter into any scheme of arrangement with creditors either formally through a court or otherwise; and
 - (c) none of its officers (if it is a company or other body corporate), partners (if it is a partnership) or it (if it is a sole trader) has been a director of a company which has been placed in liquidation or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966* (Cth) (as amended).
- 7.11 The Customer agrees to notify the Company in writing as soon as practicable and in any event within three (3) days of the occurrence of:
- (a) a change in the legal status, ownership or control of the Customer;
 - (b) a change in the directors (if it is a company or other body corporate) or partners (if it is a partnership) of the Customer;
 - (c) the appointment of a liquidator, administrator or receiver, or the liquidation, administration, arrangement, receivership or bankruptcy of the Customer; or
 - (d) any step being taken to sell an asset or assets of the Customer with a value of 20% or more of the gross assets of the Customer, or sell, transfer, encumber or otherwise dispose of 20% or more of the shares (if it is a company or other body corporate) of the Customer.
- 7.12 On the occurrence of such an event described in clause 7.11, the Company may:
- (a) may require the Customer to make a new application for credit (which may include requiring the Customer to produce any documents, such as the most recent audited Financial Statements of the Customer and evidence of incorporation, and/or requiring a Guarantee and Indemnity to be executed by any necessary parties); and/or
 - (b) reduce, suspend until further notice, or terminate the provision of credit to the Customer and/or may require the Customer to make a new application for credit.
- 7.13 The Company may at any time set off amounts payable by the Company to the Customer from the amounts payable by Customer to the Company.

Charge over Property

- 7.14 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- (a) where a Customer and/or a Guarantor (if any) are the owners of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to

mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met;

- (b) should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clause, the Customers and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursement including legal costs on a solicitor and own client basis; and
- (c) the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 7.14.

8. SUB-CONTRACTING

- 8.1 The Customer hereby authorises the Company (if it should see fit to do so) to contract with a Carrier and any Sub-Contractor for the provision of Services and or Carriage of the Goods.
- 8.2 The Sub-Contractor is deemed to be entitled to the full benefit of these Terms to the same extent as the Company. The Company is deemed to have entered into this Agreement for its own benefit and also as agent for the Sub-Contractor.
- 8.3 If the Company subcontracts any Services, the Company:
 - (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these Terms; and
 - (b) will be liable to the Customer for any act or omission of the Sub-Contractor as if such act or omission were the act or omission of the Company.
- 8.4 Any clause in these Terms excluding or limiting the liability of the Company or providing any right or exemption from liability to the Company is also available and extends to protect all Sub-Contractors and every servant or agent of the Company and of any Sub-Contractor.
- 8.5 Without limiting the effect of any other clause of these Terms, the Customer or any other person or persons owing or having any interest in all or any part of the Goods will not be entitled to make any claim against any person other than the Company by whom all or any part of the Services is undertaken, or any servant or agent of any such person or of the Company, in relation to the Goods or arising out of the Services.

9. CUSTOMER WARRANTIES

- 9.1 The Customer warrants that:
 - (a) that it is the owner of the Goods or otherwise has the authority of the owner or person having an interest in the Goods or any part thereof and has full power and authority to deal with the Goods;
 - (b) that it has not relied on any warranty or representation made by, for or on behalf of the Company other than those that are expressly set out in these Terms;
 - (c) it has in place whether prior to or at the time of entering into this Agreement adequate coverage over the Good for the Carriage and/or Storage of the Goods, and acknowledges and agrees that the Company does not take responsibility for such insurance;
 - (d) that a certificate of currency must be provided to the Company prior to accepting the Goods for Storage;
 - (e) it has fully and adequately described the Goods, their nature, weight, and measurement and complies with all applicable laws and regulations about the notification, classification, description, labelling, transport, and packaging of the Goods;

- (f) there is a suitable practicable road and approach for the Company and the Company's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (g) the place from which any Goods are to be collected will have safe and adequate loading facilities and equipment available;
- (h) where the Goods are Dangerous Goods, provide written notice to the Company and otherwise comply with clause 16;
- (i) it is authorised to accept these Terms for itself and the Consignee as well as any other person for whom the Customer is acting or any other person having interest in the Goods;
- (j) it will not represent itself in any way that implies that it is an agent or branch of the Company and has no authority to make or accept any offers or representations on the Company's behalf;
- (k) that if any of the Goods are subject to the control of the customs, all customs duty, excise duty and costs which the Company becomes liable to pay or shall pay in respect of such Goods pursuant to any law relating to customs or excise shall be paid by the Customer;
- (l) that it has and will comply with all the requirements of the Commonwealth of Australia and any States or Territories in relation to the loading, handling and unloading of the Goods and shall be responsible for ensuring that proper facilities and safeguards exist for the collection, delivery, loading, handling and unloading of the Goods by the Company;
- (m) that it has complied with all applicable Laws relating to Dangerous Goods by fully describing in writing whether on the consignment note or separately (and in the latter case has brought the description to the actual attention of the Carrier's servants or agents) the name and nature and the value of all Dangerous Goods or capable of causing damage or injury to any other Goods, to any person or animals with which, or to any store, vessel, vehicle, wagon, van, aircraft or conveyance of any kind whatsoever in which they may be loaded, carried, packed or stored and additional freight charges shall be paid on such Dangerous Goods if deemed necessary by the Company.
- (n) that any person requesting the Goods in Storage is authorised to do so for and on behalf of the Customer;
- (o) that the Company is entitled to open any document package or other container in which the Goods are placed or carried to inspect the Goods either to determine their nature or condition or to determine their ownership or destination where any consignment note or other document is lost, damaged, destroyed or defaced;
- (p) If, under Law, a Container must be opened to allow the Goods to be inspected, the Company will not be liable for any loss, damage or delay incurred as a result of any opening, unpacking, inspection or repacking and the Customer agrees to pay the Company's charge for the cost of any such opening, unpacking, inspection or repacking; and
- (q) The Customer:
 - (i) acknowledges that the Company has no responsibility or liability in relation to any pallets used for Carriage;
 - (ii) must ensure that pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
 - (iii) releases and indemnifies the Company from and against any liability in relation to the loss of pallets or failure of any party to transfer pallets on or off any hire account.

10. COMPANY'S OBLIGATIONS

10.1 In performing the Services the Company will use reasonable endeavours to:

- (a) comply with all statutory obligations that apply to the provision of the Services including but not limited to occupational health and safety Laws, public health orders and any applicable road transport Laws;
- (b) obtain and maintain at its own expense all proper and necessary licences as may be required by Law for the provision of the Services;
- (c) to the extent that the Company provides Storage, account for all Goods received and use modes of Storage appropriate to the nature of those Goods;
- (d) deliver the Goods to the address nominated by the Customer and to effect delivery at the Delivery Date, subject to clause 17, 18 and 33.7 hereof; and
- (e) act in accordance with the Customer's reasonable and lawful directions.

11. EXCLUSION AND LIMITATION OF LIABILITY

- 11.1 To the fullest extent permitted by Law, the Company its Related Entities and its Sub-Contractor's, shall not be liable whether in tort (including negligence), contract (including a fundamental breach of contract), bailment, or otherwise:
- (a) loss of the Goods;
 - (b) damage to the Goods; or
 - (c) mis-delivery, any delay, non-delivery, or other failure to supply the Goods, unless such loss, damage, or failure is directly caused by the negligence, fraud, or wilful misconduct of the Company its Related Entities, or its Sub-Contractors.
- 11.2 Notwithstanding any other provision of these Terms, to the extent permitted by Law, the Company will not be liable for any loss of or damage to the Goods:
- (a) caused by a Force Majeure Event;
 - (b) caused by the Company following the Customer's instructions;
 - (c) caused by the Goods deteriorating or becoming contaminated with any virus, bacteria, fungi, pathogen, disease, mould vermin or like condition; or
 - (d) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including stone, rain, hail or storm damage, except where such loss or damage could have been reasonably prevented by the Company.
- 11.3 Notwithstanding any other provision in these Terms, but subject always to the above clauses, if any liability whatsoever, howsoever arising, is found to attach to the Company, or any Sub-Contractor, the Company's liability shall be limited in the case of Services supplied under this agreement to the lesser of:
- (a) supplying of the Services again;
 - (b) payment of the cost of having the Services supplied again; or
 - (c) the value of the Goods at the time the liability arose, up to a maximum of A\$1,000.00.
- 11.4 Any claim for damages against the Company must be brought within twelve (12) months from the date of this Agreement or the date the Services were completed or the Goods delivered (whichever occurs first), except where a longer period is prescribed by Law.
- 11.5 Notwithstanding anything contained herein, the Company acknowledges that it remains subject to any implied warranty provided by the CCA. To the extent that the CCA applies to these Terms and prevents the exclusion, restriction, or modification of any such warranty, the provisions of clause 15 shall prevail.
- 11.6 If the Company is liable for loss of, or damage to any Goods, to the extent permitted by Law, no claim may be made unless notice of that claim is lodged in accordance with clause 14.

12. INDEMNIFICATION

- 12.1 The Customer hereby indemnifies the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost (including solicitor fees) sustained by the Company, arising out of or in connection with:
- (a) any breach of the Terms, conditions or warranties of this Agreement;
 - (b) negligence by the Customer or its representatives; or
 - (c) any loss or damage arising from any inherent defect, quality of vice of the Goods, except where such defect or quality was caused or contributed to by the Company its Related Entities or its Sub-Contractors.
- 12.2 The Company hereby indemnifies the Customer in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost (including solicitor fees) sustained by the Customer, arising out of or in connection with:
- (a) any breach of the Terms, conditions or warranties of this Agreement; or
 - (b) any negligence by the Company its Related Entities or its Sub-Contractors.
- 12.3 Each indemnity provided under these Terms requires the indemnified party to take reasonable steps to mitigate any loss or damage. The indemnifying party's liability will be reduced to the extent that any loss or damage arises from or is connected with any negligent, unlawful, or wilful act or omission by the indemnified party or its representatives.

13. INSURANCE

- 13.1 Insurance will not be arranged by the Company. It is the responsibility of the Customer to ensure that adequate insurance cover is arranged in view of the application of all clauses hereof, upon which the Company accepts Goods for Carriage.
- 13.2 The Customer acknowledges that:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of the Company; and
 - (b) the Company is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - (c) under no circumstances will the Company be under any liability with respect to the arranging of any such insurance and no claim will be made against the Company for failure to arrange or ensure that the Goods are insured adequately or at all.

14. CLAIMS

- 14.1 Notwithstanding clauses 12 and 13, if the Customer believes that they have any claim against the Company, they must notify the Company in writing as soon as reasonably practicable after becoming aware of the issue, but in any event:
- (a) within fourteen (14) days of the Delivery Date, or for non-delivery, within fourteen (14) days of the anticipated Delivery Date or the removal or destruction of the Goods; and
 - (b) where the claim relates to loss or damage not immediately apparent, within a reasonable period not exceeding six (6) months from the date the Customer became aware or ought reasonably to have become aware of the loss or damage.
- 14.2 The failure to notify a claim within the time limits under clause **Error! Reference source not found.** is evidence of satisfactory performance by the Company of its obligations.

15. COMPETITION AND CONSUMER ACT

- 15.1 Notwithstanding anything herein contained the Company shall continue to be subject to any implied terms, conditions or warranties imposed by the CCA or any other Commonwealth or State legislation if and to the extent that the said legislation is applicative to this Agreement and presents either expressly or impliedly the exclusion, restriction, or modification of any such term, condition, or warranty.

- 15.2 Where the Customer acquires Goods and/or Services from the Company as a 'consumer' within the meaning of that term in the CCA, the Customer has the benefit of certain guarantees under the CCA. Nothing in this Agreement excludes, restricts, or modifies any guarantee provided under the CCA which cannot be so excluded, restricted or modified.
- 15.3 If the CCA applies, to the extent to which the Company is entitled to do so, its liability under any applicable consumer guarantee provided under Division 1 of Part 3-2 of the CCA is limited to:
- (a) in the case of Goods, the repair or replacement of the Goods, the supply of equivalent Goods or the payment of the cost of repairing or replacing the Goods or acquiring equivalent Goods; and
 - (b) in the case of Services, supplying the Services again or payment of the cost of having the Services supplied again.

16. DANGEROUS HAZARDOUS GOODS

- 16.1 The Customer shall not tender for the provision of Carriage by the Company any Dangerous Goods without presenting to the Company a full description disclosing their nature, correctly labelled, and any information required by the Carrier and in any event the Customer will be liable for all death, bodily injury, loss and/or damage thereby caused and will indemnify the Company for such liability.
- 16.2 Except under special arrangement previously made in writing between the Customer and the Company, the Company will not accept or deal with any Dangerous Goods.
- 16.3 At the time the Dangerous Goods are collected by or delivered to the Company, the Goods must comply with the requirements of any applicable Law (including but not limited to, *Dangerous Goods Safety Management Act 2001* (Qld), and *The Australian Code for the Transport of Dangerous Goods by Road & Rail*.
- 16.4 If, in the opinion of the Company or the Carrier, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless by the Company or the Carrier on the Company's behalf without compensation to and at the cost of the Customer..

17. DELIVERY

- 17.1 The Company is authorised to deliver the Goods to the Consignee or its agent at the address nominated to the Company for that purpose and without prejudice to any other method of delivery.
- 17.2 The Company shall be deemed to have delivered the Goods in accordance with this Agreement if at that address the Company obtains a receipt, signed delivery docket for the Goods or signature on its consignment note from any person at that address.
- 17.3 If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Company, the Company may, at its option, deposit the Goods at that place (which will be conclusively presumed to be due delivery under these Terms), store the Goods or redeliver the Goods to the Customer at the Customer's expense.
- 17.4 If the Goods are stored by the Company pursuant to clause 21:
- (a) the Customer will pay or indemnify the Company for all costs and expenses incurred with respect to such Storage; and
 - (b) the Company may, at any time, deliver the Goods to the Customer at the Customer's expense.
- 17.5 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Agreement.
- 17.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this Agreement.
- 17.7 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

- 17.8 Any time specified by the Company for the delivery of Goods is an estimate only and the Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then the Company shall be entitled to charge the Customer any additional costs incurred by the Company as a direct consequence of any resultant delay or rescheduling of the delivery.
- 17.9 Any Goods delivered in excess of the quantity designated in the Order may be returned at the Customer's expense.

18. DELAY

- 18.1 Time is of the essence of this Agreement, however neither party shall be liable for fault or delay caused by an event beyond its reasonable control provided that:
- (a) such event could not have been foreseen or avoided with proper due diligence; and
 - (b) the affected party notified the other of the event and its likely duration as soon as practicable.
- 18.2 If the Goods are not delivered by the Delivery Date, (or if no Delivery Date is specified, within a reasonable time after the Order is submitted) the Company may, without limitation to any other remedy which the Company may have as a result of those circumstances, either:
- (a) refuse to accept the Goods;
 - (b) terminate all or any part of the Agreement; or
 - (c) require the Customer to deliver the Goods by the most expeditious means available and any additional charges in excess of those that would usually apply

19. ROUTES AND DEVIATION

- 19.1 The Customer authorises any deviation from the usual route for transportation or manner of provision of Carriage that may, in the absolute discretion of the Company, be considered desirable or necessary in the circumstances.
- 19.2 If the Customer expressly or impliedly instructs the Company to use, or it is expressly or impliedly agreed that the Company will use a particular method of providing or performing the Carriage, the Company will give priority to that method but if it cannot conveniently be adopted by the Company, the Customer authorises the Company to provide the Carriage using another method.

20. METHOD OF CARRIAGE

- 20.1 If the Customer instructs the Company to use a particular method of Carriage, whether by road, rail, sea or air, the Company will give priority to this method, provided that the method can reasonably and conveniently be adopted by the Company. Where the Company cannot reasonably and conveniently give priority to the method specified, the Company may use any other method or methods to transport the Goods at its absolute discretion, and the Customer is deemed to authorise such other method or methods.
- 20.2 The Customer is also deemed to have authorised all further or additional charges which may become payable as a result of the Goods being carried by some other method or methods as outlined in clause 20.1.

21. STORAGE

- 21.1 Where Goods are stored by the Company at the request of the Customer, the Customer will provide:
- (a) an address to which notices will be sent;
 - (b) samples of the signatures of persons entitled to collect the Goods; and
 - (c) an inventory of the Goods to be stored.

- 21.2 The Company may remove the Goods from a place of Storage to another place of Storage in the same city at its discretion and will provide notice to the Customer of any such removal.
- 21.3 Storage charges do not include removing, packing, unpacking, inspecting, stowing, restoring or delivering.
- 21.4 The Customer must give 24 hours' notice to the Company of its intention to remove Goods from Storage.
- 21.5 The Company will not be obliged to deliver any Goods except to the Customer or to a person authorised in writing by the Customer to receive the Goods without:
- (a) a direction in writing from the Customer; and/or
 - (b) payment of all amounts due by the Customer to the Company on any account whatsoever.
- 21.6 The Customer will remove its Goods from Storage within seven (7) days of receipt of written notice from the Company.
- 21.7 If any identifying document or mark is lost, damaged, destroyed, or defaced, the Company may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their nature or condition or to determine their ownership.

22. PALLET CONTROL

- 22.1 Where the Carriage of Goods involves the use of hired pallets, the Customer is responsible to raise any pallet transfer docket to affect a transfer of pallets to the Consignee of the Goods.
- 22.2 All pallets supplied as part of the Carriage and which the Company does not transfer to the Customer's account with a pallet hirer must be made available for collection by the Company when requested and must not be used for any other purpose. For the avoidance of any doubt the Company will not be liable to you for any storage fees in relation to the pallets.
- 22.3 At no time will the hired pallets be transferred to the Company's pallet hire account throughout the performance of the Services.

23. COR LAWS

- 23.1 The Company is committed to taking all steps, so far as is reasonably practicable, to ensure that any Services are performed safely and in accordance with the CoR Laws.
- 23.2 The Company shall not comply with any direction or instruction provided by Customer or Consignee that might:
- (a) have the effect of contributing to a breach of;
 - (b) prevent the Company from taking all steps that are reasonably necessary to prevent a breach of; or
 - (c) prevent the Company from complying with its obligations under, the CoR Laws.
- 23.3 Without limiting any other clause of this Agreement, the Company shall not be liable for any loss or damage whatsoever which may be suffered by another party as a result of any action or inaction undertaken by the Company to ensure compliance with the CoR Laws.
- 23.4 The Customer acknowledges and agrees that they have ensured that any relevant party (including the Consignee) are aware of, and comply with, their obligations under the CoR Laws and that any such party is aware of any load restraint requirements applicable to the transportation of the Goods.

24. TITLE TO GOODS

- 24.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Company all amounts owing to the Company; and
 - (b) the Customer has met all of its other obligations to the Company.
- 24.2 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

24.3 It is further agreed that:

- (a) until ownership of the Goods passes to the Customer in accordance with clause 24.1 that the Customer is only a bailee of the Goods and must return the Goods to the Company on request.
- (b) the Customer holds the benefit of the Customer's insurance of the Goods on trust for the Company and must pay to the Company the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
- (c) the Customer must not sell, dispose, or otherwise part with possession of the Goods other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Goods then the Customer must hold the proceeds of any such act on trust for the Company and must pay or deliver the proceeds to the Company on demand.
- (d) the Customer should not convert or process the Goods or intermix them with other goods but if the Customer does so then the Customer holds the resulting product on trust for the benefit of the Company and must sell, dispose of or return the resulting product to the Company as it so directs.
- (e) the Customer irrevocably authorises the Company to enter any premises where the Company believes the Goods are kept and recover possession of the Goods.
- (f) the Company may recover possession of any Goods in transit whether or not delivery has occurred.
- (g) the Customer shall not charge or grant an encumbrance over the Goods nor grant nor otherwise give away any interest in the Goods while they remain the property of the Company.
- (h) the Company may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Customer.

25. CONFIDENTIALITY

- 25.1 The parties agree to keep confidential any Confidential Information. The parties agree that the dealings under this Agreement are and shall remain strictly confidential and are not to be disclosed to third parties, except for the purpose of implementing the Order, as required by law or with prior written consent.
- 25.2 The Customer acknowledges that their personal or commercial information may be collected, retained, used and/or disclosed by the Company to professional consultants, such as financial advisors or lawyers for legitimate purposes.
- 25.3 The parties must store all Confidential Information in a way that minimizes the risk of unauthorised access.
- 25.4 The Customer acknowledges that it must return any Confidential Information to the Company, on request.
- 25.5 The parties obligations under this clause 25 does not apply to any information which:
- (a) is in the public domain (other than because of a breach of any obligation of confidence owed to the Company); or
 - (b) the parties can demonstrate by evidence in writing was in the Customer's possession as at the date of this Agreement; or
 - (c) subsequently comes into the possession of the parties through a third party who does not owe any obligation of confidence to the parties in respect of that information.

26. PERSONAL PROPERTY SECURITIES REGISTER (PPSR)

- 26.1 The following definition apply to this clause:

Excluded Interest means any of the interests set out in section 8 of the PPSA or any interest that is not a Security Interest but encumbers the Goods.

Financing Change Statement has the meaning given to that term in the PPSA.

Financing Statement has the meaning given to that term in the PPSA.

PPSR shall refer to the Personal Property Securities Register.

PMSI refers to Purchase Money Security Interest and has the meaning provided in the PPSA.

Security Interest means a PPSA Security Interest and any interest held as security for the payment of a monetary obligation or the performance of any other obligation, including:

- (a) a mortgage, charge, encumbrance, lien, pledge or hypothecation; and
- (b) a bill of sale, assignment, title retention arrangement, trust or power held as security.

26.2 The parties acknowledges and agrees that these Terms constitutes a security agreement for the purposes of the PPSA which creates a Security Interest in:

- (a) all Goods being transported, carried or handled by the Company, over which the Company invoked a lien;
- (b) all Carriage that will be supplied in the future by the Company to the Customer; and
- (c) all Goods previously supplied (if any) and all Goods that will be supplied in the future by the Company to the Customer.

26.3 The Customer consents to the Company registering a Financing Statement on the PPSR in relation to any Security Interest in Company's favour arising under or in connection with this Agreement.

26.4 The Customer agrees:

- (a) to promptly execute any further documents and/or do any such further acts and provide such further information (as complete, accurate and up-to-date in all respects), which the Company may reasonable require to:
 - (i) register a Financing Statement or Financing Change Statement in relation to a Security Interest on the PPSR and otherwise do all things necessary and required by the Company to ensure that any Security interest registered by Company is a perfected Security Interest under the PPSA;
 - (ii) registered any document on any registered reasonably necessary to secure the Company's interest under these Terms;
 - (iii) registered any other document required to be registered under the PPSA; or
 - (iv) correct a defect in a statement referred to in sub-clause (a) of this clause.
- (b) that it must not allow an Excluded Interest to exist over the Goods;
- (c) indemnify, and if demanded reimburse, the Company for all expense incurred in registering a Financing Statement or Financing Change Statement on the PPSR, or releasing any Goods that are subject of a Security Interest;
- (d) not make any amendment demand or register a Financing Change Statement in respect of a Security Interest without the prior written consent of the Company;
- (e) not create, or purport to create, any Security Interest in the Goods (except that which is prescribed by this clause 26); and
- (f) not register, or permit to be registered, a Financing Statement or a Financing Change Statement in relation to the Goods in favour of a third party without the Company's prior written consent.

26.5 The Customer acknowledges that the rights conferred upon the Company under section 123 and 128 of the PPSA are enforceable and may be enacted by the Company.

26.6 The parties agree to keep confidential all information of the kind referred to in section 275 of the PPSA, unless compelled by law to disclose such information.

26.7 For the avoidance of doubt, the Company's interest constitutes a PMSI for all Goods supplied to all Customers with a Credit Facility with the Company (or any other Customer where the Goods have been supplied on credit).

Waiver of PPSR Provisions

- 26.8 The parties agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these Terms.
- 26.9 The Customer hereby waives any rights in may have to:
- (a) receive notices under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
 - (b) redeem the Goods under section 142 of the PPSA; and
 - (c) reinstate these Terms under section 153 of the PPSA.

27. LIEN

- 27.1 The Company may claim a general or particular lien over the Goods, and any documents or records relating to them for outstanding payments relating to the Services provided by the Company.
- 27.2 The Company may sell any Goods held by it for outstanding payments by public auction or private sale without notice to the Customer. In addition, the lien will cover the costs and expenses of exercising the lien including without limitation, the costs of sale and any reasonable legal fees incurred by the Company.
- 27.3 The lien and rights granted by this clause 27 survive delivery of the Goods and the Company is entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts.
- 27.4 If there is any surplus arising from the sale of the Goods, the Company must render the surplus to the Customer.
- 27.5 Any sale under clause 27.2 will not prejudice or otherwise affect the Company's right to recover charges due or payable for Services rendered or the detention or sales of Goods from the Customer.

28. COMPANY CHARGES

- 28.1 The Company's charges are deemed to be earned as soon as the Goods are loaded and despatched by the Company.
- 28.2 The Customer will be and remains responsible to the Company for all proper charges incurred by the Company for any reason whatsoever.
- 28.3 The Company is entitled to make a charge for any delay in loading or unloading the Goods which results from the Customer's default. The permissible delay period starts upon the Company reporting at the relevant place for loading or unloading.
- 28.4 The cost of any labour to load or unload the vehicle is the responsibility of the Customer or Consignee of the Goods.

29. DEFAULT AND CONSEQUENCES OF DEFAULT

- 29.1 Each of the following occurrences constitutes an event of default:
- (a) the Customer breaches or is alleged to have breached these Terms for any reason (including, but not limited to, defaulting on any payment due under these Terms) and fails to remedy that breach within fourteen (14) days of being given notice by the Company to do so;
 - (b) the Customer, being a natural person, commits an act of bankruptcy;
 - (c) the Customer, being a corporation, is subject to:
 - (i) a petition being presented, an order being made or a meeting being called to consider a resolution for the Customer to be wound up, deregistered or dissolved;
 - (ii) a receiver, receiver and manager or an administrator under part 5.3A of the Corporations Act being appointed to all or any part of the Customer's property and undertaking;
 - (iii) the entering of a scheme of arrangement (other than for the purpose of restructuring); and any assignment for the benefit of creditors;

- (d) the Customer purports to assign its rights under these Terms without the Company's prior written consent; or
 - (e) the Customer ceases or threatens to cease conduct of its business in the normal manner.
- 29.2 Where an event of default occurs, except where payment in full has been received by the Company, the Company may:
- (a) terminate this Agreement
 - (b) terminate any or all Orders and credit arrangements (if any) with the Customer;
 - (c) refuse to deliver Goods or provide further Services; or
 - (d) retain (where applicable) all money paid by the Customer on account of Goods or Services or otherwise.
- 29.3 In addition to any action permitted to be taken by the Company under clause 29.2, on the occurrence of an event of default all invoices will become immediately due and payable.

30. TERMINATION

- 30.1 In addition to the express rights of termination provided in these Terms, either party may terminate this Agreement with immediate effect by giving the other party at least fourteen (14) days prior written notice to that effect.
- 30.2 Upon termination of this Agreement whether by effluxion of time or otherwise, the Customer shall deliver to the Company all price lists and property of the Company, if any, in its possession.
- 30.3 Termination of this Agreement will not affect the rights, powers, remedies, obligations, duties and liabilities of either party under this Agreement which have accrued prior to the termination date and which continue to be enforceable.

31. GOODS AND SERVICES TAX (GST)

- 31.1 Unless expressly stated otherwise, all consideration to be provided under this Agreement is expressed as exclusive of GST. The supplying party may recover from the receiving party an amount on account of GST. That amount is:
- (a) equal to the value of the supply calculated in accordance with GST law multiplied by the prevailing GST rate; and
 - (b) payable at the same time as the recipient is required to pay for the related supply.
- 31.2 GST shall be payable by the Customer without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable.
- 31.3 The Company must issue a tax invoice or tax invoices to the Customer for the amount of GST referable to the Taxable Supply.
- 31.4 If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by the Customer shall be determined by the Company and shall be the same amount of GST that would be payable if the Taxable Supply were the only supply made to the Customer.
- 31.5 If the Customer makes default in the payment on the due date of any amount payable pursuant to clause 31.1 then without prejudice to any other remedies of the Company, the Customer shall pay to the Company upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company arising out of the default of the Customer
- 31.6 If payment made by one party to the other is a reimbursement or indemnification of a cost, expense, loss or liability incurred by that party then the payment will be reduced by an amount for which that party is entitled to a tax input credit.

32. PRIVACY LAWS

- 32.1 All emails, documents, images or other recorded information held or used by the Company containing Personal Information, is considered Confidential Information. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act.
- 32.2 The Company will collect, use and disclose the Customer's Personal Information in accordance with its Privacy Policy as amended from time to time, details of which can be found on the Company's Website.
- 32.3 The Customer agrees for the Company to obtain from a credit reporting agency (**CRA**) a credit report containing personal credit information (i.e. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Company.
- 32.4 The Customer agrees that the Company may exchange information about the Customer with those credit providers or related body corporates, either named as trade referees by the Customer, or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 32.5 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit pursuant to section 18k(1)(h) of the Privacy Act.
- 32.6 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other agreed purposes or required by law from time to time):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 32.7 The Company may give information about the Customer to a CRA for the following purposes:
- (a) to obtain a consumer credit report; and/or
 - (b) allow the CRA to create or maintain a credit information file about the Customer including credit history.
- 32.8 The Customer acknowledges that, the Company may from time to time, have reporting obligations to credit providers including but not limited to invoice insurance agencies (like National Credit Insurance) the Customer acknowledges and consents to the Company requesting and releasing information about the Customer for the purposes of making a claim on the insurance or complying with its reporting obligations.

33. GENERAL

33.1 Nature of Relationship

Nothing in this Agreement constitutes or is to be deemed to constitute the Customer as an employee of, a partner of, or joint venturer with the Company.

33.2 Intellectual Property

- (a) The Customer acknowledges that the Company retains all Intellectual Property Rights in any documents or things created by the Company while providing its Services in connection with the Order pursuant to these Terms.
- (b) Without limiting the effect of sub-clause (a) of this clause 33.2 the Customer acknowledges and agrees that the Company retains all results of any research, enquiries or investigations undertaken by it while providing the Services and is not obliged to provide those results to the Customer.

33.3 Dispute Resolution

- (a) All complaints are to be lodged with the Company's office within seven (7) days of the issue arising. The parties shall then organise a meeting and attempt to resolve the dispute in good faith, within at least fourteen (14) days of the notice being received.
- (b) If the parties cannot resolve the dispute pursuant to subclause (a) above, the Customer and Company agree that mediation is the preferred method of dispute resolution.
- (c) The Customer and Company acknowledge that their obligations under these Terms remain intact despite an ongoing dispute and agree to continue to perform these obligations.

33.4 Assignment

- (a) The Customer must not assign or subcontract any contract for the purchase of Services or its rights or obligations under these Terms (or a connected agreement).
- (b) The Company may, at any time, novate, assign or transfer part or all its rights and obligations under this document to any third party and, to the extent required, the Customer consents to the novation, assignment or transfer and agrees to enter into a novation, assignment or transfer agreement on terms specified by the Company.

33.5 Severance

If the whole or part of any provision of this Agreement is held to be void or unenforceable, whether by illegality or otherwise, it shall be severed from this Agreement and the remaining provisions shall continue to have full force and effect.

33.6 Jurisdiction

The Agreement is governed by the Laws of the State of Queensland, unless the application of a and any proceedings pertaining to the contract shall be instituted in the courts of Queensland.

33.7 Force Majeure

- (a) The Company will not be liable for any failure or delay in performance of the Carriage to the extent that such failure or delay is due to a Force Majeure Event affecting the Company.
- (b) If a Force Majeure Event causes the delay or non-performance of the Company's obligations for thirty (30) days or more, either party may, by notice in writing, immediately terminate any agreement incorporating these Terms.

33.8 Waiver

A waiver of a breach of any of the provisions of the Agreement shall not be construed as a waiver of any subsequent breach of such provision or of any other term or condition of this Agreement.

33.9 Restraint

- (a) The Customer shall not either by itself, or through any related person or corporation, engage one or more of the Company's employees, contractors or Sub-Contractors to perform the same or substantially the same or similar services or a part of those services previously performed for the Customer by or on behalf of the Company within a 12-month period prior to the Customer's engagement of such person or persons.
- (b) If the Customer breaches the provisions of sub-clause (a) of this clause, the Customer will immediately pay to the Company liquidated damages in the amount equivalent to the

fees charged by the Company to the Customer in the 12-month period to the date on which the Company's employee, contractor, or Sub-Contractor, as the case may be, was so engaged, or if the Company's services have been provided to the Customer for a period of less than 12 months, then the amount equivalent to 12 times the average monthly fees charged by the Company to the Customer.

33.10 Entire Agreement

- (a) The entire agreement between the parties is contained in these Terms and there are no other understandings, representations, or agreements between the parties that are not set out in these Terms.
- (b) The Customer acknowledges and agrees that these Terms set out the sole basis upon which the Company will provide Carriage to the Customer. The supply or provision by the Customer of any document setting out other, or alternative, terms will be of no legal effect and will not constitute a variation of these Terms or amount to a new contract or be part of these Terms.

33.11 Variation

- (a) The Company will not be bound by any agreement purporting to vary these Terms unless such agreement is in writing and signed on behalf of the Company by an authorised officer of the Company.
- (b) Any amendment to the Terms contained in this Agreement may only be amended in writing by the consent of both parties.

33.12 Jointly and Severally Liable

Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all obligations (including the payment of all costs) under these Terms and Conditions.

33.13 Change in Control

- (a) The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address, contact phone or fax number/s, or business practice).
- (b) The Customer shall be liable for any loss incurred by the Company as a result of the Customers failure to comply with sub-clause (a) of this clause 33.13.

33.14 Set-off or Deduction

- (a) All amounts payable under or in connection with these Terms must be paid without set-off, counterclaim, withholding, deduction or claim to a lien whatsoever, whether or not any such set-off, counterclaim, withholding, deduction or lien arises under this agreement (unless otherwise required by law).
- (b) If a party is required by law to make a deduction or withholding in respect of any sum payable under or in connection with these Terms to another party, it must, at the same time as the sum that is the subject of the deduction or withholding is payable, make a payment to the other party of such additional amount as is required to ensure that the net amount received by the other party will equal the full amount that would have been received by it had no such deduction or withholding been required to be made.