

Panucci Transport Pty Ltd - Transport Terms and Conditions

1. Agreement

- (a) These Terms and Conditions, together with the Quotation, constitute an agreement between the Supplier and the Customer in relation to the Supplier's supply of the Services to the Customer (**Agreement**).
- (b) The Quotation, together with these Terms and Conditions, constitutes an offer from the Supplier that is capable of acceptance by the Customer, until the earlier of:
 - (i) the expiry of the Quotation Offer Period; or
 - (ii) the date that the Supplier advises the Customer that the Quotation is revoked,after which time, the offer set out in the Quotation will lapse and will not be capable of acceptance by the Customer without the consent of the Supplier.
- (c) The Customer will be taken to have accepted the Agreement if it:
 - (i) confirms to the Supplier in writing that it accepts the terms of the Quotation; or
 - (ii) provides the Supplier with instructions to proceed with the Services.

2. Definitions and Interpretation

2.1 Definitions

Unless the context requires otherwise, words beginning with capital letters have the meanings given to them in the Quotation or as defined below:

ACL means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement has the meaning given to that term in clause 1(a).

Business Day means a day on which banks open for trading in New South Wales, excluding Saturdays, Sundays and public holidays.

Claim means any claim, notice, investigation, action, proceeding, demand, cost, damage, loss, expense, liability or other outgoing of whatever nature, past and present, howsoever and whensoever arising, whether known or unknown, fixed or ascertained, actual or contingent.

Customer means, where a person places an Order or accepts the Agreement:

- (a) in their personal capacity, that person; or
- (b) on behalf of another person or persons, that person or those other persons (as applicable).

Delivery Address means the address specified by the Customer in an Order to which it requests the Supplier deliver the Goods.

Dangerous Goods means Goods which are volatile or explosive or which are or may become dangerous, noxious, hazardous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property and includes all Goods which are likely to fall within the definition of hazardous, noxious, dangerous, explosive, inflammable or radioactive goods under any legislation, regulation, code or convention (whether or not legally enforceable) relevant to the Services, or any national or international rules applicable to the transport of, or the performance of other services regarding, dangerous goods.

Force Majeure Event means an act of God, war, any act of terrorism, epidemic, pandemic, revolution, any unlawful act against public order or authority, a strike or industrial dispute, an act or omission of a

governmental agency, or any other event (whether the same or different to the events set out in this definition) that is out of a party's reasonable control.

Goods means all goods referred to in the Quotation and any other goods in respect of which the Supplier agrees to supply the Services pursuant to these Terms and Conditions.

GST Law has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

GST has the meaning given to it under GST Law.

Insolvency Event means, in relation to a party:

- (a) any act of insolvency by that party under applicable law;
- (b) any application made to a court for that party to be wound up or liquidated;
- (c) that party ceasing to carry on business or resolving to wind itself up, or otherwise, dissolve itself, or give notice of its intention to do so;
- (d) the appointment of a liquidator, provisional liquidator, administrator, receiver, manager or controller in respect of that party or its assets;
- (e) anything analogous or having a substantially similar effect to any of the events specified above under the Law of any jurisdiction by which that party is governed.

Interested Person means a person with any interest in the Goods including the Customer, the owner, storer, consignee or consignee of the Goods and each of their agents and employees.

Legislative Requirements means any applicable law including legislation, ordinances, regulations, by-laws and other subordinate legislation.

Order means any request or order by or from the Customer for the supply of Services by the Supplier, whether written, oral or otherwise.

Premises means any place or places of the Supplier, the Customer or third party where Goods may be handled, held, packaged, packed, repacked, unpacked, unloaded, decanted, despatched, warehoused, stored, transported or removed from time to time.

Prohibited Article means any item:

- (a) the possession of which is unlawful; or
- (b) the carriage of which by air, road or rail is prohibited in Australia.

Quotation means a quotation issued by the Supplier for the provision of Services in response to an Order, and any other document, term or communication incorporated into the Agreement by the terms of that quotation or by agreement between the Supplier and the Customer.

Quotation Offer Period means the period of 14 days from the date of a Quotation, or such later date accepted by the Supplier.

Receiver means the person to whom the Goods are being delivered.

Service Fees means the fees payable by the Customer for the Services.

Services includes the whole of the operations and services performed or undertaken by the Supplier and its related bodies corporate in respect of the Goods, whether in transit, in storage, or otherwise and includes carriage, storage services, stocktaking services, goods/ stock management services, goods assembly/processing services, packaging or handling of Goods, customs agent services, forwarding services, shipping services and any other service performed or undertaken by the Supplier and its related bodies corporate.

Subcontractor means:

- (a) any other person, firm or corporation with whom the Supplier may arrange for the performance of the Services or any part thereof; and
- (b) any employee, agent or subcontractor of any of the persons in paragraph (a).

Supplier means Panucci Transport Pty Ltd ACN 003 681 016.

Taxable Supply has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Terms and Conditions means these terms and conditions.

Workplace Health and Safety Laws means any Legislative Requirements or guidelines relating to workplace health and safety.

2.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) if the Quotation includes any special conditions these Terms and Conditions must be read subject to those special conditions;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (d) a reference to time is to Sydney, Australia time;
- (e) a reference to '\$' 'AUD\$' 'AUD' or 'dollars' is a reference to the lawful currency of Australia;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally; and
- (h) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

3. Application of Terms and Conditions

3.1 Application and acceptance

- (a) These Terms and Conditions apply to and govern all Services and all Orders.
- (b) By placing an Order, the Customer:
 - (i) warrants that it has the authority of all Interested Persons to request the Services and accept these Terms and Conditions; and
 - (ii) confirms acceptance of these Terms and Conditions on behalf of itself and each Interested Person.
- (c) Each Order that is accepted by the Supplier will form a separate contract between the Supplier and the Customer for the relevant Services and will incorporate and be governed by the Quotation (if applicable) and these Terms and Conditions.
- (d) The Agreement is the entire agreement of the Parties on its subject matter. The only enforceable rights and obligations of the Parties in relation to the subject matter of the Agreement are those that arise out of the provisions contained in the Agreement, and:

- (i) all representations, communications and prior agreements in relation to the subject matter of this Agreement are merged in and superseded by the Agreement; and
- (ii) if you provide us with any form of purchase order or other terms and conditions before or after the date of this Agreement in respect of the subject matter of this Agreement, the Parties will not be bound to comply with any of the provisions set out in, or associated with, that purchase order or those other terms and conditions.

3.2 **Variation or Waiver**

- (a) These Terms and Conditions cannot be waived or varied unless the variation is agreed in writing by a director or secretary of the Supplier.
- (b) Except as provided in clause 3.2(a), the Supplier is not bound by any terms and conditions contained in any of the Customer's documentation or any instructions given by any person which conflict with these Terms and Conditions, including for the avoidance of doubt any purchase order that may be issued by the Customer relating to any Order.

3.3 **Amendment**

The Supplier may amend the Terms and Conditions from time to time. Unless otherwise stated, the amended Terms and Conditions will apply to all Orders placed by the Customer after the amended Terms and Conditions are provided to the Customer.

3.4 **Benefit**

These Terms and Conditions, including without limitation clause 9.4, cover, and may be invoked by, any person that the Supplier uses to perform all or any part of the Services, including any Subcontractor, and each of the Supplier's employees, servants, agents and officers. Such subcontractors, employees, servants, agents and officers are entitled to the benefit of these Terms and Conditions to the same extent as the Supplier and the Supplier holds the benefit of this Agreement on trust for those third parties.

3.5 **Authority**

The person giving instructions to the Supplier for the performance of the Services, or placing an Order on behalf of the Customer, warrants that they are authorised by the Customer to do so.

4. **Services**

4.1 **Acceptance of Orders**

The Supplier reserves the right in its absolute discretion to refuse to provide the Services to any person, or in respect of any Goods or class of Goods. The Supplier may refuse to accept an Order at its absolute discretion and without needing to provide any reason.

4.2 **Third party conditions and fees**

- (a) Unless the Supplier and the Customer agree otherwise in writing:
 - (i) all Goods are carried by the Supplier subject to any bill of lading issued by and/or conditions and fees imposed by any steamship supplier, railway, port or harbour authority or other third party carriers of the Goods; and
 - (ii) such fees will be added to, and are payable by the Customer to the Supplier in addition to, the Service Fees.
- (b) Without limiting clause 4.2(a), the Customer acknowledges that:
 - (i) in order to perform the Services, the Supplier may be required to transport the Goods using one or more containers (**Goods Containers**) owned or controlled by third parties (collectively, the **Container Operator**);

- (ii) in circumstances where the Supplier does not return the Goods Containers to a location nominated by the Container Operator (**Return Location**) for the de-hire of the Goods Containers by the time permitted by the Container Operator, the Supplier may be charged fees or charges by the Container Operator (**Late De-Hire Charges**);
- (c) If the Container Operator or the operator of the Return Location:
 - (i) refuses to accept the de-hire or return of one or more of the Goods Containers without any fault on the part of the Supplier (for example, where the Return Location does not have capacity to accept the de-hire or return of the Goods Containers); and
 - (ii) nevertheless charges the Supplier any Late De-Hire Charges until such time as the Supplier is able to de-hire or otherwise return the Goods Containers, even if the Supplier has otherwise completed its performance of the Services,

then the Customer agrees to, at the election of the Supplier:

- (iii) reimburse the Supplier for all Late De-Hire Charges that the Supplier incurs (even if the Supplier incurs such fees after it has completed its performance of the Services); and
- (iv) pay the Late De-Hire Charges direct to the Container Operator (even if the Late De-Hire Charges are charged or claimed after the Supplier has performed the Services); and indemnify the Supplier for the Late De-Hire Charges and any costs or expenses incurred by the Supplier to defend any claim relating to the Late De-Hire Charges.

4.3 **Subcontracting**

- (a) The Supplier is authorised at its absolute discretion to arrange on any terms for the performance of the Services by any Subcontractor.
- (b) The Customer agrees that the Supplier is not obliged to advise or assist the Customer or any other party to prepare or make a Claim against a Subcontractor. The Supplier may agree in writing to provide advice or assistance and may make an additional charge for doing so.

4.4 **Delivery**

- (a) The Supplier will use reasonable endeavours to deliver the Goods to the Delivery Address.
- (b) The Supplier may deliver the Goods to the Receiver or any person who the Supplier reasonably believes to be an employee, agent or other representative of the Receiver at the Delivery Address.
- (c) If the Receiver is unavailable or the Delivery Address is unattended and the Customer or the Receiver has provided the Supplier with authority to do so, the Supplier may at its sole discretion and at the Customer's sole cost, expense and risk:
 - (i) leave the Goods at the Delivery Address, which will be conclusively deemed to be due delivery of the Goods; or
 - (ii) return the Goods to any of the Supplier's Premises and notify the Customer it has done so.
- (d) If the Supplier returns any Goods to the Supplier's Premises as contemplated by clause 4.4(c)(ii):
 - (i) the Supplier will seek the Customer's further instructions regarding delivery of the Goods;
 - (ii) pending receipt and implementation of the Customer's further instructions, the Supplier will store the Goods at the Customer's sole risk;

- (iii) the Customer must pay the Supplier any costs which the Supplier may incur in forwarding, storing, returning or disposing of the Goods and the Supplier's charges (if any) for making a second or further delivery attempt and for otherwise implementing the Customer's further instructions.
- (e) Except to the extent expressly set out in these Terms and Conditions, the Supplier does not accept any liability and the Customer will not hold the Supplier responsible for any loss, damage or other liability to the Customer, Receiver or any other party having an interest in the Goods. The Customer indemnifies the Supplier against any Claim for loss, damage or other liability, except to the extent that the loss, damage or other liability was caused by the negligence of the Supplier.

4.5 **Consignment**

- (a) Unless otherwise directed by notice in writing by the Customer, the Supplier is authorised by the Customer to collect payment of cash on delivery (**COD**) in respect of the Goods in legal tender, by cheque, or by electronic transfer or payment, and to give receipts on behalf of the Customer.
- (b) If a consignment note or docket specifies that charges are payable to the Supplier by the Receiver or that Goods are consigned "COD" or "Freight Collect", the Client shall not be required to pay such charges unless the Receiver fails to pay them after the Supplier has made a reasonable demand for payment from the Receiver.

4.6 **Timing**

The Supplier will use reasonable endeavours to pick-up and deliver the Goods in each case at or within the time agreed with the Customer. However, any dates or times specified for departure or arrival at the point of collection or delivery are estimates only and will not bind the Supplier. The Supplier is not liable for any loss, damage or delay occasioned to the Customer or any other person from late or non-delivery of the Goods.

4.7 **Storage**

In the course of providing the Services, the Supplier may at any time and from time to time hold the Goods at any Premises and may at any time and from time to time remove the Goods from any Premises at which they are being held at the sole discretion of the Supplier and in every case at the Customer's risk and expense. The Supplier is not liable for any loss, damage or delay occasioned to the Customer or any other person arising from or in connection with the Supplier's storage or management of the Goods.

4.8 **Packing requirements**

- (a) The Customer is responsible for ensuring that the packaging of the Goods meets the requirements of the Receiver and all Legislative Requirements.
- (b) If the Supplier is required to incur any expense or liability to conform to the packaging requirements of the Receiver or any Legislative Requirements, the Customer must immediately reimburse and indemnify the Supplier for all expenses and liability incurred by the Supplier.
- (c) The Customer undertakes that at time of consignment:
 - (i) the Goods will have secure, undamaged packaging;
 - (ii) the contents of the Goods have not been tampered with;
 - (iii) the Goods are accompanied by documentation that identifies the Customer as the consignor of the Goods; and
 - (iv) the Goods are presented by a person who can be verified as a representative of the Customer.

4.9 **Inspection**

The Supplier is entitled, and may permit any federal, state or local governmental authority, to open any container or package in which the Goods are placed or carried, in order to inspect the Goods, without any liability to the Supplier.

4.10 **Supplier's discretion**

The Supplier will use reasonable endeavours to comply with any specific instructions of the Customer regarding the provision of the Services, but the Supplier may, in its discretion:

- (a) use any method or mode of carriage it considers appropriate to carry out the Services;
- (b) deviate from any usual route or storage location; or
- (c) without limiting clause 4.10(a), refuse to store, deliver or transport the Goods where, the Supplier considers in its absolute discretion, it would be unlawful to do so.

5. **Services Fee**

5.1 **Liability for Services Fee**

The Supplier earns the Service Fees as soon as the Goods are collected from the Customer, or from the collection address specified in the Quotation or otherwise nominated by the Customer, whether the Goods are delivered to the Receiver or the Delivery Address or not and, to the fullest extent permitted by law, the Service Fees are non-refundable.

5.2 **Calculation of Service Fee**

The Service Fees payable by the Customer to the Supplier for the Services will be determined:

- (a) if the Supplier has provided a Quotation (and that Quotation has not lapsed or been withdrawn), in accordance with the Quotation; or
- (b) if the Supplier has otherwise agreed on pricing terms of an Order with the Customer for the Services, in accordance with those pricing terms.

5.3 **Adjustments**

- (a) Except as otherwise agreed in writing by the Supplier, the Supplier may withdraw a Quotation at any time before the placement of an Order by the Customer, and in any event, a Quotation lapses after the expiry of the Quotation Offer Period.
- (b) The Supplier will not be bound by a Quotation if, in the opinion of the Supplier, there has been a change in the circumstances in which the Quotation was given, including any incorrect description of the Goods or any change to the scope of the Services required to be performed, and in such circumstances, the Supplier may charge additional fees for the Services or, in its absolute discretion, refuse to perform the Services.
- (c) Except as otherwise agreed in writing by the Supplier, the Supplier may revise the rates and charges specified in any pricing schedule or contract by giving not less than 5 Business Days' prior written notice to the Customer.

5.4 **Additional amounts payable**

- (a) Except as expressly stated to the contrary, all Quotations and prices offered by the Supplier are quoted exclusive of GST, stamp duty, registration fees, taxes or government charges of any kind or other fees incurred (including those charged by third parties) as a result of the performance of the Services and any such charges will be added to and are payable by the Customer in addition to the Service Fees.

- (b) Without limiting clause 5.4(a), the Customer acknowledges that it may be required to pay additional fees and charges to the Supplier in circumstances where:
 - (i) the Supplier performs additional or ancillary services outside the scope of the Services set out in the Quotation, upon request by the Customer or where required to be performed in order to provide the Services set out in the Quotation (**Additional Services**); or
 - (ii) the Supplier incurs third party fees or charges in the course of performing the Services (**Third Party Costs**).
- (c) The Customer must pay the Supplier for all Additional Services at the prices and rates set out in the Quotation or otherwise at the current prices and rates applicable from time to time, whether or not such prices or rates are known to the Customer, or notified or published by the Supplier.
- (d) The Customer must, at the election of the Supplier, either:
 - (i) reimburse the Supplier for all Third Party Costs in full; and
 - (ii) pay the Third Party Costs direct to the relevant third party and indemnify the Supplier for the Third Party Costs and any costs or expenses incurred by the Supplier to defend any claim relating to the Third Party Costs.
- (e) The Customer may, at any time, request the Supplier to provide a list of current prices and rates applicable to any Additional Services.
- (f) The Customer acknowledges that the Additional Services and Third Party Costs that the Customer may be liable to pay for includes (without limitation) a heavy container fee, dangerous goods fee, weighbridge charge, storage fee, wharf container de-hire fee, depot container de-hire fee, fee for removal and disposal of bladder and dunnage, waiting time or demurrage fee, fuel levy and after hours fee.

5.5 Payment

- (a) Subject to clause 5.5(b) and except as otherwise agreed in writing by the Supplier, the Customer must pay the Service Fees to the Supplier by the earlier of:
 - (i) the time that the Goods are delivered to the Customer or the Receiver (as applicable); and
 - (ii) 10 Business Days after the date of each invoice issued by the Supplier.
- (b) The Supplier may require the Customer to pay all or any part of the Service Fees in advance, in which case the Supplier will not provide the Services until the Supplier receives such payment
- (c) If the Supplier has not received payment of any Service Fees by the time specified in 5.5(a), the Supplier may, in its discretion, retain possession of the Goods until such time as the Supplier receives such payment.
- (d) The Customer must pay each invoice issued by the Supplier in accordance with the instructions contained in that invoice.
- (e) The Customer must pay all amounts payable to the Supplier under the Agreement without withholding, deduction, counter claim or set-off.

5.6 GST

Unless otherwise specifically stated, all amounts payable under these Terms and Conditions are expressed on a GST exclusive basis. When GST is payable on a Taxable Supply, then the amount

payable for the Taxable Supply will be the amount plus GST.

5.7 Lien

The Supplier will have a particular and general lien on Goods that the Supplier has in its possession. The particular and general lien will be for all monies that become due under these Terms and Conditions, including interest and all other expenses relating to the handling, transport, storage or warehousing of the Goods. The Supplier's particular and general lien also extends to the amount of any costs of complying with the law, in relation to the advertisement for sale, sale by auction, or otherwise, customs, excise, taxes, duties and other statutory charges which may apply in relation to the sale of the Goods to satisfy or partially satisfy the Customer's obligations to the Supplier under these Terms and Conditions (**Costs**). The Customer acknowledges and agrees that if it does not pay monies owing under these Terms and Conditions within 15 Business Days of being notified by the Supplier, the Supplier may sell the Goods to recover such amounts and any Costs.

5.8 Interest

- (a) The Customer will pay to the Supplier on demand interest at the commercial overdraft rate charged by the Supplier's then current bank on any Service Fees or other monies payable by the Customer to the Supplier which remain unpaid for 5 Business Days after notification from the Supplier of any amount that is due and payable. Interest under this clause 5.9 will be calculated from the relevant due date and accrue on a daily basis until paid.
- (b) The Customer acknowledges and agrees that it is liable for and will pay all costs including debt collection, commission, solicitor's fees and any out of pocket expense incurred by the Supplier in the recovery of unpaid Service Fees or other monies payable by the Customer to the Supplier.

6. Dangerous Goods and Prohibited Articles

- (a) Subject to clause 8(b), the Supplier does not accept any carriage of any shipments of Goods that contain Dangerous Goods or Prohibited Articles and will not store or manage any Dangerous Goods or Prohibited Articles.
- (b) In its absolute discretion, the Supplier may accept the carriage of Dangerous Goods or Prohibited Articles if such acceptance has been agreed to by the Supplier in writing and subject to the Customer providing the Supplier with the following:
 - (i) a full description of the Goods in writing; and
 - (ii) any additional information requested by the Supplier or that might reasonably be expected to be pertinent to the carriage of the Goods.
- (c) The Customer must not tender for carriage or storage of any Dangerous Goods or Prohibited Articles unless otherwise agreed between the parties in writing.
- (d) If the Supplier considers, on reasonable grounds, that a shipment of Goods may contain Dangerous Goods or any Prohibited Article or may cause injury or damage to any person or property, the Supplier may, at the cost of the Customer, do anything appropriate to minimise or avoid such injury or damage. The Supplier will not be liable to the Customer for any loss or damage the Customer may incur by reason of the Supplier's actions under this condition.
- (e) The Customer indemnifies the Supplier from and against all liabilities, penalties, losses, expenses (including legal expenses on an indemnity basis) and Claims from carriage, handling, storage, delivery or disposal of any Dangerous Goods or Prohibited Articles.
- (f) The Customer undertakes to take appropriate security measures to prevent the unauthorised carriage of an explosive or an explosive device.
- (g) The Customer affirms awareness that:
 - (i) the Goods will be subject to security and clearing procedures; and

- (ii) it is illegal without authorisation, to consign as cargo, an explosive or an explosive device.
- (h) The Customer agrees to identify shipments of Goods subject to pre-export regulatory controls, and provide the Supplier with information and all necessary documentation to comply with applicable regulations.
- (i) The Customer must:
 - (i) ensure that the Receiver or other person that accepts delivery of any Dangerous Goods or Prohibited Articles holds all licences, permits, certificates and authorisations (**Authorisations**) required by applicable law to receive or accept delivery of such Goods; and
 - (ii) upon request by the Supplier, provide evidence that the Receiver or other person accepting delivery of any such Goods holds such Authorisations.
- (j) The Customer agrees that in the event that it fails to comply with a request made by the Supplier pursuant to clause 7(i)(ii):
 - (i) the Supplier may refuse to part with possession of the Goods;
 - (ii) the Customer will be liable to pay for the Service Fees as if the delivery of the Goods remaining in the possession of the Supplier had completed; and
 - (iii) the Customer may be required to pay additional Service Fees for any storage or additional transport or other services required to be provided by the Supplier as a result of the Customer's failure to comply with clause 7(i)(ii)

7. Export/Import Controls

7.1 Controls

- (a) The Customer assumes responsibility for and guarantees compliance with all applicable export controls laws, including but not limited to regulations and rules that:
 - (i) prohibit unauthorised trade in military and other strategic goods and services, as well as financial or commercial dealings, with named individuals and entities in countries to, from, through or over which the Customer's shipment of Goods may be carried; or
 - (ii) impose conditions under which certain technologies, information, and commodities can be transported to, from, through or over any country which the Customer's shipment of Goods may be carried.
- (b) The Customer is responsible at its own expense for determining export and import licensing or permitting requirements for a shipment of Goods, obtaining any required licenses and permits, and ensuring that any consignee is authorised to receive or otherwise deal with by the laws of the origin, destination countries and any country(s) asserting jurisdiction over the Goods.
- (c) The Customer appoints the Supplier as its agent solely for the purpose of clearing and entering the shipment of Goods through customs. If the Supplier subcontracts this work, the Customer certifies that the Supplier is the consignee for the purpose of designating a customs broker to perform customs clearances and entries.

7.2 Accuracy of Information

- (a) The Customer warrants that all statements and information that the Customer provides relating to the exportation and importation of the shipment of Goods will be true and correct and the Customer is responsible for compliance with all legal requirements concerning the timeliness, completeness and accuracy of shipment of Goods information.
- (b) The Customer acknowledges that:

- (i) in the event that the Customer makes untrue or fraudulent statements about the shipment of Goods or any of its contents, the Customer risks a civil claim and/or criminal prosecution the penalties for which include forfeiture and sale of the Customer's shipment of Goods; and
 - (ii) if it provides late, incomplete or incorrect information this may have serious effects, such as delays to flights, denied or delayed permission to land or unload flights and/or the imposition of heavy fines by governmental or regulatory authorities.
- (c) The Customer agrees to indemnify the Supplier for any and all fines, penalties, losses, costs and damages that the Supplier may incur or suffer, and all fines, penalties, losses, costs and damages a third party may incur or suffer, which arise from or are caused by late, incomplete or inaccurate information provided by the Customer.

7.3 Customer Responsibility

- (a) To the extent that the Supplier may voluntarily assist the Customer in completing the required customs and other formalities, such assistance will be rendered at the Customer's sole risk. The Customer agrees to indemnify the Supplier and hold the Supplier harmless from any costs, penalties or liabilities that the Supplier incurs in connection with providing this assistance, and pay any administration fee that the Supplier may charge the Customer for providing the services described in this clause.
- (b) Any customs duties, taxes (including but not limited to value-added tax or goods and services tax if applicable), penalties, storage charges or other expenses the Supplier or the Customer incurs as a result of the actions of customs or other governmental authorities or the Customer's failure and the Receiver's failure to provide proper documentation and/or to obtain the required licence or permit will be charged to the Customer or the Receiver. In the event that the Supplier decides to charge the Receiver and the Receiver refuses to pay the incurred charges the Customer agrees to pay the charges to the Supplier together with the Supplier's fee for the administration involved as well as any extra costs that the Supplier has incurred. Upon the Supplier's first request the Customer will provide a proper guarantee for any of the duties, taxes, penalties, storage charges or any other expenses set out in this condition.
- (c) The Supplier is not liable for any delays, losses or damage caused by interference from customs officers or other governmental authorities.
- (d) Unless otherwise stated or specifically included in the Supplier's Quotation, rates quoted do not include surcharges applied by carriers and those will be payable by the Customer in addition to the quoted rates.

8. Customer's Warranties and Undertakings

8.1 Legislative Requirements

The Customer:

- (a) warrants that it has complied with and undertakes that it will continue to comply with all Legislative Requirements and Workplace Health and Safety Laws applicable to the storage, packaging, processing, handling and carriage of the Goods; and
- (b) must provide in a timely manner all assistance, information and documents reasonably required by the Supplier to comply with Legislative Requirements or Workplace Health and Safety Laws applicable to the Services.

8.2 Workplace Health and Safety Laws

- (a) The Customer warrants that it will comply with all Workplace Health and Safety Laws in relation to the Goods and any premises owned or occupied by the Customer and will notify the Supplier of any issues or requirements of which the Customer is, or should be, aware, and which may affect the Supplier's ability to comply with Workplace Health and Safety Laws in relation to the performance of the Services, including in respect of the loading, unloading, handling, processing or management of the Goods.

- (b) Without limiting any other right or remedy of the Supplier, the Supplier may refuse to accept the Goods if the Supplier, in its discretion, considers that, having regard to the presentation and packaging of the Goods by the Customer, it is not, or may not be, reasonably practicable to accept, load, handle, process, manage, deliver or unload the Goods in compliance with all Workplace Health and Safety Laws.

8.3 **Packaging, description and presentation**

- (a) The Customer acknowledges it is responsible for the packing of the Goods and the accuracy of any description of the Goods attached to the goods or their packaging or otherwise provided to the Supplier and warrants that:
 - (i) the Goods are clearly labelled and addressed and presented in a clear and unambiguous manner with old or redundant labels removed;
 - (ii) the Goods are packed to withstand all risks of handling, storage and carriage, having regard to their nature;
 - (iii) any description of the Goods on any packaging or document, including regarding contents, weight or dimensions, relating to the Goods is accurate;
 - (iv) any special requirements or instructions relating to the loading, unloading, handling, carriage, processing or management of the Goods, including as a result of the weight or dimensions of the Goods or their packaging, are clearly specified and clearly identified to the Supplier at the time of placing the Order or requesting the Services; and
 - (v) either:
 - (A) it has prepared the shipment of Goods for carriage in secure premises by the Customer's own staff and contractors and the Goods have been protected from unauthorised interference: or
 - (B) if the Customer has not prepared the shipment of Goods for carriage, it has satisfied itself that the Goods and their packaging comply with all Legislative Requirements and otherwise comply with all requirements of these Terms and Conditions.
- (b) The Customer indemnifies the Supplier against any Claim for loss, damage or other liability arising as a result of a breach of any of the warranties provided by the Customer in clause 9.3(a).

8.4 **Suitability of Services**

- (a) In the event that the Supplier indicates to the Customer, or the Customer should reasonably be aware, that the Goods are not suitable for all or any part of the Services, and the Customer nevertheless proceeds with its Order for Services, the Customer will not hold the Supplier responsible for any loss, damage or other liability to the Customer, Receiver or any other person having an interest in the Goods arising from the provision of the Services. The Customer indemnifies the Supplier against any Claim for loss, damage or other liability arising as a result of the Goods not being suitable for all or any part of the Services in the circumstances outlined in this clause 9.4(a).
- (b) Notwithstanding clause 9.4(a), the Customer acknowledges that the Supplier has no obligation to assess, or inform the Customer of, the suitability of the Goods for the Services.

8.5 Acknowledgement

The Customer acknowledges and agrees that the Supplier has no obligation to verify the content, condition or quality of Goods delivered to the Premises or collected in connection with the Services.

8.6 Warranties

The Customer warrants that:

- (a) the person delivering the Goods to, or collecting the Goods from, the Supplier is authorised to do so by the Customer and (if applicable) to sign for any delivery or collection document or consignment note on behalf of the Customer;
- (b) the Goods are not Dangerous Goods or Prohibited Articles, other than as agreed between the parties in writing;
- (c) it has not asked the Supplier to handle, store or transport the Goods in any way that could be unlawful; and
- (d) any consignee of the Goods is a person or organisation with whom the Supplier or the Customer may not legally trade under any applicable laws or regulations.

9. Termination and Cancellation

- (a) No order for Services contained in a Quotation, once the Quotation is accepted by the Customer, may be cancelled by the Customer except with the Supplier's prior written consent. If the Customer cancels all or any part of an order other than in accordance with this clause, the Customer indemnifies the Supplier against any and all liability the Supplier may suffer as a result of such cancellation.
- (b) Either party (**terminating party**) may terminate the Agreement by providing notice to the other party (**defaulting party**) upon the occurrence of any of the following events:
 - (i) a defaulting party breaches a material term in this Agreement, which in the reasonable opinion of the terminating party, cannot be remedied;
 - (ii) a defaulting party breaches a material term in this Agreement, which has not been remedied within 10 Business Days after receiving notice of the breach;
 - (iii) an Insolvency Event occurs in respect of a defaulting party; or
 - (iv) a defaulting party commits fraud or an act of serious or wilful misconduct.
- (c) Upon termination of the Agreement, any and all amounts payable by the Customer to the Supplier in respect of any period prior to termination, including for Services provided but not yet invoiced, must be paid by the Customer within 10 Business Days after the date of termination.

10. Liability

10.1 Consumer Guarantee

Nothing in these Terms and Conditions limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the ACL (or any liability under them) which by law may not be limited or excluded.

10.2 Exclusion of warranties

To the maximum extent permitted by law and subject to clause 11.1, the Customer acknowledges and agrees that all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms and Conditions are excluded.

10.3 Exclusion of liability

- (a) To the maximum extent permitted by law and subject to clause 11.1, the Supplier is not liable for any Claim, loss, injury or damage arising from, ancillary to or in connection with the supply of, or failure to supply, the Services (including loss of, deterioration in, damage to, mis-delivery of, injury caused by, delay in delivering or failure to deliver Goods) for any reason, known or unknown to the Supplier.
- (b) The Supplier shall not in any circumstances be liable in any way for any loss, damage, cost or penalty sustained or incurred by the Customer, in connection with any information given or made by or on behalf of the Supplier (whether negligently or otherwise and whether verbally or otherwise) as to liability of the Goods for customs duty, excise duty or any other impost or tax or in connection with the particular tariff or classification applicable under any legislation imposing or concerning customs duties, excise duties, tariffs or any other impost or tax. In giving or making any such quotation, advice, prediction, forecast, statement, representation or information, the Supplier relies solely on the information provided by the Customer who warrants that the information provided by it to the Supplier accurately and completely describes all aspects of the Goods and the transportation or transactions relating to the acquisition, sale, importation and/or export of the Goods.
- (c) The exclusion of liability under clauses 11.3(a) and 11.3(b) includes, without limitation, any loss of income, loss of profit, production, contract, customers, goodwill, opportunity or business, or any indirect, special or consequential loss or damage of any nature.

10.4 Limitation of liability

In all cases where liability of the Supplier or any of the persons identified in clause 3.4 has not been effectively excluded, whether by these Terms and Conditions, by law or otherwise, the total liability of the Supplier (and all of the persons identified in clause 3.4) is limited, at the Supplier's option, to:

- (a) the resupply of the Services; or
- (b) payment of the cost of resupply of the Services.

10.5 Third party Claims

The Customer undertakes that it will not permit any other person who has an interest in the Goods or the performance of the Services to bring a Claim or action against the Supplier even if the Supplier has been negligent or in default of its obligations under the Terms and Conditions or otherwise and if such a Claim or action is made the Customer will indemnify the Supplier against all loss, damages and other consequences of the Claim or action and all costs and expenses incurred by the Supplier in defending it.

10.6 Time for making claims

Any Claim for loss, damage or delay or any other Claim arising from the Services must be notified in writing by the Customer to the Supplier within 30 days of the date on which the act or omission giving rise to the Claim occurs, failing which the Supplier shall be discharged of all liability in relation to the claim. Time is of the essence in respect of this clause. An endorsement on a freight note, delivery docket or other note or document in respect of any carriage does not constitute notice in writing for the purpose of this clause.

11. Personal Information

Where the Customer discloses personal information to the Supplier, the Customer must ensure it has, on behalf of the Supplier, obtained from the person to whom the personal information relates consent for the Supplier to collect, use and/or disclose the personal information to provide the Supplier's services. To the maximum extent permitted by law, the Customer indemnifies the Supplier and its officers, employees and contractors against all Claims that arise from or are connected with the provision of any personal information by the Customer to the Supplier.

12. Ownership, title and risk

12.1 Ownership

The Customer warrants that it is the owner or the authorised agent of the owner of the Goods.

12.2 Title

Title in the Goods remains with the Customer or the owner at all times.

12.3 Risk

The Goods will remain at the risk of the Customer or owner of the Goods at all times.

12.4 Insurance

The Supplier will not effect insurance of the Goods for the benefit of the Customer or any other person and the Customer acknowledges that it is solely responsible for effecting such insurance.

13. Events beyond the Supplier's control

To the maximum extent permitted by law and without limiting any other provision of these Terms and Conditions, the Supplier will not be liable for any delay or failure to perform the Services or any other obligations resulting from any Force Majeure Event.

14. General

14.1 Assignment

The Customer must not assign or transfer its rights or obligations under this Agreement to any other party without the prior written consent of the Supplier (which may be withheld in its absolute discretion).

14.2 Governing law and jurisdiction

These Terms and Conditions and each Order are governed by and to be construed in accordance with the laws in force in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

14.3 Severability

Part or all of any provision of the Agreement that is illegal or unenforceable must be severed from the Agreement and will not affect the continued operation of the remaining provisions of the Agreement.

14.4 Confidentiality

The Customer agrees to keep confidential the Service Fees and the terms and conditions of the Agreement and other documentation provided by the Supplier to the Customer.

14.5 Notices

(a) Any notice required or permitted to be delivered to any party under these Terms and Conditions must be in writing and is deemed properly delivered, given and received:

- (i) when delivered by hand;
- (ii) if sent by registered mail, one Business Day after being sent;
- (iii) if sent by overnight delivery via a national courier service, one business day after being sent; and
- (iv) on the day sent by email, provided that the sender has not received a transmission error as of or prior to 5:00 p.m. local time of the intended recipient on such day,

and in each case is sent or delivered to a party's last known address or email address, as applicable.

- (b) The Customer must notify the Supplier in writing of any change to its address, phone number or email address within 10 Business Days of any such change.