

1. Definitions

- 1.1 **"Agent"** means Logivision Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of Logivision Pty Ltd, who operates as a Freight Forwarder brokering contracts with various freight carriers ("Carriers") on behalf of the Client for the purpose of obtaining discounted rates for transportation.
- 1.2 **"Bill of Lading"** means the Agent's produced Bill of Lading, which the Client shall cause to be completed all the appropriate documents required for carriage, in regard to the Services being requested by the Client, and the pick-up or destination desired.
- 1.3 **"Carriers"** shall mean and include:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom the Agent may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.4 **"Client"** means any person/s requesting the Agent to provide the Services, or person/s acting on behalf of and with the authority of the Client (including any sender, shipper, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents) entering into this Contract (and is not limited to the person/s identified in the schedule) both in its own personal capacity and for and on behalf of any principal(s) or trust(s), whether or not disclosed to the Agent. Where the Client comprises two or more persons, the obligations imposed and rights conferred upon the Client by this Contract shall be imposed and conferred upon each person forming the Client, severally and all of them jointly, including all Charges for Services provided by the Agent.
- 1.5 **"COGSA 1936"** means the Carriage of Goods by Sea Act of the United States of America approved on 16th April 1936.
- 1.6 **"Confidential Information"** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **"Personal Information"** such as: 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) and pricing details.
- 1.7 **"Consignee"** means the person to whom the Goods are to be delivered by the Carrier by way of the Agent's Services.
- 1.8 **"Consignment Note"** means the applicable Carrier's Consignment Note. The Client will be responsible for requesting and reviewing Consignment Notes relevant with a designated Carrier. The Agent is not obligated to provide copies of Consignment Notes, or any information contained therein, to the Client.
- 1.9 **"Contract"** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.10 **"Cookies"** means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when using the Agent's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.11 **"Charges"** means the Charges payable for the Services (plus any GST where applicable) as agreed between the Agent and the Client in accordance with clause 8 below.
- 1.12 **"Dangerous Goods"** means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this Contract) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in the legislation governing cartage by road or rail in the States and Territories of Australia.
- 1.13 **"Goods"** means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services, or for storage by the Agent.
- 1.14 **"GST"** means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.15 **"Hague-Visby-Rules"** means the provisions of the International Convention for the unification of certain rules relating to bills of lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979.
- 1.16 **"Montreal Convention"** means the Montreal Convention 1999 as applied respectively by the legislation of the Commonwealth of Australia and of New Zealand.
- 1.17 **"Parties"** shall mean where applicable the Agent and the Client collectively or individually either may be referred to as Party in the Contract.
- 1.18 **"Services"** means all services provided by the Agent to the Client to facilitate the movement of Goods from one place to another by the Agent as may be requested by the Client from time to time (including, but not limited to, anything done or to be done in relation to 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 the offering of any advice or recommendations.

2. Interpretation

- 2.1 In this Contract, unless it is stated to the contrary or the context requires otherwise:
 - (a) words in the singular shall include the plural (and vice versa), words importing one gender shall include every gender, a reference to a person shall include any other legal entity of whatsoever kind (and vice versa) and where a word or a phrase is given a defined meaning in this Contract, any other part of speech or other grammatical form of that word or phrase has a corresponding meaning;
 - (b) the headings used in this Contract are used for administrative purposes only and do not constitute substantive matter to be considered in construing the terms of this Contract;
 - (c) a reference to a statute, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
 - (d) the words 'include' and 'including', and any variants of those words, will be treated as if followed by the words 'without limitation';

- (e) a reference to dollars (\$), is a reference to Australian currency;
- (f) this Contract is not to be interpreted against the Agent merely because they prepared this Contract; and
- (g) the following order of precedence (in descending order) will be applied to resolve any conflict, ambiguity or discrepancy in this Contract:
 - (i) Consignment Note;
 - (ii) Bill of Lading;
 - (iii) Terms and Conditions of Trade; and
 - (iv) any schedules.
- (h) any reference (other than in the calculation of consideration, or of any indemnity, reimbursement or similar amount) to cost, expense or other similar amount is a reference to that cost exclusive of GST.

3. Bill of Lading

- 3.1 In the event the Client fails to properly and expeditiously complete the appropriate documents, the Client hereby instructs the Agent, where permitted by law and the Agent may at its discretion, but without obligation, complete, correct or replace the documents for them at the expense of the Client. If a substitute form of Bill of Lading ("**BOL**") is required to complete delivery of the Client's shipment for any reason and the Agent completes that document, the terms of the completed BOL will govern and the Agent will be exonerated from all liability for undertaking such actions on behalf of the Client including specifically liability for, in whole or in part, negligence by the Agent. All Bill of Lading are non-negotiable and have been prepared by the Client or by the Agent on behalf of the Client in accordance with the Client's instructions and approved by the Client, and shall be deemed, conclusively, to have been prepared by the Client. The Client is required to provide the BOL to the Carrier designated by the Agent. Any failure to provide the proper BOL to the designated Carrier shall render the entire transaction void ab initio. The Agent shall have no obligation to make any payments or honour any rate quotes in any of the following instances:
- (a) the unauthorised alteration or use of a BOL, or
 - (b) tendering of shipments to any carrier other than that designated by the Agent, or
 - (c) the use of any BOL not authorised or issued by the Agent.

4. Acceptance

- 4.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Services provided by the Agent.
- 4.2 These terms and conditions are to be read in conjunction with the Agent's quotation, Bill of Lading, the Carrier's consignment note, agreement, airway bills, manifests, or any other forms as provided by the Agent to the Client. If there are any inconsistencies between these documents, then the terms and conditions contained in this Contract shall prevail subject to clause 2.1(g) in the event of any dispute.
- 4.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 4.4 The use of a Client's own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the contract so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 4.5 The Client shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to this Contract.
- 4.6 Any exercise of discretion by the Agent shall be absolute and unfettered and may be unreasonable or arbitrary.
- 4.7 The Client acknowledges and accepts that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Agent and it has been approved with a credit limit established for the account.
- 4.8 In the event that the supply of the Services request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Agent reserves the right to refuse delivery.
- 4.9 Except under special arrangements previously made in writing, the Agent will not accept or deal with any:
- (a) Dangerous Goods. Any person delivering such Goods to the Agent, or causing the Agent to handle or deal with any such Goods, shall be liable for all loss or damage caused thereby and shall indemnify the Agent against all penalties claims damages costs and expenses arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the sole discretion of the Agent (or any other person in whose custody they may be at the relevant time such Goods are accepted) if they become dangerous to other goods or property; and
 - (b) bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and the Agent will not accept any liability whatsoever for any such Goods.
- 4.10 Any handling, installation, removal, assembly or erection of any kind included in the provision of the Services is undertaken on the basis that the Agent accepts no liability whether in contract, tort, bailment or otherwise for any loss, damage or injury of any kind whatsoever, howsoever arising (including, but not limited to, any negligence or breach of Contract by the Agent) caused or incurred or occurring during any part of such activity including any loss, damage or injury to any person, property or thing or any Goods.
- 4.11 Any time specified by the Agent for provision of the Services is an estimate only and the Agent will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Agent is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Agent shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

5. Electronic Transactions Act

- 5.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA) or any other applicable provisions of that Act or any Regulations referred to in that Act.

6. Errors and Omissions

- 6.1 The Client acknowledges and accepts that the Agent shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Agent in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Agent in respect of the Services.
- 6.2 In circumstances where the Client is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services ("**Client Error**"). The Client must pay for all Services it orders from the Agent notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. The Agent is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

7. Change in Control

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

8. Charges and Payment

- 8.1 At the Agent's sole discretion, the Charges shall be either:
- (a) as indicated on invoices provided by the Agent to the Client in respect of Services provided; or
 - (b) the Agent's current Charges at the date of delivery of the Goods according to the Agent's current brokerage rates; or
 - (c) the Agent's quoted Charges (subject to clause 8.3) which shall be binding upon the Agent provided that the Client shall accept in writing the Agent's quotation within thirty (30) days (quarantine and statutory charges or origin or destination additional Charges are not included, unless specifically stated at the time of quoting); or
 - (d) have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Client. The Agent/Carrier may, at any time, open any container or any other package or unit in order to 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, or
 - (e) "Less than Load" ("**LTL**") rates are based on the freight class as determined by the National Motor Freight Classification ("**NMFC**") are weight based; or
 - (f) "Truckload" ("**TL**") rates are based on Dock Door Pickup/Dock Door Delivery and Shipper Load/Consignee Unload and are state to state and mileage based. Additional fees may apply for Charges including, Tractor Detention, Trailer Detention, and Driver Assistance. The Client must tender the load to the Carrier at the agreed upon rate, or pay a \$ 150.00 "truck ordered, not used" penalty. Air Freight rates are based on the greater of actual or dimensional weight. If an Air Freight shipment contains oversize freight, additional Charges and transit days may apply; or
 - (g) "Van Line" ("**VL**") rates are driven by state to state/mileage, weight (actual or density) and commodity/product type; or
 - (h) "Flatbed" ("**FB**") rates are based on equipment type, state to state/mileage and weight. If a flatbed shipment contains oversize freight, additional Charges and transit days may apply.
- 8.2 ***All displayed transit times are estimates only and do not include day of pickup. Pickup dates are not guaranteed.*** In the event that a guaranteed service is requested by the Client an additional Charge will apply. Guaranteed Service transit times do not include holiday and/or no service" days as defined by the individual Carrier. The Client is liable for all Charges related to the shipment. In the event of a Carrier's failure to comply with the guaranteed service requested, the Client shall have fourteen (14) days from the actual delivery date of shipment to deliver a written claim request to the Agent. If the Agent does not in a timely manner receive a claim request within the said fourteen (14) days, the Service provided by the Carrier will be deemed to have met all guaranteed Service standards and the claim request will automatically be considered invalid and denied. In the event of the Carrier's failure to comply with the guaranteed Service requested and after the Carrier has agreed to liability, the Agent will credit the account of the said Client with such amount awarded by the Carrier. In no event shall the Agent be liable nor will any account be credited if the Client does not use the Agent's BOL.
- 8.3 The Agent reserves the right to change the Charges:
- (a) if a variation to the Agent's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of the Agent, delivery times or date or otherwise, etc.); or
 - (b) to reflect any increases to the Agent in the cost of providing the Services which are beyond the reasonable control of the Agent (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, administration costs (including photocopying, postage, etc.), or increases in fuel costs, taxes or customs duties, insurance premiums or warehousing costs, General Average costs or for any other services, facilities or resources provided by the Agent); or
 - (c) for any delay over thirty (30) minutes in either loading and/or unloading (from when the Carrier arrives onsite), and/or any overnight or extended storage occurring other than from the Carrier's fault.
- 8.4 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by the Agent, which may be:
- (a) on the Carrier's receipt of the Goods; or
 - (b) the date specified on any invoice, consignment note, airway bill, bill of lading, manifest, or any other form as being the date for payment; or
 - (c) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices; or
 - (d) the date specified on any invoice or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice, consignment note, airway bill, manifest, or any other form given to the Client by the Agent.

- 8.5 Payment may be made by electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Agent.
- 8.6 Receipt by the Agent 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 and until then the Agent's ownership or rights in respect of the Services shall continue.
- 8.7 The Client acknowledges and agrees that the Client's obligations to the Agent for the supply of Services shall not cease until:
- (a) the Client has paid the Agent all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to the Agent in respect of all contracts between the Agent and the Client.
- 8.8 The Agent may in its discretion allocate any payment received from the Client towards any invoice that the Agent determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Agent may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Agent, payment will be deemed to be allocated in such manner as preserves the maximum value of the Agent's Purchase Money Security Interest (as defined in the PPSA) in respect of the Services provided.
- 8.9 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Agent nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Agent in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Agent investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Agent placing the Client's account into default and subject to default interest in accordance with clause 32.1.
- 8.10 The Client shall be liable for and pay to the Agent any additional costs or expenses the Agent may incur and for any loss or damage occasioned either directly or indirectly to the Agent as a result of the Agent relying upon the description and particulars provided by the Client or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- 8.11 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to the Agent an amount equal to any GST the Agent must pay for any provision of Services by the Agent under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 8.12 Where the Client requesting or organising the Agent to provide the Services is acting on behalf of any third party, and that third party is intended to be responsible for the payment of the Charges, then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Charges as if they had contracted for the provision of the Services on their own behalf.
- 9. Provision of the Services**
- 9.1 The Agent is not a "Common Carrier" and will accept no liability as such. All articles are carried or transported, and all storage and other services are performed by the Agent subject only to these conditions and the Agent reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 9.2 *Freight Forwarding*
- (a) the Client authorises the Agent (in its discretion at any time without notice to the Client) to:
 - (i) license or sub-contract all or any part of its rights and/or obligations, including using the services of others where necessary to ensure safety of other road users and property and/or compliance with lawful authority requirements and/or Police or private escorts, road closures and/or transport control, and using specialist equipment such as special cooling, etc.;
 - (ii) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever; and
 - (iii) comply with any order or direction or recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.
- 9.3 Except to the extent that any of the Services where the Agent acts as a freight forwarder, the Agent shall act as a forwarding agent only.
- 9.4 The Client acknowledges and agrees:
- (a) the Agent contracts with the Client both on its own behalf and on the behalf of the Agent's servants, agents and subcontractors, and the Client undertakes that the Client will not make any claims against such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission by any of them;
 - (b) in respect of any clause herein which excludes, or in any way limits, the liability of the Agent in respect of the Services, the Agent, in addition to acting for itself, is acting as an agent of, and trustee for, each of its employees and also any other person or company with whom the Agent arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this Contract in so far as to the exclusions or indemnities that are contained herein are concerned and, in so far as may be necessary to give effect to this clause, the Agent will hold the benefit of these terms and conditions for its employees and so any such person or company and their employees;
 - (c) the Client shall indemnify the Agent against:
 - (i) the consequences of such claim or allegation thereof;
 - (ii) all claims or demands whatsoever by whomsoever made in respect of any loss, damage, or injury howsoever caused whether or not by negligence or wilful act or omission of the Agent, its servants, agents or subcontractors.
- 9.5 The Agent's Charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises or despatched from third party premises as directed by the Client in order to fulfil the carriage of the Goods.

- 9.6 Should the Client require the Agent to collect the Goods upon the Client's behalf from a third party, any receipt the Agent may give that third party when effecting collection is no more than a record of the collection and cannot be construed as confirmation of the quality or condition of the Goods.
- 9.7 The Agent will assist the Client in providing the correct labelling required for the Client's Goods. The correct label will be required to show:
- (a) the precise Goods in the shipping container;
 - (b) any hazardous Goods;
 - (c) country of origin;
 - (d) correct weight in pounds and kilograms;
 - (e) port of entry details; and
 - (f) any details that are required in the language of the destination country

10. Extent of Liability in the Case of Combined Transport

- 10.1 Where the Carriage specified on the face of the Bill of Lading is Combined Transport, the sub-contractor shall be liable for loss or damage to the Goods occurring between the time when he takes the Goods into his charge and the time of delivery.
- 10.2 The sub-contractor shall, however, be relieved of liability for any loss or damage if such loss or damage was caused by:
- (a) an act or omission of the Agent, or person other than the sub-contractor acting on behalf of the Agent or from whom the sub-contractor took the Goods in charge;
 - (b) insufficiency or defective condition of the packaging or marks and/or numbers;
 - (c) handling, loading, storage or unloading of the Goods by the Agent or any person acting on behalf of the Agent;
 - (d) inherent vice of the Goods;
 - (e) strike, lockout, stoppage or restraint of labour, the consequences of which the sub-contractor could not avoid by the exercise of reasonable diligence;
 - (f) a nuclear incident if the operator of a nuclear installation or a person acting for him is liable for this damage under an applicable International Convention or National Law governing liability in respect of nuclear energy; or
 - (g) any cause or event which the sub-contractor could not avoid and the consequences whereof he could not prevent by the exercise of reasonable diligence.
- 10.3 The burden of proving that the loss or damage was due to one or more of the above causes or events shall rest upon the sub-contractor. When the sub-contractor establishes that, in the circumstances of the case, the loss or damage could be attributed to one or more of the causes and events specified in (b) to (d) above, it shall be presumed that it was so caused. The claimant shall, however, be entitled to prove that the loss or damage was not, in fact, caused wholly or partly by one or more of these causes or events.
- 10.4 Where the Carriage specified on the face of the Bill of Lading is Combined Transport and when in accordance with Clause 10.1 the sub-contractor is liable to pay compensation in respect of loss or damage and the stage of transport where loss or damage occurred is known, the liability of the sub-contractor in respect of such loss or damage shall be determined by the provisions contained in any International Convention or National Law, which provisions
- (a) cannot be departed from by private contract, to the detriment of the claimant, and
 - (b) would have applied if the claimant had made a separate and direct contract with the sub-contractor in respect of the particular stage of transport where the loss or damage occurred and received as evidence thereof any particular document which must be issued in order to make such International Convention or National Law applicable.
- 10.5 With respect to the transportation in the United States of America or in Canada to the Port of Loading or from the Port of Discharge, the responsibility of the sub-contractor shall be to procure transportation by sub-contractors (one or more) and such transportation shall be subject to the inland sub-contractor's contracts of carriage and tariffs and any law compulsorily applicable. The sub-contractor guarantees the fulfillment of such inland sub-contractors' obligation under the contracts and tariffs.

11. Additional Modified Combined Transport Clause

- 11.1 In the case of a combined transport carriage to or from:
- (a) Australia;
 - (b) Commonwealth of Independent States Countries (CIS);
 - (c) the Continent of Africa;
 - (d) the Middle East which, for the purposes of this Bill of Lading only, is expressly defined as: Afghanistan, Bahrain, Egypt, Iran, Jordan, Kuwait, Lebanon, Oman, Qatar, Saudi Arabia, Syria, Turkey, United Arab Emirates and Yemen Arab Republic;
 - (e) India, Pakistan, Bangladesh and Sri Lanka;
 - (f) the Peoples Republic of China in relation to Carriage in any of the above countries prior to the commencement of loading on the initial carrying vessel or subsequent discharge from the final carrying vessel, the Agent's responsibility and his liability for any loss or damage occurring to the Goods shall not be as specified in clause 3 and 10 above. Instead, with respect to such Carriage:
 - (i) the Agent constitutes that the Agent or the Agent's nominated agent (where applicable) shall have the authority as an agent to enter into contracts on behalf of the Agent with others for transport, storage, handling or any other services in respect of the Goods, and the Agent or the Agent's nominated agent may as such as an agent enter into contract with others on any terms whatsoever including terms less favourable than the terms in the Bill of Lading;
 - (ii) the Agent shall not be responsible for any act or omission by any party with whom the Agent as agent enters into contracts on behalf of the Agent; and
 - (iii) the Agent shall not be liable for any loss or damage whatsoever in respect of the Goods.

12. Compliance Laws

- 12.1 The Bill of Lading in so far as it relates to sea carriage by any vessel whether named herein or not shall have effect subject to the Hague Rules or any legislation making such Rules or the Hague-Visby Rules compulsorily applicable (such as COGSA 1991) to the Bill of Lading and the provision of the Hague Rules or applicable legislation shall be deemed incorporated herein. The Hague Rules (or COGSA 1936 if the Bill of Lading is subject to US law) shall apply to the carriage of Goods by inland waterways and reference to carriage by sea in such Rules or legislation shall be deemed to include reference to inland waterways. The Hague Rules or Hague Visby Rules applicable legislation shall apply to all Goods whether carried on deck or under deck. If and to extent that provisions of the Harter Act of the United States of America 1893 would otherwise be compulsorily applicable to regulate the Agent's responsibility for the Goods during any period prior to loading on or after discharge from the vessel, the Agent's responsibility shall instead be governed by the provisions of clause 10, but if such provisions are found to invalid such responsibility shall be subject to COGSA 1936.
- 12.2 The Agent shall be entitled (and nothing in the Bill of Lading shall operate to limit or deprive such entitlement) to the full benefit of, and rights to, all limitations of or exemptions from liability and all rights conferred or authorised by any applicable law, statute or regulation of any country including, but not limited to, where applicable any provisions of sections 4281 to 4287, inclusive, of the Revised Statutes of the United States of America and amendments thereto and where applicable any provisions of the laws of the United States of America.
- 12.3 Save where the Hague or Hague/Visby Rules apply by reason of 12.1 above, the Bill of Lading shall take effect subject to any national law in force at the port of shipment or place of issue of the Bill of Lading or elsewhere making the Hamburg Rules compulsorily applicable to this Bill of Lading in which case this Bill of Lading shall have effect subject to the Hamburg Rules which shall nullify any stipulation derogating therefrom to the detriment of the shipper or Consignee.

13. Custom Brokerage

- 13.1 The Client agrees that, by signing acceptance of these terms and conditions the Client duly authorises the Agent to act as their nominated Customs Broker under Section 181 (1) of the Customs Act 1901 (as Authorised Agents), to act on the Client's behalf, with the Agent then becoming the Client's duly nominated agent or sub-agent as appointed, in all matters involving the Australian Customs Service.
- 13.2 The Client acknowledges that the Agent will, for the purposes of customs duty, classify the Goods, compile the Goods for customs purposes and calculate the customs duty payable on the Goods based on the information provided by the Client to the Agent in relation to the Goods, and the Agent shall not be liable for any mistake in classification, or compiling of the Goods or calculation of customs duty resulting from the failure of the part of the Client to provide sufficient information to the Agent concerning the Goods so as to enable the Agent properly to classify and compile the Goods and properly calculate the customs duty on the Goods.
- 13.3 In the event that an examination of the Goods is required by any statutory authority, or other person authorised by the Client or entitled to examine the Goods, the Agent shall not be responsible for failure to arrange, or delay in arranging such examination unless the Agent shall have been given sufficient written notice by the Client to enable it to arrange such examination.
- 13.4 The Agent is entitled to be paid, and retain, all brokerages, commissions, allowances and other remunerations paid to, or retained by, ship forwarding agents (or freight forwarders) and/or insurance brokers.

14. Client-Packed Containers

- 14.1 The Agent may open at the Client's risk and expense any document or any packaging or container in which the Goods are placed or carried to inspect the Goods to determine their nature or condition or to determine their ownership or destination where any consignment note or identifying mark is lost, damaged, destroyed, defaced or otherwise.
- 14.2 Subject to any written special instructions to the contrary:
- (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure; and
 - (b) the Agent is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.
- 14.3 Goods requiring special appliances for loading and/or unloading are accepted for carriage only on condition that such appliances are made available by the Client at the collection and/or delivery address. If the Agent is, without prior arrangement, called upon to load and/or unload such Goods, the Agent shall not be liable to the Client for any loss whatever, howsoever caused, arising out of such loading and/or unloading and the Client shall indemnify the Agent against all claims and demands whatsoever which could not have been made if such assistance had not been given.

15. Dangerous Goods

- 15.1 Unless otherwise agreed in advance in writing with the Agent the Client or their authorised agent shall not tender for carriage any Dangerous Goods, or anything which may encourage vermin or pests. The Client shall be liable for and hereby indemnifies the Agent for all loss and damage and all additional Charges and expenses incurred or sustained by the Agent/Carrier arising out of the carriage of the Goods, any false, misleading or inaccurate information or description of such Dangerous Goods, or any default or failure of the Client to declare the Goods and Dangerous Goods and provide full particulars thereof.
- 15.2 Where Dangerous Goods and/or anything likely to encourage vermin or pests are accepted for carriage the Client warrants that the carriage thereof is not prohibited and they have fully disclosed in writing to the Agent before the Carrier has taken possession of the Goods the full particulars and description of the Goods, the nature and value of the Goods, all requirements of lawful authorities for such carriage and all other relevant information.
- 15.3 The Agent/Carrier may, at its discretion, at the Client's expense and without compensation thereto or to any other person with an interest in the Goods and without prejudice to its charges or any other rights hereunder:
- (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Client or any other person with an interest thereto; and/or

- (b) dispose of or destroy or abandon or render harmless any Goods which the Carrier believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination, or any declared Dangerous Goods which are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature.

16. Client's Responsibility

16.1 The Client expressly warrants to the Agent that:

- (a) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract, and by entering into this Contract the Client accepts these Terms and Conditions for the Consignee as well as for all other persons on whose behalf the Client is acting;
- (b) the Goods are fit for carriage, comply with any applicable legal requirements relating to the nature, condition and/or packaging of the Goods (and that the expenses of complying with such requirements or any other lawful requirements of any authority, other body or the company shall be at the Client's cost) and are not Dangerous Goods;
- (c) the person handing over the Goods to the Agent/Carrier is authorised to sign and accept these terms and conditions;
- (d) it is solely the Client's responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
- (e) any packaging, labelling and/or marking by the Client accurately describes the Goods as to content, weight and method of handling or otherwise, complies with applicable dangerous goods codes, any other applicable laws and with any relevant Australian or international standards; and
- (f) at the Agent's discretion, where differences or omissions between address and/or contact information written on the consignment and/or other documentation or in any form of communication (including, but not limited to, email and telephone) provided by the Client to the Agent, the Agent shall reserve the right to choose which delivery information is followed and shall not be held liable for any associated costs in relocation of the Goods if this address is the incorrect one.

16.2 The Client shall indemnify the Agent against any loss (including any fine, levy, charge or other monetary imposition to which the Agent may become liable incidental to the carriage) damage, death or injury, including loss or damage to the Agent's containers and/or equipment arising out of:

- (a) the Client's unreasonable detention of any vehicle, container or other equipment of the Agent; or
- (b) any breach of the Client's warranties under clause 16.1, including the failure to comply with clause 16.1(e).

17. Insurance

17.1 The Agent/Carrier will not, without the Client's written instruction, **and the Agent/Carrier's written approval**, insure the Goods, and:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Agent/Carrier;
- (b) subject to sub-clause (c):
 - (i) the Agent/carrier is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
 - (ii) under no circumstances will the Agent/Carrier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Agent/Carrier for failure to arrange or ensure that the Goods are insured adequately or at all.
- (c) any such insurance is at the Client's own expense. Where the Client's instruction does not specify the class of insurance to be effected, the Agent may in its discretion affect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
 - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
 - (ii) loss, damage or expensed proximately caused by delay;
 - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
 - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
 - (v) any exclusion common to that class of insurance; and/or
 - (vi) any other exclusion advised by the Client to the Agent/Carrier, detailed in the special instructions.

18. Delivery of the Goods

18.1 The Carrier is authorised to deliver the Goods at the Client's nominated delivery address, and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this Contract:

- (a) if at that address the Carrier obtains from any person a receipt or a signed delivery docket for the Goods; or
- (b) that even if the Client is not present at the nominated delivery address, that it is deemed that delivery has occurred even without the Carrier's obtained a signed receipt or delivery docket.

18.2 The Carrier 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 Contract.

18.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.

18.4 Perishable Goods, which are not taken up immediately upon arrival, or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Client, and payments or tender of the net proceeds of any sale after deduction of Charges shall be equivalent to delivery. All Charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Client.

18.5 Non-perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee, may be sold (as per clause 30.2 or returned at the Carrier's option at any time after expiration of twenty-one (21) days from a notice in writing sent to the address which the Client gave to the Agent/Carrier for delivery of the Goods. A communication from any agent or correspondent of the Agent/Carrier to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.

- 18.6 Instructions to collect payment on delivery of the Goods (COD), in cash or otherwise, are accepted by the Carrier upon the condition that the Carrier in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
- 19. Loss or Damage**
- 19.1 Subject to clause 30.2 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Agent shall not be under any liability for:
- (a) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or any confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process;
 - (b) compliance with the directions of any person or lawful authority entitled to give them;
 - (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, mis-delivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of the Agent or not);
 - (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of any delay in delivery, forwarding or transit or failure to deliver the Goods;
 - (e) any act or omission whether wilful, reckless, negligent or otherwise of the Agent, or its servants or agents or sub-contractors;
 - (f) any failure to follow instructions given to the Agent by, or on behalf of, the Client, whether or not such failure is wilful;
 - (g) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging; or
 - (h) any act, omission or neglect of the Client, including insufficient or improper packaging, labelling or addressing (subject to clause 9.7) or quality of description of the Goods, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.
- 19.2 In the case of carriage by sea or air, no optional declaration of value to increase the carrier's liability under either the Carriage by Civil Aviation (Carrier's Liability) Act 1959, Article 22(2) of Schedule 1 as amended by Schedule 2, or Article IV Rule 5(a) of Schedule 1 of the Carriage of Goods by Sea Act 1991, will be made except upon express instructions given in writing to the Client. In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purposes of extending liability, and Goods will be forwarded or dealt with at the Client's risk or other minimum Charges unless express instructions in writing to the contrary are given by the Client.
- 20. Conditions of Storage**
- 20.1 The Carrier will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Carrier, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case the Agent/Carrier will be entitled to make a reasonable additional charge.
- 20.2 The Agent/Carrier is authorised to remove the Goods from one warehouse to another without cost to the Client. the Agent/Carrier will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 20.3 The Client is entitled upon giving the Agent/Carrier reasonable notice to inspect the Goods in store, but a reasonable charge may be made by the Agent/Carrier for this service.
- 20.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving the Carrier not less than five (5) working days' notice. If the Client gives the Agent/Carrier less than the required notice the Agent/Carrier will still use their best endeavours to meet the Client's requirements but shall be entitled to make a reasonable additional charge for the short notice.
- 20.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Agent/Carrier to do so. In default, the Agent/Carrier may sell any or all of the Goods as per clause 22.
- 21. Indemnities**
- 21.1 The defences and exclusions of liability in these conditions general including clause 19 apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against the Agent even if it is resulted from an act or omission of the Agent done wilfully or recklessly with knowledge that damage would or would probably result.
- 21.2 Nothing whatsoever done or omitted to be done or other conduct by the Agent in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under any circumstances constitute either a breach going to the root of this Contract, or a deviation or departure therefrom or a repudiation thereof such as to have effect of disentitling the Agent from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other protections herein which shall continue to have full force and effect in any event whatsoever.
- 21.3 Subject to clause 30.2, but without prejudice to any other provision hereof, this Contract and any other contract the Agent makes under its authority and any contract made by any person whom the Agent has delegated such authority, shall be made by the Client or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage thereof (including storage by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit). All further or additional Charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 8.
- 22. Lien**
- 22.1 In addition to its rights under the Warehouseman's Liens Act 1935, the Agent/Carrier shall have and retain a general lien on any Goods/shipment submitted by the Client to the Agent/Carrier for the provision of Services by the Agent (including where done so in the capacity of any sender, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents), and in the possession or

control of the Agent (and any documents relating to those Goods), for pecuniary obligations owing from time to time by the Client on any account whatsoever to the Agent (including, but not limited, to payment of the Charges), and the Agent shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. The Agent shall be entitled to retain the sums due to it, in addition to the Charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Agent's right to recover from the Client any Charges due or payable in respect of the carriage or such detention and sale.

23. Claims

- 23.1 Notwithstanding clauses 17 and 19, in the event that the Client believes that they have any claim against the Agent then they must lodge any notice of claim for consideration and determination by the Agent within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 23.2 The failure to notify a claim within the time limits under clause 23.1 is evidence of satisfactory performance by the Agent of its obligations hereunder.

24. Notice of Loss, Time bar

- 24.1 The Agent/Carrier shall be discharged of all liability unless:
- (a) notice of any claim is received by the Agent or its contractor in writing within seven (7) days after the date specified in Clause 24.2, or within a reasonable time after that date if the Client proves that it was impossible to so notify, and
 - (b) suit is brought in the proper forum and written notice thereof received by the Agent/Carrier within nine (9) months after the date specified in Clause 24.2.
- 24.2 For the purposes of Clause 24.1, the applicable dates are:
- (a) in the case of loss or damage to Goods, the date of delivery of the Goods;
 - (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered; or
 - (c) in any other case, the event giving rise to the claim.

25. General Average

- 25.1 The Agent/Carrier may declare General Average which shall be adjustable according to the York/Antwerp Rules of 1994 at any place at the option of the Agent and the amended Jason Clause as approved by Baltic and International Maritime Council ("BIMCO") is to be considered as incorporated herein and the Agent shall provide such security as may be required by the Agent in this connection.
- 25.2 Notwithstanding clause 25.1 the Client shall defend, indemnify and hold harmless the Agent in respect of any claims of a General Average nature, including any claims or demands for General Average security which may be made on the Agent and the Client shall forthwith provide such security as may be required by the Agent in this connection.
- 25.3 The Agent shall be under no obligation to take any steps whatsoever to collect security for General Average contributions due to the Agent.

26. Special Liability Conditions

- 26.1 Where the Agent contracts as principal for the performance of the Client's instructions, the Agent undertakes to perform, or in its own name to procure, the performance of the Client's instructions and, subject to the provisions of these terms and conditions, shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
- 26.2 Where the Agent contracts as a principal and sub-contracts the performance of the Agent's Services; and it can be proved that the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor; the Agent shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor in the contract between the Agent and the sub-contractor and in any law, statute or regulation and the liability of the Agent shall not exceed the amount recovered, if any, by the Agent from the sub-contractor.
- 26.3 Notwithstanding other provisions in these terms and conditions, if it can be proved where the loss of or damage to the Goods occurred, the Agent's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:
- (a) cannot be departed from by private contract, to the detriment of the claimant, and
 - (b) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- 26.4 Notwithstanding other provisions in these terms and conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 26.2 do not apply, the Agent's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.
- 26.5 Notwithstanding the provisions of Clauses 26.2, 26.3 and 26.4, if the loss of or damage to the Goods occurred at sea or on inland waterways, and the owner, charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of the Agent shall be limited to the proportion of such limitation fund as is allocated to the Goods.
- 26.6 In the event of any inconsistency between these terms and conditions and the conditions of any Bill of Lading or Air Waybill issued by or on behalf of the Agent as Principal, the conditions of any such Bill of Lading or Air Waybill shall prevail to the extent of such inconsistency but no further.

27. Both-to-Blame Collision Clause

- 27.1 The Both-to-Blame Collision Clause as recommended by the Baltic and International Maritime Council ("BIMCO") as at the same time of the provision of Services is incorporated into and forms part of these terms and conditions.

28. USA and/or Canada and Additional Responsibility Clause

- 28.1 With respect to transportation within the USA or Canada, the responsibility of the Agent shall be to procure transportation by Carriers (one or more) and such transportation shall be subject to such Carrier's contracts and tariffs and any law compulsorily applicable. The Agent guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.
- 28.2 If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate the Agent's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Agent's responsibility shall instead be determined by these terms and conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.
- 28.3 If and to the extent that the provisions of the Regulations made pursuant to the Carriage of Goods by Sea Act 1991 (as amended) of the Commonwealth of Australia (or any amendments to such Regulations) would otherwise be compulsorily applicable to regulate the Agent's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, the Agent's responsibility shall be determined by these terms and conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.
- 28.4 If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by the Agent as principal, these terms and conditions shall be read subject to the provisions of the Hamburg Rules and any term of these terms and conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

29. Air Carriage

- 29.1 Where the Agent acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given. If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention may be applicable and the Convention governs and, in most cases, limits the liability of carriers in respect of loss of or damage to Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
- 29.2 Notwithstanding any other provision of these terms and conditions, where the Agent acts as a principal in respect of a carriage of Goods by air, the Agent's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.

30. Governing Law and Jurisdiction

- 30.1 These terms and conditions and any claim or dispute arising out of or in connection with the Services of the Agent shall be subject to the laws of New South Wales of Australia in which the Agent has its principal place of business, and any such claim or dispute shall be determined by the courts of that State and no other Court.
- 30.2 Notwithstanding anything herein contained, the Agent shall continue to be subject to any implied warranty provided by the Competition and Consumer Act 2010 (as amended) of the Commonwealth of Australia or any other Commonwealth or State legislation, if and to the extent that the said Act is applicable to the contract evidenced by these terms and conditions and prevents the exclusion, restriction or modification of such warranty.

31. Cancellation

- 31.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of the Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 31.2 If the Agent, due to reasons beyond the Agent's reasonable control, is unable to deliver any Services to the Client, the Agent may cancel any Contract to which these terms and conditions apply or cancel delivery of the Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall repay to the Client any money paid by the Client for the Services. The Agent shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 31.3 The Client may cancel Delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 31.3, the Client will not be liable for the payment of any costs of the Agent.

32. Default and Consequences of Default

- 32.1 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 Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 32.2 If the Client owes the Agent any money the Client shall indemnify the Agent from and against all costs and disbursements:
 (a) incurred; and/or
 (b) which would be incurred and/or
 (c) for which by the Client would be liable;
 in regard to legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under these terms and conditions, internal administration fees, the Agent's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 32.3 Further to any other rights or remedies the Agent may have under this Contract, if the Client has made payment to the Agent, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Agent under this clause 32 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 32.4 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client has exceeded any applicable credit limit provided by the Agent; or
- (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

33. Personal Property Securities Act 2009 ("PPSA")

- 33.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 33.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by the Agent, over which the Agent invokes a lien; and
 - (b) all Services that will be supplied in the future by the Agent to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Agent for Services – that have previously been provided and that will be provided in the future by the Agent to the Client.
- 33.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Agent may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 33.3(a)(i) or 33.3(a)(ii).
 - (b) indemnify, and upon demand reimburse, the Agent for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Agent; or
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of the Agent.
- 33.4 The Agent and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 33.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 33.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 33.7 Unless otherwise agreed to in writing by the Agent, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 33.8 The Client shall unconditionally ratify any actions taken by the Agent under clauses 33.3 to 33.5.
- 33.9 Subject to any express provisions to the contrary (including those contained in this clause 33), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

34. Security and Charge

- 34.1 In consideration of the Agent agreeing to provide its Services, the Client grants the Agent a security interest by way of a floating charge (registerable by the Agent pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Services under this Contract and/or permit the Agent to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 34.2 The Client indemnifies the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Agent's rights under this clause.
- 34.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 8.7, 33.2 and 34.1 as applicable, is deemed insufficient by the Agent to secure the repayment of monies owed by the Client to the Agent, the Client hereby grants the Agent a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

35. Privacy Policy

- 35.1 All emails, documents, images or other recorded information held or used by the Agent is Personal Information, as defined and referred to in clause 35.3, and therefore considered Confidential Information. The Agent acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Agent acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Agent that may result in serious harm to the Client, the Agent will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

- 35.2 Notwithstanding clause 35.1, privacy limitations will extend to the Agent in respect of Cookies where the Client utilises the Agent's website to make enquiries. The Agent agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Agent when the Agent sends an email to the Client, so the Agent may collect and review that information ("collectively Personal Information").
- If the Client consents to the Agent's use of Cookies on the Agent's website and later wishes to withdraw that consent, the Client may manage and control the Agent's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 35.3 The Client agrees for the Agent to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. 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 Client in relation to credit provided by the Agent.
- 35.4 The Client agrees that the Agent may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 35.5 The Client consents to the Agent being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 35.6 The Client agrees that personal credit information provided may be used and retained by the Agent for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client'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 Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 35.7 The Agent may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 35.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 35.3 above;
 - (b) name of the credit provider and that the Agent is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided the Agent is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Agent has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of the Agent, the Client has committed a serious credit infringement; or
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 35.9 The Client shall have the right to request (by e-mail) from the Agent:
- (a) a copy of the Personal Information about the Client retained by the Agent and the right to request that the Agent correct any incorrect Personal Information; and
 - (b) that the Agent does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 35.10 The Agent will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 35.11 The Client can make a privacy complaint by contacting the Agent via e-mail. The Agent will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 36. Confidential Information/Conflict of Interest**
- 36.1 The Client assumes liability for all loss or damage suffered by the Agent as a result of breach of confidentiality undertaken by itself, or its employees or agents.
- 36.2 Neither party will use the other party's Confidential/personal Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this contract, and a party may only disclose the other party's Confidential/personal Information:
- (a) if required by law;
 - (b) to exercise their rights under this Contract;
 - (c) if necessary to perform their obligations under this Contract;

- (d) if the other party has provided their written consent to the disclosure; or
(e) if the Confidential/personal Information is already in the public domain (otherwise than as a result of disclosure in breach of this Contract).
- 36.3 The Agent is obliged to remain vigilant to, and to advise the Client of, any conflict of interest that may potentially impact or harm the Client. To avoid conflict of interest and commercial sensitivities, it is agreed by the Agent that any and all information regarding the Client (and their business, commercial agenda and employees) shall remain confidential at all times and shall only be disclosed in the event of legal order or obligation.
- 36.4 The Client agrees to indemnify the Agent on a continuing, full indemnity basis from and against any liability, loss, expense and demand for or arising from any false, misleading, non-descriptive representation or statement made by the Client in respect of the Goods to any third party (including but not limited to, the Australian Border Force where Goods are subject to customs inspection). This indemnity survives termination of this Contract.
- 36.5 The obligations of confidentiality shall survive the finalisation or discontinuance of any agreement between the Client and the Agent.

37. Trusts

- 37.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not the Agent may have notice of the Trust, the Client covenants with the Agent as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not during the term of the Contract without consent in writing of the Agent (the Agent will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust fund or trust property.

38. General

- 38.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 38.2 EXCEPT AS EXPRESSLY PROVIDED IN THIS CONTRACT, THE AGENT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH REGARD TO SHIPMENTS, WAREHOUSED GOODS, ITEMS IN TRANSIT OR DELIVERIES OR WITH REGARD TO THE INFORMATION PROVIDED ON THE AGENT'S WEBSITE OR SERVICES RELATED TO TRANSACTIONS CONDUCTED ON THE AGENT'S WEBSITE. THE AGENT CANNOT GUARANTEE DELIVERY BY ANY SPECIFIC TIME OR DATE. IN NO EVENT, SHALL THE AGENT BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES RELATING TO LOSS OF PROFITS OR INCOME, WHETHER OR NOT SUCH DAMAGES WERE REASONABLY FORESEEABLE.
- 38.3 The Client agrees that the Agent may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Agent to provide Services to the Client.
- 38.4 Where the Agent/Carrier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Agent/Carrier, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this Contract and the Agent/Carrier gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Agent/Carrier. This clause does not apply to a failure by the Client to make a payment to the Agent, once the parties agree that the Force Majeure event has ceased.
- 38.5 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 38.6 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 38.7 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.

39. Miscellaneous

- 39.1 *Notice*
Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the Agent to be the address of the recipient of the notice.
- 39.2 *Defenses and Limits of Liability*
The defenses and limits of liability provided in these terms and conditions shall apply in any action against the Agent whether founded in

contract or in tort or howsoever otherwise founded.

39.3 *Legislation*

If any legislation is compulsorily applicable to any business undertaken, these terms and conditions shall, as regards such business, be read as subject to such legislation and nothing in these terms and conditions shall be construed as a surrender by the Agent of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these terms and conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be over-ridden to that extent and no further.

39.4 *Headings*

Headings of clauses or groups of clauses in these terms and conditions are for indicative purposes only.