



## TRADING TERMS AND CONDITIONS

**NOTE: The Australian Consumer Law and other legislation have provisions that may not be contracted out of. Accordingly where those mandatory provisions apply, they override provisions to the contrary in these Terms and Conditions.**

### 1. INTERPRETATION

In these Terms and Conditions unless the context otherwise requires:

- (i) a reference to a party includes a reference to the party's successors and permitted assigns and any person claiming under or through the party;
- (ii) every agreement or obligation expressed or implied in this Deed by which two or more persons agree or are bound shall bind such persons jointly and each of them severally;
- (iii) a reference to a group of persons includes a reference to all of them collectively, any two or more collectively and each of them individually;
- (iv) "ACL" means the Australian Consumer Law Schedule of the *Competition and Consumer Act 2010* (Cth) as amended;
- (v) "Applicant" means the party or parties defined as the Applicant in the Credit Application;
- (vi) "Deed" means the deed constituted by the acceptance of this Credit Application (including the Terms and Conditions) by the Company (acceptance may be constituted by the granting of goods or services by the Company to the Applicant);
- (vii) "the Company" means the business described at the top of the first page of the Credit Application, its successors and/or assigns;
- (viii) "Conditions"/"Terms"/"Terms and Conditions" means these Trading Terms and Conditions forming part of the Deed;
- (ix) "consumer" is as defined in the ACL and in determining if the Applicant is a consumer, the determination is made if the Applicant is a consumer under the Deed;
- (x) "GST" means the goods and services tax as imposed by the GST Law together with any related interest, penalties, fines or other charge;
- (xi) "GST Law" has the meaning given to that term in *A New Tax System (Goods and Services) Act 1999* (Cth) as amended;
- (xii) "including" and similar expressions means "including, but not limited to";
- (xiii) "Person" includes an individual, the estate of an individual, a body politic, a corporation, an association (incorporated or unincorporated) and a statutory or other authority;
- (xiv) "PPSA" means the *Personal Property Securities Act 2009* (Cth) as amended;
- (xv) "services" means services supplied by the Company to the Applicant;
- (xvi) "Special Goods" means any goods which are, at the Applicant's request, embellished, embroidered, printed, machined, cut-to-size or specifically ordered for the Applicant.

### 2. ACCEPTANCE OF THE APPLICATION

- 2.1 Acceptance by the Company of this Application may occur by one of several means including written notification to the Application, or commencing supply of goods or services, or countersigning this Deed.
- 2.2 If the Company accepts this Application, the provision of Goods or Services and any credit facilities to the Applicant are subject to the Terms and Conditions.
- 2.3 If the Application is made by more than one Applicant, each Applicant is jointly and severally liable under this Deed together with any guarantors.

### 3. CREDIT LIMIT

The Credit Limit specified **does not** limit the liability of the Applicant and Guarantor(s) to the Company.

### 4. STATEMENTS

A Statement of Account from the Company to the Applicant indicating the amount owing by the Applicant is conclusive evidence of that amount, except in the case of manifest error.

### 5. REPRESENTATIONS

The Applicant and the Guarantors warrant the correctness of the information which they have furnished to the Company in this Application, and acknowledge that the Company has relied upon this information in determining whether or not to grant credit, and the extent thereof the Applicant.

### 6. CHARGE

- 6.1 The Applicant and each of the Guarantors, if any, hereby jointly and severally charge all their right, title and interest in any land that they
  - (i) currently own;
  - (ii) acquire in the future;
  - (iii) have a beneficial interest in; and/or
  - (iv) acquire a beneficial interest in the futurein favour of the Company, with due and punctual observance of all of the obligations of the Applicant and the Guarantors.

- 6.2 The Applicant and the Guarantors hereby indemnify the Company against all expenses and legal costs (on an indemnity basis) for preparing, lodging and removing any caveat.
- 6.3 The Applicant and each of the Guarantors, if any, hereby acknowledge that the Company may at its discretion register and lodge an absolute caveat(s) on such property or properties in respect of the interest conferred on it under this clause
- 6.4 Such registration of a caveat by the Company over the Applicant's and/or Guarantors' property or properties must not be challenged by the Applicant and/or the Guarantors in any way whatsoever, and they agree not to take any steps in filing a "lapsing notice" via the Land Titles Office to have the caveat removed, until such time that the Applicant and/or Guarantors have paid all monies owing by them to the Company as claimed from time to time.

### 7. ASSIGNMENT

- 7.1 The Applicant and the Guarantors must not assign or transfer any of their rights or obligations in connection herewith to any other person whatsoever.
- 7.2 The Company may assign or transfer all or any of its rights or obligations under this Deed at any time.
- 7.3 The Company may disclose to a proposed assignee, transferee or sub-participant information which relates to the the Applicant and/or the Guarantors or was furnished in connection with this Deed.

### 8. CHANGE IN CONTROL

- 8.1 The Applicant must advise the Company in writing no later than fourteen (14) days before a charge in effective control of the Applicant or of any change or alteration of any particulars contained in this Application (if applicable).
- 8.2 the Company (upon receipt of such advice) is entitled to review the Deed and in its sole discretion, to terminate the Applicant's credit facilities upon seven (7) days written notice (the "Notice Period") to the Applicant.
- 8.3 In such circumstances, the Company is entitled to payment by the Applicant of a sum equal to the cost of Goods and/or Services then unpaid by the Applicant upon expiry of the Notice Period. The Applicant shall indemnify the Company in respect of any loss arising from the Applicant's failure to so notify.
- 8.4 If the Applicant signs the Application as the trustee of any trust (the "Trust"), the Applicant is personally liable and liable as trustee.

### 9. GUARANTEE & INDEMNITY

- 9.1 If the Applicant is a company, all directors and the directors' spouses are required to sign a personal guarantee or guarantees collateral to this Application. However, the failure of one or more directors/spouses to sign a guarantee does not affect the liability of those who have signed a guarantee.
- 9.2 The Applicant agrees to pay the stamp duty in respect of such guarantee to guarantees.
- 9.3 In consideration of the Company agreeing to sell and supply goods and/or services on credit to the Applicant each person who has signed the Deed as guarantor hereby unconditionally and irrevocably guarantees to the Company the due and punctual payment of all debts and monetary liabilities including without limitation sums of money, interest, indemnity legal costs, damages, charges and expenses which are, or which may become payable by the Applicant to the Company on any account and in any capacity ("Guaranteed Moneys") and, as a separate and independent obligation, agrees to indemnify and keep the Company indemnified from and against any claim, action, loss, damage, cost, expense, outgoing or payment suffered, paid or incurred by the Company in relation to the non-payment or non-recovery of the Guaranteed Moneys.
- 9.4 Each guarantor hereby expressly acknowledges that this Guarantee and Indemnity ("the Guarantee") is given upon and subject to the following conditions:-
  - (i) In the event of the Applicant failing to pay the Company any Guaranteed Moneys the Guarantor will immediately pay such monies to the Company.
  - (ii) In the event of the Applicant failing to carry out or perform any of its obligations the Guarantor will immediately carry out and perform the same.
  - (iii) The Guarantor shall be deemed to be jointly and severally liable with the Applicant (in lieu of being merely a surety for it) for the payment of the Guaranteed Moneys and it shall not be necessary for the Company to make any claim or demand on or to take any action or proceedings against the Applicant or make any demand against the Guarantor before commencing proceedings against the Guarantor to pay the Guaranteed Moneys or to carry out and perform the obligations herein contained.
  - (iv) No time or other indulgence whatsoever that may be granted by the Company to the Applicant shall in any manner whatsoever affect a liability of the Guarantor hereunder and the liability of the Guarantor shall continue to



remain in full force and effect until all monies owing to the Company have been paid and all obligations have been performed.

- (v) If any payment received or recovered by the Company is avoided by law such payment shall be deemed not to have discharged the liability of the Guarantor and the Guarantor and the Company shall each be restored to the position which they would be in had no such payment been made.

#### 10. GOVERNING TERMS AND CONDITIONS

- 10.1 These are the only Terms which are binding upon the Company with the exception of those otherwise agreed in writing by the Company or which are imposed by a statute and which cannot be excluded.
- 10.2 Any direction by the Applicant either verbal or written to procure goods or services from the Company will be deemed as acceptance by the Applicant of these Terms, despite any provisions to the contrary in the direction or any purchase order issued by the Applicant.

#### 11. TERMS OF PAYMENT

- 11.1 Unless the Company has agreed in writing to extend credit to the Applicant, the Applicant must pay the relevant amount in full on delivery of goods or services.
- 11.2 Where the Company has agreed in writing to extend credit to the Applicant, Payment to the Company for goods delivered is due within 30 days of the invoice date.
- 11.3 The Applicant is not entitled to make any deduction from amounts owing to the Company in respect of any set off or counterclaim to be held back for retention.

#### 12. PAYMENT DEFAULT

- 12.1 If the Applicant defaults in payment by the due date of any amount payable to the Company then all money which would become payable by the Applicant to the Company at a later date on any account, becomes immediately due and payable without the requirement of any notice to the Applicant, and the Company may, without prejudice to any of its other accrued or contingent rights:
- (i) charge the Applicant interest on any sum due at the prevailing rate of 15% per annum for the period from the due date until the date of payment in full;
- (ii) charge the Applicant for, and the Applicant must indemnify the Company from, all costs and expenses (including without limitation indemnity legal costs and debt collection costs and commissions) incurred by the Company resulting from the default or in taking action to enforce compliance with the Deed or to recover any goods;
- (iii) cease or suspend supply of any further goods or services to the Applicant;
- (iv) terminate any uncompleted contract with the Applicant.
- 12.2 Clauses 12.1 may also be relied upon, at the Company's option where the Applicant; or one of the Applicant's partners; or one of the Guarantors
- (i) is a natural person and becomes bankrupt or enters into any scheme of arrangement or any assignment or composition with or for the benefit of his or her creditors or any class of his or her creditors generally; or
- (ii) is a corporation and it enters into any scheme of arrangement or any assignment or composition with or for the benefit of its creditors or any class of its creditors generally, or has a liquidator, administrator, receiver, manager or similar functionary appointed in respect of its assets, or any action is taken for, or with the view to, the liquidation (including provisional liquidation), winding up or dissolution without winding up of the Applicant.

#### 13. INSPECTION AND ACCEPTANCE

- 13.1 If the Applicant is a consumer, nothing in this Application limits any remedy available pursuant to the ACL save to the extent permitted under law.
- 13.2 The Applicant must inspect all goods upon delivery and within 48 hours of delivery give notice with full details and description to the Company named in the relevant invoice if the Applicant alleges that the goods or services are not in accordance with the Applicant's order. Failing such notice, the goods or services shall be deemed to have been satisfactorily accepted by the Applicant.
- 13.3 When any non-compliance with the Applicant's order is accepted by the Company, the Company may, at its option, replace the goods or services, or refund the price of the goods or services.

#### 14. RETURNS

- 14.1 Unless otherwise agreed, returns other than required pursuant to the ACL must be approved by the Company named in the relevant invoice.
- 14.2 These authorised returns must be freight prepaid and will only be accepted if they are in a saleable condition.
- 14.3 The Company reserves the right to charge a handling fee [equal to 10% of the price of the goods] for goods returned under this provision. Unless required by the ACL, Special Goods are not returnable.

#### 15. QUOTATIONS

- 15.1 Unless previously withdrawn, a quotation is valid for 30 days or such other period as stated in it whichever period is the lesser. A quotation is not to be construed as an obligation to sell but merely an invitation to treat and no contractual relationship shall arise from it until the Applicant's order has been accepted in writing by the Company.
- 15.2 The Company is not bound by any conditions attaching to the Applicant's order or acceptance of a Quotation and, unless such conditions are expressly accepted by the Company in writing, the Applicant acknowledges that the Applicant's conditions are expressly negated.
- 15.3 Every quotation is subject to and conditional upon obtaining any necessary import, export or other licence.

#### 16. PRICING

The Parties agree that a quoted amount does not include GST unless otherwise stated.

#### 17. PASSING OF PROPERTY AND RISK

- 17.1 Goods supplied by the Company to the Applicant shall be at the Applicant's risk immediately upon delivery to the Applicant, into the Applicant's custody or at the Applicant's direction (whichever happens first).
- 17.2 The Applicant shall insure the goods from the time of that delivery at its cost against such risks as it thinks appropriate, shall note the interest of the Company on the insurance policy and shall produce a certificate to this effect to the Company upon request.
- 17.3 Property in the goods supplied by the Company to the Applicant under these Terms shall not pass to the Applicant until those goods and other goods have been paid for in full.
- 17.4 Until the Company receives full payment in cleared funds for all goods and services supplied by it to the Applicant, as well as all other amounts owing to the Company by the Applicant:
- (i) the Applicant shall store the goods in a manner which shows clearly that they are the property of the Company; and
- (ii) the Applicant may sell the goods in the course of its business and shall account to the Company for the proceeds of sale (including any proceeds from insurance claims). These proceeds must be kept in a separate bank account with a bank to whom the Applicant has not given security however failure to do so will not affect the Applicant's obligations as trustee.
- 17.5 In addition to the Company's rights under the PPSA, the Applicant irrevocably authorises the Company at any time to enter onto any premises upon which:
- (i) the Company's goods are stored to enable the Company to inspect the goods and/or if the Applicant has breached these Terms, reclaim the goods;
- (ii) the Applicant's records pertaining to the goods are held to inspect and copy such records.
- 17.6 The Applicant and Seller agree that the provisions of this clause apply notwithstanding any arrangement under which the Company grants credit to the Applicant.

#### 18. PERSONAL PROPERTY SECURITIES ACT

- 18.1 Notwithstanding anything to the contrary contained in these Terms, the PPSA applies to these Terms.
- 18.2 For the purposes of the PPSA:
- (i) terms used in this clause 18 that are defined in the PPSA have the same meaning as in the PPSA;
- (ii) these Terms are a security agreement and the Company has a Purchase Money Security Interest in all present and future goods supplied by the Company to the Applicant and the proceeds of the goods;
- (iii) the security interest is a continuing interest irrespective of whether there are monies or obligations owing by the Applicant at any particular time; and the Applicant must do whatever is necessary in order to give a valid security interest over the goods and their proceeds which is able to be registered by the Company on the Personal Property Securities Register.
- 18.3 The security interest arising under this clause 18 attaches to the goods when the goods are collected or dispatched from the Company's premises and not at any later time.
- 18.4 Where permitted by the PPSA, the Applicant waives any rights to receive the notifications, verifications, disclosures or other documentation specified under sections 95, 118, 121(4), 130, 132(3)(d), 132(4), 135 and 157 of the PPSA.
- 18.5 The Company and the Applicant agree to contract out of and nothing in the provisions of sections 96, 125, 129, 142 and 143 of the PPSA will apply to these Terms.
- 18.6 To the extent permitted by the PPSA, the Applicant agrees that:
- (i) the provisions of Chapter 4 of the PPSA which are for the benefit of the Applicant or which place obligations on the Company will apply only to the extent that they are mandatory or the Company agrees to their application in writing; and
- (ii) where the Company has rights in addition to those in Chapter 4 of the PPSA, those rights will continue to apply.
- 18.7 The Applicant must immediately upon the Company's request:
- (i) do all things and execute all documents necessary to give effect to the security interest created under this Deed; and
- (ii) procure from any person considered by the Company to be relevant to its security position such agreements and waivers (including as equivalent to those above) as the Company may at any time require.
- 18.8 the Company may allocate amounts received from the Applicant in any manner the Company determines, including in any manner required to preserve any Purchase Money Security Interest it has in goods supplied by the Company.
19. SUPPLY
- The Company reserves the right to suspend or discontinue the supply of goods to the Applicant without being obliged to give any reason for its action.
20. PART DELIVERIES
- 20.1 The Company reserves the right to make part deliveries of any order, and each part delivery shall constitute a separate sale of goods upon these Terms.
- 20.2 A part delivery of an order shall not invalidate the balance of an order.



21. **INSTALLATION**
- 21.1 the Company's quotation or invoice is made on a supply only basis.
- 21.2 Installation and commissioning (if any) is at the expense of the Applicant unless otherwise specified in writing by the Company.
22. **DIMENSIONS, PERFORMANCE DATA AND OTHER DESCRIPTIVE DETAILS**
- 22.1 If the Applicant is a consumer, nothing in this clause limits any remedy available pursuant to the ACL.
- 22.2 To the greatest extent permitted by law:
- (i) Photographs, drawings, illustrations, weights, dimensions and any other particulars accompanying, associated with or given in a quotation, descriptive literature or a catalogue approximate the goods offered but may be subject to alteration without notice.
- (ii) Any performance data provided by the Company or a manufacturer is an estimate only and should be construed accordingly.
- (iii) Unless agreed to the contrary in writing, the Company reserves the right to supply an alternative brand or substitute product when necessary.
23. **SHIPMENT AND DELIVERY**
- 23.1 The means of delivery is at the Company's sole discretion.
- 23.2 The Company may deliver the goods to the Applicant's premises in accordance with the Company's usual practices.
- 23.3 If the Company directs the Applicant to collect the goods:
- (i) the Applicant must collect the goods within 7 days of being advised they are ready;
- (ii) if the Applicant does not collect the goods within this time, the Applicant is deemed to have taken delivery of the goods and is liable for storage charges payable monthly on demand.
- 23.4 The Applicant must pay to the Company on demand any delivery costs incurred by the Company if
- (i) the Applicant requests another method of delivery from that outlined in (a) above; or
- (ii) the Applicant elects to use an independent courier to deliver the goods and enters into a separate contract with that independent courier to deliver the goods.
24. **MANUFACTURERS' CHANGES**
- Where the Company is acting as agent for a manufacturer or the Company, the Company shall not be liable for any alteration or variation in the goods made by the manufacturer or the Company.
25. **CURRENCY**
- Where goods are imported into Australia, any adverse variation in the price arising from fluctuation in exchange rates between the date of the Applicant's order and the date of payment by the Company will be to the Applicant's account.
26. **CONTINGENCIES**
- Any charge, duty, impost, sales tax or other expenditure which is not applicable at the date of Quotation or Sales Invoice but which is subsequently levied upon the Company in relation to a Quotation or Sales Invoice as a result of the introduction of any legislation, regulation or governmental policy, shall be to the Applicant's account.
27. **CHARGES BEYOND POINT OF DELIVERY QUOTED**
- Unless otherwise agreed in writing, if the Company prepays freight, insurance, custom and import duties (if any), landing and delivery charges and all other charges in connection with shipment and delivery of the goods, then any such charges shall be to the Applicant's account.
28. **FORCE MAJEURE**
- 28.1 If the Company's performance or observance of any obligations is prevented, restricted or affected by reason of a force majeure event including strike, lock out, industrial dispute, raw material shortage, breakdown of plant, transport or equipment or any other cause beyond the Company's reasonable control, the Company may, in its absolute discretion give prompt notice of that cause to the Applicant.
- 28.2 On delivery of that notice the Company is excused from such performance or observance to the extent of the relevant prevention, restriction or effect.
29. **COMPANY'S CANCELLATION**
- 29.1 If the Company is unable to deliver the goods, then it may cancel the Applicant's order (even if it has been accepted) by written notice to the Applicant.
- 29.2 If the Applicant commits a breach of its obligations to the Company under the Deed, then the Company may, without prejudice to any other rights or remedies which it may have, refuse to supply the Applicant (without notice) and is entitled to immediate payment of the sum equal to the price of all goods and/or services then unpaid, together with other costs and expenses of collection of any moneys are due and payable by the Applicant, including the fees of any mercantile agent or lawyer engaged by the Company on an indemnity basis.
30. **APPLICANT'S CANCELLATION**
- 30.1 To the greatest extent permitted under law, the Applicant shall have no right to cancel an order which has been accepted by the Company unless otherwise agreed in writing.
- 30.2 If a right of cancellation is granted to the Applicant, such right of cancellation must be exercised in accordance with the relevant terms of cancellation and by notice in writing from the Applicant to the Company with which the order has been placed not later than 7 days prior to the estimated date of shipment by the manufacturer or that Seller as the case may be.
- 30.3 Unless otherwise agreed between the Applicant and Seller, upon cancellation prior to shipment any deposit paid by the Applicant shall be forfeited to the manufacturer or Seller (as the case may be).
- 30.4 Despite the cancellation of any order for any reason, the Applicant must still purchase from the Company any goods ordered by the Applicant which constitute Special Goods (whether in store, in transit or being manufactured) which were procured or ordered by the Company before such cancellation, unless otherwise agreed in writing by the Company.
31. **WARRANTY AND LIABILITY OF SELLER**
- 31.1 the Company makes no express warranties under these Terms.
- 31.2 Except as the Terms specifically state, or as contained in any express warranty provided in relation to the goods or services, the Deed does not include by implication any other term, condition or warranty in respect of the quality, merchantability, acceptability, fitness for purpose, condition, description, assembly, manufacture, design or performance of the goods or services or any contractual remedy for their failure.
- 31.3 If the Applicant is a consumer nothing in these Terms restricts, limits or modifies the Applicant's rights or remedies against the Company for failure of a statutory guarantee under the ACL.
- 31.4 If the Applicant on-supplies the goods to a person who is a consumer, or uses up or transforms the goods in the course of trade then:
- (i) if the goods or services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, then the amount specified in section 276A(1) of the ACL is the absolute limit of the Company's liability to the Applicant;
- (ii) otherwise, payment of any amount required under section 274 of the ACL is the absolute limit of the Company's liability to the Applicant;
- howsoever arising under or in connection with the sale, installation, use of, storage or any other dealings with the goods or services by the Applicant or any third party.
- 31.5 To the greatest extent permitted under law the Company is not liable to the Applicant in any way under or in connection with the sale, installation, use of, storage or any other dealing with the goods or services by the Applicant or any third party.
- 31.6 To the greatest extent permitted under law the Company is not liable for any indirect or consequential losses or expenses suffered by the Applicant or any third party, howsoever caused, including but not limited to loss of turnover, profits, business or goodwill or any liability to any other party.
- 31.7 The Applicant expressly acknowledges and agrees that:
- (i) it has not relied upon, any service involving skill and judgement, or on any advice, recommendation, information or assistance given by the Company, its agents or employees in relation to the goods or services or their use or purpose.
- (ii) it has not made known, whether expressly or by implication, to the Company any purpose for which it requires the goods or services and it has the sole responsibility of satisfying itself that the goods or services as suitable for the use of the Applicant.
- (iii) Nothing in the Terms is to be interpreted as excluding, restricting or modifying the application of any non-excludable State or Federal legislation applicable to the sale of goods or supply of services.
32. **ALTERATION TO CONDITIONS**
- The Company may, at any time and from time to time, alter these Terms and Conditions by providing notice to the Applicant.
33. **GOVERNING LAW**
- These Terms and Conditions shall be governed by the laws of Western Australia. The parties agree to submit to the exclusive jurisdiction of the Courts of Western Australia.
34. **WAIVER**
- the Company's failure to enforce any of these Terms and Conditions shall not be construed as a waiver of any of the Company's rights.
35. **WRITTEN NOTICE**
- A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received upon posting. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
36. **NO ADVERSE CONSTRUCTION**
- These Terms and Conditions are not to be constructed to the disadvantage of the Company because the Company was responsible for their preparation.
37. **TRUSTEE CAPACITY**
- 37.1 The Applicant and the Guarantors enter into this Deed in their personal capacities and in their capacities as trustees of any trust.
- 37.2 The Applicant and the Guarantors acknowledgement that:
- (i) each reference to it is a reference to it in its individual capacity and its capacity as trustee (unless stated otherwise); and
- (ii) all of its obligations under this Deed bind it in each of those capacities.



- 37.3 The Applicant and the Guarantors represent, warrant and agree, in respect of any trust of which it is the trustee that:
- (i) no action has been taken or proposed to remove it as trustee of the trust;
  - (ii) it has power under the trust deed to enter into and comply with its obligations under this Deed;
  - (iii) it has in full force and effect the authorisations necessary to make this Deed, perform obligations under this deed and allow them to be enforced (including under the trust deed and its constitution (if any));
  - (iv) it has a right to be fully indemnified out of the property held on trust by the trustee under the trust deed in respect of obligations incurred by it under this Deed;
  - (v) it is not, and has never been, in default under the trust deed;
  - (vi) no action has been taken or proposed to terminate the trust;
  - (vii) it and any other trustee(s) has complied with their obligations in connection with the trust;
  - (viii) the Company's rights under this Deed rank in priority to the interests of the beneficiaries of the trust;
  - (ix) it has considered the purpose of this Deed and considers its terms to be fair and reasonable and that the entry into and performance of this Deed arise for the benefit of the beneficiaries whose consent (if necessary), has been obtained; and
  - (x) prior to the satisfaction of all of his obligations under this Deed, it will not do anything which:
  - (xi) effects or facilitates the retirement, removal or replacement of the trustee;
  - (xii) could restrict the trustee's right of indemnity from the property held on trust by the trustee in respect of obligations incurred by the trustee under this Deed;
  - (xiii) could restrict or impair the ability of the trustee to comply with his obligations under this Deed;
  - (xiv) effects or facilitates the termination of the trust;
  - (xv) effects or facilitates the variation of the trust deed;
  - (xvi) effects or facilitates resettlement of the property held on trust by the trustee; or
  - (xvii) could result in the property held on trust by the trustee being mixed with other property.
38. **SEVERANCE**
- 38.1 If any provision of these Terms and Conditions
- (i) is or becomes void, voidable, illegal or unenforceable in its terms;
  - (ii) would not be void, voidable, illegal or unenforceable if it were read down; and
  - (iii) is capable of being read down,
- then that provision will be read down accordingly.
- 38.2 If, notwithstanding clause 38.1, a provision of these Terms and Conditions is still void, voidable, illegal or unenforceable, then:
- (i) if the provision would not be void, voidable, illegal or unenforceable if some words were omitted, those words are severed; and
  - (ii) otherwise, the whole provision is severed,
  - (iii) and the rest of these Terms and Conditions will be of full force and effect.

**TERMS AND CONDITIONS OF CARTAGE**

1. **Definitions**

**"charges"** means our quoted charges for services calculated under our rates schedule or other agreed rates, any taxes, duties and government charges levied on the services and any other amounts under condition 6.3.

**"consumer"** means an individual who acquires our services wholly or predominately for personal, domestic or household use or consumption.

**"contract"** means the transport or services contract between you and us including these conditions.

**"credit note"** means a document entitled "Credit Note" we give you or a person you nominate in writing.

**"dangerous goods"** means any articles or substances which are, or may become, a risk to health, safety, property or the environment and include, without limitation, articles or substances so classified, specified or listed in laws or the International Air Transport Association dangerous goods regulations.

**"force majeure event"** means anything outside our reasonable control, including without limitation, fire, storm, flood, earthquake, lightning, explosion, accident, road or rail closures, rail derailment, wharf delays, was, terrorism, sabotage, epidemic, quarantine restriction, labour dispute or shortage, act or omission of air traffic control, airline pilot or any third person or public authority.

**"goods"** means the goods picked up or received from you or on your behalf.

**"laws"** means all applicable laws, regulations, guidelines, codes, standards or policies of the Commonwealth of Australia, any state, territory or local authority.

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

**"services"** means the operations we undertake for the goods including our IT systems, processes and software.

**"sign"** or **"signature"** includes provision in electronic form.

**"subcontractor"** means any person we arrange to provide services for the goods and any person who is an employee, agent or subcontractor of that person.

**"us", "we", "our"** means TKL Family Holdings Pty Ltd Trustee for the TKL Family Trust Trading As TKL Logistics ABN 60 229 422 491 and its related bodies corporate within the meaning of that expression in section 9 of the Corporations Act 2001 (Cth) carrying on business in their own names and any business names and their officers, employees, agents and subcontractors.

**"writing"** means any representation of words, figures or symbols capable of being rendered in visible form.

**"you", "your"** means the person contracting with us.

2. **Consumer contract**

If you are a consumer:

- (a) these conditions do not affect any rights you have under Schedule 2 of the competition and Consumer Act 2010 (Cth);
- (b) conditions 6.4 (change in rates), 5.3 (contracting out of certain provisions in the PPSA) and condition 8 (Limitations and exclusion of liability) except for conditions 7.4\* and 7.5\*, do not apply to the contract unless and only to the extent:
  - (1) the contract is for the carriage of goods by ship, or
  - (2) services are supplied outside Australia; and
  - (c) the laws in force in the place in which the contract is made apply to the contract.

\* Condition 7.4 is a list of goods for which we provide services at your risk and won't pay for any loss or damage.

\* Condition 7.5 is a list of causes and loss or damage for which we won't pay.

3. **What you need to know about us and our services**

3.1 We are not common carriers, do not accept any liability as common carriers and may refuse to provide services to any person or goods for any reason.

3.2 We rely on the details supplied to us but we do not admit their accuracy or completeness and our signature is only an acknowledgement for the number of items picked up or received by us.

3.3 Our services commence when we pick up or receive the goods and we earn our charges then.

3.4 We will not exchange any pallets and you must not transfer any pallet to our pallet accounts unless we agree in writing.

3.5 We will not collect any cash on delivery unless we agree in writing.

3.6 We will have delivered the goods if at the delivery address we obtain an acknowledgement of delivery or if delivery occurs under condition 3.7.

3.7 We may at your risk and expense leave the goods at delivery address if you so authorise us, store the goods or return them to the sender (each of which constitutes delivery) if:

- (a) the delivery address you or your agent give us is unattended during normal business hours or the prearranged delivery period; or
- (b) the receiver fails to take delivery of the goods.

3.8 **We can:**

- (a) deviate from any usual route or method of transport to provide the services;
- (b) subcontract the whole or any part of our services;
- (c) do anything appropriate including disposing or destroying goods if we think the goods are described incorrectly or you haven't given us an appropriate declaration about them, or they may become dangerous goods;
- (d) open and inspect the goods at any time without notice to you to determine their nature, condition, ownership or destination;

- (e) carry, store, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the goods with others;
- (f) lease, hire or enter into any agreement for, or use, any aircraft, ship, container, pallet or rail wagon to provide the services; and
- (g) complete any documents required to comply with any laws.

3.9 **If we store the goods:**

- (a) we can require you to remove them if you don't pay the charges when due;
- (b) we don't have to make them available until all charges have been paid and you sign, or a person authorised in writing by you signs, a receipt for them; and
- (c) we can return them to you at your last known address if you don't remove them when we require or we give you notice to remove them.

3.10 We may sell or dispose of any uncollected or undelivered goods 30 days after making reasonable efforts to contact you and do not have to account to you for the sale or disposal unless required by laws.

3.11 **We:**

- (a) claim a general or particular lien over the goods for all charges under the contract and under any other contract between us and whether the subject of a demand or not;
- (b) may under the lien sell the goods by public auction or private sale to recoup any overdue charges without any notice to you; and
- (c) you agree that the lien arising under these service conditions is a security interest.
- (d) the parties agree that the lien attaches to the Goods when the Goods are accepted by us for carriage.
- (e) if we ask, you must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by these Service Conditions are enforceable, perfected (including but not limited to perfection by registration), maintained or otherwise effective. Anything that is required to be done by you under this clause will be done at your own expense. You agree or reimburse our costs in relation to this clause.

3.12 If a temperature control section is completed on our or your documentation, then:

- (a) we will try to provide the services at temperatures within accepted tolerance levels;
- (b) you acknowledge temperature variations can occur; and
- (c) any temperature record maintained by us will be conclusive of the temperatures during the services.

3.13 We contract as agent and trustee for our employees, agents and subcontractors so they also have the benefit of the contract and these conditions (including any exclusions or limitations of liability we have) to the same extent as us as if they were parties to it.



#### 4. Your promises

You promise us:

- (a) You are either the owner of the authorised agent of the owner of the goods and have authority to enter into the contract;
- (b) You or your agent have fully and accurately described the goods and their value; and
- (c) You will comply with all laws and the goods can be safely handled and transported and are packed to withstand the ordinary risks of the services.

#### 5. What you must do and not do

5.1 You must, or cause your agent to:

- (a) provide us with all necessary documentation for the services and fully, accurately and legibly complete the label on the goods and the sender and receiver panel on the front of the contract or any of our, or you, documentation;
- (b) give us an appropriate declaration about any dangerous goods and notify us if the goods require special handling;
- (c) if you are not the receiver, make the goods conform to the receiver's requirements;
- (d) if our services include storage or holding of goods:
  - (1) give us at least 7 days notice if you intend to collect them or have them collected or redelivered; and
  - (2) remove the goods within 7 days if we give you notice to remove them; and
- (e) If requested by us, do all the things and execute all documents necessary or we require to give full effect to the contract and the transactions contemplated by it.

5.2 You Indemnify us against any cost or liability we incur, pay or have to pay in dealing with any claim against us for loss or damage to property or illness, injury or death, to the extent caused:

- (a) by the goods or your breach of contract or these conditions;
- (b) because one of your promises is incorrect; or
- (c) by a negligent or unlawful act or omission or wilful misconduct if you or the receiver or any person acting for you or the receiver, and there is no need for us to suffer loss or damage before enforcing this right of indemnity.

5.3 You irrevocably waive any right you may have to receive notices under sections 121(4) (enforcement of liquid assets – notice to grantor), 130 (notice of disposal), 132(3)(d) (contents of statement of account after disposal), 132(4) (statement of account f no disposal) and 135 (notice of retention) of the PPSA.

#### 6. Our charges

6.1 You or the person you nominate must pay our charges within 7 days of the date of invoice unless otherwise advised by us.

6.2 You must pay the charges if the person nominated to pay the charges doesn't do so.

6.3 You must also pay:

- (a) an additional charge as reasonably determined by us if condition 3.7 applies, or of there is any delay outside our control in loading or unloading greater than 30 minutes;
- (b) our cost to comply with any laws or requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority not included in our charges;
- (c) any excise, customs duty or applicable taxes (including any fine or penalty);
- (d) the cost, expense or loss to us of destruction or disposal under condition 3.8(c), of opening or inspecting under condition 3.8(d); redelivery, storage or return under conditions 3.7 or 3.9; and of sale under conditions 3.10 or 3.11;
- (e) the cost of labour or machinery or both to load, unload, maintain or protect the goods.

6.4 We may change our rates schedule or other agreed rates at any time with notice to you.

6.5 You can claim up to the dollar amount of a credit note, or we will provide our services at our GST inclusive charges up to the dollar amount of a credit note, within 12 months of its date.

6.6 We do not have to repay you any amount you overpay us on an invoice unless you claim that amount within 12 months of the overpayment.

#### 7. Limitations and exclusions on our liability to you

7.1 We so not exclude or limit the application of any laws, including Schedule 2 of the Competition and Consumer Act 2010 (Cth), where to do so would

contravene those laws or cause any part of these conditions to be void.

7.2 We exclude from these conditions all conditions, warranties, terms and consumer guarantees implied by laws, general law or custom except any, the exclusion of which, would contravene any laws or cause this condition to be void ("Non-Excludable Condition").

7.3 The goods are at your risk at all times and we exclude all liability to you or any other person for, and you indemnify us against any claim by any person about, any loss, damage, misdelivery, delay, deterioration, contamination, our failure to deliver the goods or perform the services, and whether arising because of breach of contract, bailment, tort including negligence, our wilful act or omission or breach of statutory duty.

7.4 We will not pay for any loss or damage to documents, goods in prepaid wallets, satchels or envelopes, appliances with electrical components, computers, jewellery, pictures or picture frames, porcelain china, ceramic items, crystal, marble or enamel goods, goods the production, sale, import or export of which is prohibited by laws, dangerous goods, glass (including bottles and their contents), windscreens, car panels, precious stones or metals, currency or negotiable instruments, produce, liquids, perishable goods, floor or wall tiles, fragile goods, regulated waste, cigarettes or goods under bond.

7.5 We will not pay for any loss or damage to goods if it is caused by ordinary loss in weight or volume, shrinkage, ordinary leakage, ordinary wear and tear, insufficient and/or unsuitable packing or preparation, delay, inherent vice, a force majeure event, electrical or mechanical derangement or you or your agent overload or incorrectly load the transport vehicle.

7.6 Our liability to you for any breach of a Non-Excludable Condition is limited, at our option, to supplying the services again, or the cost of supplying the services again.

7.7 We will not pay any indirect, economic, special or consequential loss or damage including but not limited to loss of revenue, profit, production, business, anticipated savings or claims by your customer, even if we know they are possible or otherwise foreseeable.

7.8 These conditions apply even in circumstances arising from a fundamental breach of contract or breach of a fundamental term.

7.9 These Service Conditions contain the entire understanding of the parties as to its subject matter. There is no other understanding, agreement, warranty or representation whether express or implied in any way defining or extending or otherwise relating to these provisions or binding on you and us with respect to matters to which this contract relates. We will not be bound by any agreement purporting to vary these terms unless such an agreement is in writing and signed on our behalf by an authorised officer of TKL Family Holdings Pty Ltd Trustee for the TKL Family Trust Trading As TKL Logistics.

#### 8. Force majeure

If we cannot carry out an obligation under the contract either in whole or in part because of a force majeure event, then our obligations under the contract will be suspended for the duration of the event or waived to the extent applicable.

#### 9. Other matters which affect the contract

9.1 The laws of Western Australia apply to the contract and you must bring any proceedings against us in a court of Western Australia.

9.2 If a condition or a part of a condition is unenforceable, it must be severed from and does not affect the rest of the contract.

9.3 We are not bound by any waiver, discharge or release of a condition or any agreement which changes the contract unless it is in writing and signed by or for us.

9.4 Conditions 3, 5, 6, 7 and 8 are essential conditions of the contract.

9.5 A reference to any law includes any statutory modification, substitution or re-enactment of it.