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## MIH VIC Pty Ltd T/A Cool Couriers Refrigerated Freight Services – Terms & Conditions

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### 1. Definitions

- 1.1 **“Acknowledgment Document”** means the document signed by the Customer in conjunction with these Terms and Conditions of Trade and applicable if the Company elects, whereby the Customer acknowledges the extent and effect of the provision of security the Customer provides to the Company in consideration of the provision of the Services.
- 1.2 **“Company”** means MIH VIC Pty Ltd T/A Cool Couriers Refrigerated Freight Services its successors and assigns or any person acting on behalf of and with the authority of MIH VIC Pty Ltd T/A Cool Couriers Refrigerated Freight Services.
- 1.3 **“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.
- 1.4 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.
- 1.5 **“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.
- 1.6 **“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 Customer does not wish to allow Cookies to operate in the background when using the Company’s website, then the Customer 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.**
- 1.7 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Company to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:  
(a) if there is more than one Customer, is a reference to each Customer jointly and severally; and  
(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and  
(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and  
(d) includes the Customer’s executors, administrators, successors and permitted assigns.
- 1.8 **“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.
- 1.9 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.10 **“Price”** means the Price payable for the Services (plus any GST where applicable) as agreed between the Company and the Customer in accordance with clause 7 below.
- 1.11 **“Services”** means all services including the supply of incidental items, provided by the Company to the Customer to facilitate the movement of Goods from one place to another by the Company as may be requested by the Customer 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.
- 1.12 **“Sub-Contractor”** means and includes:  
(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 Company 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 sub-clauses (a) and (b).

### 2. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

- 2.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Customer purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.
- 2.3 Liability of the Company arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the CCA or howsoever arising, is limited to any of the following as determined by the Company:  
(a) rectifying the Services; or  
(b) providing the Services again; or  
(c) paying for the Services to be provided again.
- 2.4 If the Company is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.3 or the CCA, but is unable to do so, then the Company may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Customer which were not defective.

### 3. Acceptance

- 3.1 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 Customer places an order for or accepts Services provided by the Company.
- 3.2 These terms and conditions are to be read in conjunction with the Company’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Company to the Customer. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

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- 3.4 The Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Company and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Goods request exceeds the Customer's credit limit and/or the account exceeds the payment terms, the Company reserves the right to refuse delivery.
- 3.6 Any dispute or difference arising as to the interpretation of these Terms and Conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute the parties shall be free to pursue other dispute resolution avenues.
- 3.7 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Errors and Omissions

- 4.1 The Customer acknowledges and accepts that the Company 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 Company 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 Company in respect of the Services.
- 4.2 In circumstances where the Customer is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Customer is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services ("**Customer Error**"). The Customer must pay for all Services it orders from the Company notwithstanding that such Services suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Services. The Company is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

### 5. Change in Control

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

### 6. Credit Card Information

- 6.1 The Company will:
- (a) keep the Customer's personal details, including credit card details for only as long as is deemed necessary by the Company;
  - (b) not disclose the Customer's credit card details to any third party; and
  - (c) not unnecessarily disclose any of the Customer's personal information, except in accordance with the Privacy Act (clause 29) or where required by law.
- 6.2 The Customer expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Customer, the Company is entitled to immediately charge the Customer's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Customer pursuant to the terms of this Contract.

### 7. Price and Payment

- 7.1 At the Company's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by the Company to the Customer upon placement of an order for the Services; or
  - (b) the Company's quoted Price (subject to clauses 7.2 and 7.3) which shall be binding upon the Company provided that the Customer shall accept in writing the Company's quotation within seven (7) days.
- 7.2 The Company may, by giving notice to the Customer, increase the Price of the Services to reflect any increase in the cost to the Company beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 7.3 The Company may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 7.4 At the Company's sole discretion, a reasonable non-refundable deposit may be required upon placement of an order for Services, in accordance with any quotation provided by the Company or as notified to the Customer prior to the placement of an order for the Services.
- 7.5 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
- (a) on or before delivery of the Goods; or
  - (b) on completion of the Services; or
  - (c) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (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 given to the Customer by the Company.
- 7.6 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Customer and the Company.
- 7.7 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Company's ownership or rights in respect of the Services shall continue.
- 7.8 The Customer acknowledges and agrees that the Customer's obligations to the Company for the supply of Services shall not cease until:
- (a) the Customer has paid the Company all amounts owing for the particular Services; and
  - (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.

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- 7.9 The Company may in its discretion allocate any payment received from the Customer towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards. On any default by the Customer the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of the Company's Purchase Money Security Interest (as defined in the PPSA) in respect of the Services provided.
- 7.10 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Customer must notify the Company in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Company investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Company placing the Customer's account into default and subject to default interest in accordance with clause 25.1.
- 7.11 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this Contract or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 8. Freight Forwarding**
- 8.1 Except to the extent that any of the Services shall be actually performed by the Company, the Company shall act as a forwarding agent only. The Company shall be entitled, to enter into contracts on behalf of and as agent for the Customer and without notice to the Customer, for the carriage of the Goods by any route, means and Company, for the storage, packing, trans-shipment, unloading, loading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Company may be necessary or desirable to the performance of the Services. The Customer hereby appoints the Company the agent of the Customer for the purpose of entering into any contract, upon such terms and conditions, as the Company may in its absolute discretion think fit. The Customer shall be bound by the terms of any consignment note, air waybill or other contractual document which the Company may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Customer, the Company, or any other person.
- 9. The Company is not a Common Carrier**
- 9.1 The Company is not a Common Carrier and will accept no liability as such. All Goods are carried or transported, and all storage and other services are performed by the Company subject only to these terms and conditions and the Company reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods, at its discretion.
- 10. Customer-Packed Containers**
- 10.1 If a container has not been stowed by or on behalf of the Company, the Company shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
  - (b) the unsuitability of the Goods for carriage or storage in containers; or
  - (c) the unsuitability or defective condition of the container.
- 11. Nomination of Sub-Contractor**
- 11.1 The Customer hereby authorises the Company (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Company. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Company shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.
- 12. The Company's Servants or Agents**
- 12.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Company which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Company and any such servant or agent against all consequences thereof.
- 13. Method of Transport**
- 13.1 If the Customer instructs the Company to use a particular method of carriage whether by road, rail, sea or air the Company will give priority to the method designated but if that method cannot conveniently be adopted by the Company the Customer shall be deemed to authorise the Company to carry or have the Goods carried by another method or methods.
- 14. Route Deviation**
- 14.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.
- 15. Charges Earned**
- 15.1 The Company's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.
- 16. Demurrage**
- 16.1 The Customer will be and shall remain responsible to the Company for all its proper charges incurred for any reason. A charge may be made by the Company in respect of any delay in excess of fifteen (15) minutes in loading or unloading occurring other than from the default of the

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Company. Such permissible delay period shall commence upon the Company reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.

### 17. Dangerous Goods

17.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Customer shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.

17.2 If the Customer is in breach of clause 17.1:

- (a) the Customer, and any person delivering the Goods to the Company, or causing the Company to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified the Company against all loss, damages, claims and costs (howsoever arising) incurred by the Company in connection therewith; and
- (b) the Goods may be destroyed or otherwise dealt with as determined by the Company in its absolute discretion at the expense of the Customer (or by any other person in whose custody they may be at the relevant time also at the expense of the Customer), and neither the Company nor any such other person shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the Goods.

17.3 Where the Company agrees to accept Dangerous Goods, if during the period of cartage, the Company, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 17.2 shall apply.

### 18. Consignment Note

18.1 It is agreed that the person delivering any Goods to the Company for carriage or forwarding is authorised to sign the consignment note for the Customer.

### 19. Customer's Responsibility

19.1 The Customer expressly warrants, represents, confirms and/or acknowledges that:

- (a) the Company has relied upon the Customer in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, the Company accepts no liability for any discrepancy that may arise with the description; and
- (b) unless specified otherwise in writing, the Company has relied upon the Customer's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Customer has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) the Customer is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Customer accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Customer is acting;
- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Customer's description of the Goods;
- (e) it is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

### 20. Delivery

20.1 The Company is authorised to deliver the Goods at the address given to the Company by the Customer for that purpose and it is expressly agreed that the Company shall be taken to have delivered the Goods in accordance with this Contract if at that address the Company obtains from any person a receipt or a signed delivery docket for the Goods.

20.2 The Company may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.

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

20.4 **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 Customer, 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 Customer.

20.5 **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 2 or returned in the Company's option at any time after expiration of twenty-one (21) days from a notice in writing sent to the address which the Customer gave to the Company for delivery of the Goods. A communication from any agent or correspondent of the Company to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.

20.6 If the Customer requests the Company upon delivery:

- (a) to make delivery of the Goods to a subsequent address, then the Company may, at their sole discretion, charge the Customer the additional costs associated with doing so;
- (b) to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts or cranes) then the Company shall only do so at their sole discretion, and:
  - (i) the Company may charge the Customer the additional costs associated with doing so;
  - (ii) the Customer acknowledges that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of the Company in providing such assistance; and
  - (iii) notwithstanding that the Company may refuse such assistance without any liability to the Customer whatsoever should they believe that the risk in providing such assistance is unacceptable.

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- 20.7 The Customer and the Company agree to comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable (including, but not limited to, health and safety laws and any other relevant safety standards or legislation).
- 20.8 Any time specified by the Company for the delivery of Goods is an estimate only and the Company will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then the Company shall be entitled to charge the Customer any additional costs incurred by the Company as a direct consequence of any resultant delay or rescheduling of the delivery.
- 21. Conditions of Storage**
- 21.1 The Company will prepare an inventory of Goods received for storage and will ask the Customer to sign that inventory. The Customer will be provided with a copy of the inventory. If the Customer signs the inventory or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Company, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Customer ask for the contents to be listed, in which case the Company will be entitled to make a reasonable additional charge.
- 21.2 The Company is authorised to remove the goods from one warehouse to another without cost to the Customer. The Company will notify the Customer 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).
- 21.3 The Customer is entitled upon giving the Company reasonable notice to inspect the Goods in store, but a reasonable charge may be made by the Company for this service.
- 21.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Customer may require the Goods to be removed from the store at any time on giving the Company not less than five (5) working days' notice. If the Customer gives the Company less than the required notice the Company will still use their best endeavours to meet the Customer's requirements but shall be entitled to make a reasonable additional charge for the short notice.
- 21.5 The Customer agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Company to do so. In default, the Company shall provide the Customer with written notice of the Company's intention to SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty within twenty-eight (28) days of such notice being issued, apply the net proceeds in satisfaction of any amount owing by the Customer to the Company in accordance with the Storage Liens Act 1973.
- 22. Loss or Damage**
- 22.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- (a) the Company shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Company or not) nor for 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 delay; and
  - (b) the Customer will indemnify the Company against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Company in connection with the Goods.
- 23. Insurance**
- 23.1 The Customer acknowledges that:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of the Company; and
  - (b) the Company is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
  - (c) under no circumstances will the Company be under any liability with respect to the arranging of any such insurance and no claim will be made against the Company for failure to arrange or ensure that the Goods are insured adequately or at all.
- 24. Claims**
- 24.1 Notwithstanding clauses 22 and 23 in the event that the Customer believes that they have any claim against the Company then they must lodge any notice of claim for consideration and determination by the Company 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.
- 24.2 The failure to notify a claim within the time limits under clause 24.1 is evidence of satisfactory performance by the Company of its obligations.
- 25. Default and Consequences of Default**
- 25.1 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 Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 25.2 If the Customer owes the Company any money the Customer shall indemnify the Company from and against all costs and disbursements:
- (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Customer would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising the Company's rights under these terms and conditions, internal administration fees, the Company'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.

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- 25.3 Further to any other rights or remedies the Company may have under this Contract, if the Customer has made payment to the Company, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 25 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.
- 25.4 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
  - (b) the Customer has exceeded any applicable credit limit provided by the Company;
  - (c) the Customer 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 Customer or any asset of the Customer.

### 26. Lien

- 26.1 The Company shall have a right to take a particular and general lien on any Goods the property of the Customer or a third party owner which are in the possession or control of the Company (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to the Company (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and the Company shall have the right to sell such Goods or cargo by public auction or private treaty after giving written notice to the Customer. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 26.2 Notwithstanding clause 26.1 nothing shall prejudice the Company's rights to use any of the Company's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 26.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

### 27. Personal Property Securities Act 2009 ("PPSA")

- 27.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 27.2 Upon assenting to these terms and conditions in writing the Customer 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 Company, over which the Company invokes a lien; and
  - (b) all Services that will be supplied in the future by the Company to the Customer; and
  - (c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer 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 Customer to the Company for Services – that have previously been provided and that will be provided in the future by the Company to the Customer.
- 27.3 The Customer 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 Company 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 27.3(a)(i) or 27.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Company 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 Company;
  - (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 Company.
- 27.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 27.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 27.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 27.7 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 27.8 The Customer shall unconditionally ratify any actions taken by the Company under clauses 27.3 to 27.5.
- 27.9 Subject to any express provisions to the contrary (including those contained in this clause 27), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 28. Security and Charge

- 28.1 In consideration of the Company agreeing to provide its Services and as acknowledged by the Company in accordance with any Acknowledgment Document the Customer grants the Company a security interest by way of a floating charge (registerable by the Company 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 Customer or owned by the Customer in the future, including but not limited to those set out in any Acknowledgment Document,

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- 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 Company to appoint a receiver to the Customer in accordance with the *Corporations Act 2001* (Cth).
- 28.2 The Customer indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 28.3 In the event that the Customer defaults or breaches any term of this Contract and as a result, the security provided in clauses 7.8, 27.2 and 28.1 as applicable, is deemed insufficient by the Company to secure the repayment of monies owed by the Customer to the Company, the Customer hereby grants the Company 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 Customer now, or owned by the Customer in the future, to secure the performance of the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money), in accordance with the Acknowledgement Document.
- 29. Privacy Policy**
- 29.1 All emails, documents, images or other recorded information held or used by the Company is Personal Information, as defined and referred to in clause 29.3, and therefore considered Confidential Information. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 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 Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Company that may result in serious harm to the Customer, the Company will notify the Customer 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 Customer by written consent, unless subject to an operation of law.
- 29.2 Notwithstanding clause 29.1, privacy limitations will extend to the Company in respect of Cookies where the Customer utilises the Company's website to make enquiries. The Company 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 Customer'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 Company when the Company sends an email to the Customer, so the Company may collect and review that information ("collectively Personal Information")
- If the Customer consents to the Company's use of Cookies on the Company's website and later wishes to withdraw that consent, the Customer may manage and control the Company's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 29.3 The Customer agrees for the Company 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 Customer in relation to credit provided by the Company.
- 29.4 The Customer agrees that the Company may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 29.5 The Customer consents to the Company being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 29.6 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 29.7 The Company may give information about the Customer 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 Customer including credit history.
- 29.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 29.3 above;
  - (b) name of the credit provider and that the Company is a current credit provider to the Customer;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Customer'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 Company 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 Customer no longer has any overdue accounts and the Company 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 Company, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

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- 29.9 The Customer shall have the right to request (by e-mail) from the Company:
- (a) a copy of the Personal Information about the Customer retained by the Company and the right to request that the Company correct any incorrect Personal Information; and
  - (b) that the Company does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 29.10 The Company will destroy Personal Information upon the Customer'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.
- 29.11 The Customer can make a privacy complaint by contacting the Company via e-mail. The Company 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 Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

### 30. Cancellation

- 30.1 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.
- 30.2 If the Company, due to reasons beyond the Company's reasonable control, is unable to deliver any Services to the Customer, the Company 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 Customer. On giving such notice the Company shall repay to the Customer any money paid by the Customer for the Services. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 30.3 The Customer may cancel Delivery of the Services by written notice served within twenty-four (24) hours (Monday to Friday) of placement of the order. If the Customer cancels delivery in accordance with this clause 30.3, the Customer will not be liable for the payment of any costs of the Company, except where a deposit is payable in accordance with clause 7.4. Failure by the Customer to otherwise accept Delivery of the Services shall place the Customer in breach of this Contract.

### 31. Service of Notices

- 31.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this Contract;
  - (c) by sending it by registered post to the address of the other party as stated in this Contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 31.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

### 32. Trusts

- 32.1 If the Customer 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 Company may have notice of the Trust, the Customer covenants with the Company as follows:
- (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust, the trustees and the trust fund;
  - (b) the Customer 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 Customer against the Trust, the trustees and the trust fund. The Customer 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 Customer will not during the term of the Contract without consent in writing of the Company (the Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Customer 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.

### 33. General

- 33.1 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.
- 33.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland, the state in which the Company has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 33.3 The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent provided the assignment does not cause detriment to the Customer.
- 33.4 The Customer cannot licence or assign without the written approval of the Company.
- 33.5 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Customer agrees and understands that they have no authority to give any instruction to any of the Company's Sub-Contractors without the authority of the Company.



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- 33.6 The Customer agrees that the Company may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Company to provide Goods to the Customer.
- 33.7 Where the Company is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and the Company gives the Customer 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 Company. This clause does not apply to a failure by the Customer to make a payment to the Company, once the parties agree that the Force Majeure event has ceased.
- 33.8 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 33.9 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.
- 33.10 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.
- 33.11 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.