

TRADING TERMS AND CONDITIONS

1. Definitions

In this document the following definitions apply unless the context otherwise requires.

- 1.1. **"Approved Credit Customer"** means a customer to whom the Supplier has agreed to grant credit facilities.
- 1.2. **"Business Day"** means any day on which banks are open for business in Brisbane.
- 1.3. **"Cash Customer"** means a customer who makes payment for Goods and/or Services at the time of the purchase of the Goods and/or Services.
- 1.4. **"Collateral"** means all the Customer's present and after-acquired property. It includes: (a) Anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest; and (b) (if applicable) the Trust Property.
- 1.5. **"Conditions"** means these trading terms and conditions together with the annexed Schedule or Schedules and in the case where more than one Schedule is annexed to the trading terms and conditions, the Schedule which shall be applicable to a contract between the Supplier and the Customer shall be that Schedule that is relevant to the goods to be supplied or the services to be supplied.
- 1.6. **"COD Customer"** means a customer who makes payment for Goods and/or Services on delivery of them.
- 1.7. **"Control Event"** means - (a) in respect of any Collateral that is, or would have been, a Revolving Asset: (i) the Customer breaches, or attempts to breach clause 8.3 in respect of the Collateral or takes any step which would result in it doing so; or (ii) a person takes a step (including signing a notice or direction) which may result in Taxes, or an amount owing to an authority, ranking ahead of the security interest in the Collateral under this document; or (iii) distress is levied or a judgment, order or Security is enforced or a creditor takes any step to levy distress or enforce a judgment, order or Security, over the Collateral; or (iv) the Supplier gives a notice to the Customer that the Collateral is not a Revolving Asset. (However, the Supplier may only give a notice if the Supplier reasonably considers that it is necessary to do so to protect its rights under this document); or - (b) in respect of all Collateral that is or would have been Revolving Assets: (i) a voluntary administrator, liquidator or provisional liquidator is appointed in respect of the Customer or the winding up of the Customer begins; or (ii) a receiver, receiver and manager or controller is appointed to any of the Customer's property; or (iii) something having a substantially similar effect to paragraph (i) or (ii) happens under any law.
- 1.8. **"Consequential Loss"** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of these Conditions and whether or not foreseeable at the time of entering into these Conditions.
- 1.9. **"Customer"** means the person who has requested the Supplier to provide Goods and/or Services.
- 1.10. **"Force Majeure Event"** means an act, event or cause that is beyond the reasonable control including acts of God, lightning, earthquakes, floods, storms, other natural disasters, explosions, fires, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, revolution, sabotage, malicious damage, any order or temporary or permanent injunction of any court or acts of a government or government instrumentality, strikes, lockouts, labor disputes (to the extent they exceed seven days), road closure, traffic congestion, quarantine or customs restriction, embargo, interruption of power supply, scarcity of fuel, accident, collision or breakdown of vehicle, machinery or equipment.
- 1.11. **"Goods"** means any goods which are requested by the Customer and agreed to be supplied by the Supplier.
- 1.12. **"GST"** has the same definition as that term has in the A New Tax System (Goods and Services Tax) Act 1999 (Cth).
- 1.13. **"Loss"** includes any loss, damage or compensation (including Consequential Loss), liquidated sum or liquidated damages, charge, payment, costs or expenses.
- 1.14. **"Company"** means Trailer Transport Services (ACN 622 499 174), or a Related Party, trading under its own name or any other business name.
- 1.15. **"Order"** means an order for Goods and/or Services placed by the Customer.
- 1.16. **"Products"** means the property from time to time accepted by the Supplier from the Customer for the provision of services by the Supplier of loading, unloading, packing, handling, transport or storage.
- 1.17. **"Personnel"** means, in relation to a party, the party's officers, office-holders, employees, agents and Subcontractors.
- 1.18. **"PPSA"** means *Personal Properties Security Act 2009* which is legislation that deals with security interests in personal property.

- 1.19. "PPSR" means the Personal Property Securities Register which is an online register in which any holder of a security interest in personal property must register to ensure they have a priority claim to that property.
- 1.20. "Related Party" means any "related entity" of a party within the meaning of that term as defined in section 9 of the *Corporations Act 2001* (Cth).
- 1.21. "Revolving Asset" means any Collateral - (a) which is: (i) inventory; (ii) a negotiable instrument; (iii) machinery, plant, or equipment which is not inventory and has a value of less than AUD\$1,000 or its equivalent; (iv) money (including money withdrawn or transferred to a third party from an account of the Customer with a bank or other financial institution); and - (b) in relation to which no Control Event has occurred, subject to clause 8.6.
- 1.22. "Schedule" means the schedule or schedules which are annexed to the Conditions.
- 1.23. "Services" means any services which are requested by the Customer and agreed to be supplied by the Supplier.
- 1.24. "Subcontractor" includes any person who, pursuant to a contract or arrangement with any other person (whether or not the Supplier), supplies or agrees to supply the Goods and/or Services.
- 1.25. "Supplier" means the relevant Company with whom an Order is placed for the supply of Goods and/or Services.
- 1.26. "Tax Invoice" means any tax invoice in respect of the supply of Goods and/or Services provided to the Customer by the Supplier.
- 1.27. "Trust Property" means all the Customer's present or after-acquired property which is the subject of any trust of which the Customer is the trustee. It includes anything in respect of which the Customer as trustee of any trust has at any time a sufficient right, interest or power to grant a security interest.
- 1.28. "Competition and Consumer Act 2010" includes the *Competition and Consumer Act 2010* and any equivalent State or Territory fair trading legislation.

2. General

- 2.1. The placing of any Order by the Customer will constitute an agreement upon these Conditions which will supersede any terms or conditions embodied in the Customer's order form or otherwise sought to be imposed by the Customer, whether orally or in writing.
- 2.2. Words importing the singular include the plural and vice versa and words importing a gender include other genders.
- 2.3. A reference in these Conditions to:
 - (a) a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
 - (b) a statute includes a reference to all enactments amending or consolidating the statute and to an enactment substituted for the statute and any subordinate legislation, including regulations.
- 2.4. Should any of the terms and conditions of these Conditions be held to be unenforceable, such terms and conditions will be severable from the remaining terms and conditions which will continue to be enforceable.
- 2.5. Where a party is required to make payment or do any other thing on a day which is not a Business Day, the party must make such payment or do such other thing on the next Business Day.
- 2.6. Time is of the essence of these Conditions in relation to the obligations of the Customer.

3. Orders

- 3.1. The Supplier may decline (without giving any reason) to accept any Customer's Order. The Supplier reserves the right to withdraw any Goods and/or Services from sale from time to time despite that they may still be listed in the Supplier's catalogue or on display at the Supplier's premises.
- 3.2. Notwithstanding anything contained in these Conditions, the Supplier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty. All other implied conditions, warranties and rights are excluded unless expressly stated in these Conditions or otherwise agreed in writing by the Supplier and the Customer.

4. Price

- 4.1. The price of the Goods and/or Services will be as stated in the Tax Invoice and unless otherwise stated, all prices shall be exclusive of GST.
- 4.2. The Supplier may, unless expressly agreed in writing by the Supplier and the Customer:
 - (a) deliver and supply the Goods and/or Services in one or more instalments; and
 - (b) invoice the Customer on a pro-rata basis for the Goods and/or Services then supplied.

- 4.3. The Customer accepts the Tax Invoice as being a good and sufficient claim for the Goods and/or Services supplied as described in that Tax Invoice.

5. Payments

- 5.1. The Customer shall make payment:
- (a) in the case of a Cash Customer when purchasing the Goods and/or Services; and after receipt of a valid Tax Invoice from the Supplier;
 - (b) in the case of a COD Customer on receiving the delivery docket from the Supplier;
 - (c) in the case of an Approved Credit Customer within 30 days from Invoice date.
- 5.2. The Supplier may vary or withdraw any credit facility or credit limit at any time in its complete discretion and without any liability to the Approved Credit Customer or any party claiming through the Approved Credit Customer and without affecting or derogating from these Conditions or any obligation of the Customer.
- 5.3. A certificate signed by an officer of the Supplier identifying any Goods and/or Services not yet paid for or the amount outstanding, or the amount of interest on the amount outstanding shall be conclusive evidence of the matters stated in that certificate unless proved to the contrary.
- 5.4. An Approved Credit Customer must make all payments due without deduction or set off and if the Approved Credit Customer has a number of invoices outstanding and disputes the amount charged in respect of one or more of the invoices, the Approved Credit Customer may not refuse to pay any charges due in respect of any undisputed invoice but must pay the undisputed invoices by due date.

6. No withholding or offset

The Customer must not withhold from any payment or offset against any payment due to the Supplier in respect of any amount owed by or claimed against the Supplier.

7. Lien

- 7.1. The Customer irrevocably grants to the Supplier a general lien on any Products or goods belonging to the Customer in the Supplier's possession for all charges now due or that may become due to the Supplier by the Customer on any account whatsoever, whether in respect of those Products or goods or in respect of any other Products or goods in respect of which the Supplier provides or has provided services.
- 7.2. Without prejudice to any other rights the Supplier may have under legislation, if charges are not paid when due, or the Products are not collected when so required or designated, the Supplier may, without notice, and immediately:
- (a) remove all or any of the Products or goods and store them as the Supplier thinks fit at the Customer's risk and expense; and
 - (b) open and sell all or any of the Products or goods as the Supplier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss or damage caused.
- 7.3. The parties agree that the lien attaches to Products or goods when the Products or goods are accepted by the Supplier for the provision of services.
- 7.4. The Customer agrees that the lien arising under these Conditions is a security interest.

8. Charge and General Security Agreement

- 8.1. The Customer hereby charges in favour of the Supplier all real property in which the Customer may now or in the future have any title or interest in (as beneficial owner and as trustee of every trust in respect of which it is a trustee) as security for any monies owing to the Supplier and the Customer hereby consents to the Supplier lodging a caveat noting the Supplier's interest in that real property.
- 8.2. The Customer grants a security interest in the Collateral to the Supplier to secure the payment of the Secured Money. This security interest is a charge. If for any reason it is necessary to determine the nature of this charge, it is a floating charge over the Revolving Assets and a fixed charge over all other Collateral.
- 8.3. *Restricted dealings*
The Customer must not do, or agree to do, any of the following unless it is permitted to do so by clause 8.6 or another provision in a Transaction Document:
- (a) create or allow another interest in any Collateral; or
 - (b) dispose, or part with possession, of any Collateral.
- Transaction Document means any related contractual documentation between the parties.
- 8.4. *Permitted dealings*

The Customer may do any of the following in the ordinary course of the Customer's ordinary business unless it is prohibited from doing so by another provision in a Transaction Document:

- (a) create or allow another interest in, or dispose or part with possession of, any Collateral which is a Revolving Asset; or
- (b) withdraw or transfer money from an account with a bank or other financial institution.

8.5. *Revolving Assets*

If a Control Event occurs in respect of any Collateral then automatically:

- (a) that Collateral is not (and immediately ceases to be) a Revolving Asset;
- (b) any floating charge over that Collateral immediately operates as a fixed charge; and
- (c) the Customer may no longer deal with the Collateral under clause 8.4.

8.6. *Conversion to Revolving Assets*

If any Collateral is not, or ceases to be, a Revolving Asset, and becomes subject to a fixed charge or transfer under this clause 8, the Supplier may give the Customer a notice stating that, from a date specified in the notice, the Collateral specified in the notice is a Revolving Asset, or becomes subject to a floating charge or is transferred back to the Customer. This may occur any number of times.

8.7. *Inventory*

Any inventory which is not, or ceases to be, a Revolving Asset is specifically appropriated to a security interest under this document. The Customer may not remove it without obtaining the specific and express authority of the Supplier to do so.

- 8.8. The Customer shall, upon request by the Supplier, sign all documents and do all things that the Supplier may reasonably require to be signed or done by the Customer to secure to the Supplier any monies owing to the Supplier by the Customer from time to time.

9. **Interest**

The Customer shall pay interest on any overdue amounts with effect from the due date of payment until payment in full at the Queensland Law Society Inc Standard Contract Default Interest Rate plus 2% per annum from time to time.

10. **Retention of Title**

- 10.1. The Supplier retains legal and equitable title in any Goods supplied to the Customer until payment in full for or in connection with the supply of the relevant Goods has been received by the Supplier.

- 10.2. As between the Customer and the purchaser of any item of the Goods, the Customer sells as principal and not as agent of the Supplier. The proceeds of sale of each item of Goods must be held by the Customer in a separate fund on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.

- 10.3. The Customer holds all unpaid Goods as fiduciary for the Supplier until payment in full has been received by the Supplier and the Customer must, until payment in full has been received by the Supplier, store the Goods in such manner as to show it is the property of the Supplier and must ensure that such Goods are properly stored, protected and insured. The Supplier is irrevocably entitled, at any time and from time to time before sale of any item of Goods by the Customer, to inspect or to recover and retake possession of such Goods and otherwise exercise in relation to the Goods any of its rights whether those rights are as owner and/or unpaid Seller or otherwise and whether those rights are conferred by common law, contract, statute or in any other way. In order to exercise such entitlement, the Supplier and its agents are irrevocably authorised by the Customer to enter any of the Customer's premises or vehicles or those of any third party. The Customer agrees to obtain the consent of any such third party to such entry by the Supplier and to indemnify the Supplier and its agents for any liability arising from any entry upon such third parties' premises or vehicles. The Supplier and its agents agree to take all reasonable care in removing the Goods from such premises or vehicles but, to the extent this liability may be disclaimed by law, are not liable for any damage or injury to such premises or vehicles caused by the removal of the Goods.

- 10.4. If the Customer:

- (a) fails to pay any amount due to the Supplier by its due date;
- (b) breaches any other term or condition;
- (c) being a corporation, passes a resolution to wind up the Customer voluntarily, or the Customer has any winding up petition presented against it, or is placed under official management, administration or provisional liquidation, or a receiver, receiver and manager or controller is appointed over part of all of its undertaking or property;
- (d) the Customer being a natural person becomes insolvent or bankrupt, or commits any act of bankruptcy, or enters into any arrangement or assignment for the benefit of creditors, or if a mortgagee of any part of the Customer's property takes possession of any part of that property,

the Supplier may without prejudice to any other rights it may have and without notice to the Customer, take such steps as may be necessary to remove any unpaid Goods from the Customer's premises or otherwise in accordance with clause 10.3;

- 10.5. If the Customer receives any payment from an insurer in respect of the Goods, those proceeds must be held by the Customer in the separate fund referred to in clause 10.2 on trust for the Supplier and the Customer is under a duty to account to the Supplier for such proceeds. The creation of, or any failure of, any such trust shall not in any way limit the obligation of the Customer to pay an amount to the Supplier for Goods supplied.
- 10.6. This reservation of title and ownership is effective whether or not the Goods have been altered from their supplied form, or commingled with other goods.

11. Security Interest

- 11.1. The Customer acknowledges and agrees that:
- (a) any lien arising under clause 7;
 - (b) the grant of security (by way of charge) pursuant to clause 8; and
 - (c) the retention of ownership as provided by clause 10,
- each constitutes a security interest for the purposes of the PPSA.
- 11.2. The Customer acknowledges and agrees that the Supplier shall be entitled to register any security interest created by this document on the relevant register kept under the PPSA. The Customer agrees to, in a timely manner, sign such further documents or otherwise do such acts as may be necessary to allow the Supplier to register the security interest, including registration as a Purchase Money Security Interest under the PPSA, if applicable, and for the Supplier to obtain the benefit of any priority to which the Supplier is entitled under the PPSA over previously registered interests:
- 11.3. The Customer must:
- (a) indemnify and upon demand, reimburse, the Supplier for all expenses incurred in registering the Supplier's interest on the register kept under the PPSA or releasing any property so registered;
 - (b) not register any change statement to the details of the Supplier's security interest without the Supplier's prior written consent;
 - (c) not register or permit to be registered a security interest in relation to the goods in favour of a third party without the prior written consent of the Supplier.
- 11.4. Exclusion of PPSA provisions
To the extent the law permits:
- (a) for the purposes of sections 115(1) and 115(7) of the PPSA:
 - (i) the Supplier need not comply with sections 95, 118, 121(4), 123, 125, 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded;
 - (b) for the purposes of section 115(7) of the PPSA, the Supplier need not comply with sections 132 and 137(3);
 - (c) any right to receive a notice or statement arising by virtue of sections 129, 130, 132, 134 and 135 of the PPSA is waived;
 - (d) any right to receive a copy or any notice of any verification statement confirming registration of a financing statement or a financing change statement relating to any security interest under or provided for by these Conditions is waived;
 - (e) if the PPSA is amended after the date of this document to permit the Customer and the Supplier to agree to not comply with or to exclude other provisions of the PPSA, the Supplier may notify the Customer that any of these provisions is excluded, or that the Supplier need not comply with any of these provisions, as notified to the Customer by the Supplier; and
 - (f) the Customer agrees not to exercise its rights to make any request of the Supplier under section 275 of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- 11.5. Exercise of rights by Supplier
If the Supplier exercises a right, power or remedy in connection with this document, that exercise is taken not to be an exercise of a right, power or remedy under the PPSA unless the Supplier states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the PPSA.
- 11.6. No notice required unless mandatory
To the extent the law permits, the Customer waives:
- (a) its rights to receive any notice that is required by:
 - (i) any provision of the PPSA (including a notice of a verification statement); or
 - (ii) any other law before a Supplier or Receiver exercises a right, power or remedy; and

- (b) any time period that must otherwise lapse under any law before a Supplier or Receiver exercises a right, power or remedy.

If the law which requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

However, nothing in this clause prohibits the Supplier or any Receiver from giving a notice under the PPSA or any other law.

11.7. Appointment of nominee for registration

For the purposes of section 153 of the PPSA, the Supplier appoints the Customer as its nominee, and authorises the Customer to act on its behalf, in connection with a registration under the PPSA of any security interest in favour of the Customer which is:

- (a) perfected by registration under the PPSA; and
- (b) transferred to the Supplier under this document.

This authority ceases when the registration is transferred to the Supplier.

12. Purchase Money Security Interest

- 12.1. The Supplier claims a PMSI, as defined in the PPSA in the Goods so as to secure payment of the full purchase price of such items as are delivered from time to time.
- 12.2. The Customer grants to the Supplier a PMSI in the Goods and any proceeds of their sale to secure payment of the purchase price of the Goods delivered from time to time.
- 12.3. The Customer agrees not to do or permit anything to be done that may result in the PMSI granted to the Supplier to rank or to be subjected to priority to any other Security Interest in favour of any other party.
- 12.4. The Customer agrees to take such further steps which may be required by the Supplier to take additional or better security under the PPSA over the Goods and the proceeds of their sale, or to maintain the ability to claim and realise the Security Interest, including its priority, pursuant to the PPSA or by reason of the financing statement (in order to avoid any doubt, this obligation on the part of the Customer includes obtaining written consents, supplying information, signing forms, executing documents, whether on the part of the customer, any financier to the Customer, a lessor or landlord of the Customer or any third party having a claim or interest over land or a building in respect of which the Goods are located at present or at any time in the future).
- 12.5. The Customer agrees to provide to the Supplier when requested all details of the location of the Goods.
- 12.6. In consideration of the agreement on the part of the Supplier to supply and to continue to supply Goods to the Customer in accordance with these Conditions the Customer agrees and acknowledges the consignment Goods delivered into its possession and the proceeds of the sale constitute collateral in respect of which the Supplier is entitled to a Security Interest until such time as the Supplier receives payment in full on account of each such supply of collateral or the proceeds of its sale.

13. Default

- (a) If the Customer does not pay any monies by due date, or otherwise breaches these Conditions, the Supplier may in its absolute discretion do any one or more of the following without prejudice to any other rights of the Supplier under any law, and without the Supplier being liable in any way to any party.
- (b) The Supplier may:
 - (i) cancel any credit facility made available to the Customer; and/or
 - (ii) call up any monies owed by the Customer on any Tax Invoice whether or not the period of 30 days has expired; and/or
 - (iii) retain all monies paid on account; and/or
 - (iv) recover from the Customer all loss of profits arising from any breach; and/or
 - (v) take immediate possession of any Goods and/or Services not paid for and resell them.
- (c) The Customer shall indemnify the Supplier against all costs, including full indemnity legal costs, commercial agent fees, commissions, freight, storage charges, surcharges, fees, insurance, accounting costs, loss of profit in all interests incurred by the Supplier as a result of the Customer's default.

14. Limitation of Liability

- 14.1. If any Order is subject to the compulsory application of the *Competition and Consumer Act 2010* the Supplier's liability to the Customer for breach of a condition, guarantee or warranty implied by the *Competition and Consumer Act 2010* is limited to the extent permitted by that Act to the following options:
 - (a) either the replacement of the Goods and/or Services or the supply of equivalent Goods and/or Services; or

- (b) the payment of the cost of replacing the Goods and/or Services or acquiring equivalent Goods and/or Services; or
 - (c) the payment of the cost of repairing the Goods and/or Services or the repair of the Goods and/or Services; or
 - (d) in the case of services, to the supplying of services again or the payment of the cost of having the services supplied again.
- 14.2. Any claim for damages arising out of an Order which is subject to the compulsory application of the *Competition and Consumer Act 2010* shall be limited to such damages as may be permitted under the relevant Act.
- 14.3. Where any Order is not subject to the compulsory application of the *Competition and Consumer Act 2010*, the Supplier shall not be responsible to the Customer for:
- (a) any Loss in connection with the supply of the Goods and/or Services, whether arising from the negligent, wilful or reckless act or omission of the Supplier, its employees or agents, whether or not the Supplier has been advised, or is aware of the possibility of such Loss, and whether arising in agreement, tort or otherwise, except to the extent of warranties, undertakings and promises expressly made by the Supplier in writing and forming part of the contract;
 - (b) any Loss arising out of any fault or defect in the Goods and/or Services;
 - (c) any representations made by or on the Supplier's behalf which are not in writing;
 - (d) any statement or recommendation made, or advice, supervision or assistance given by the Supplier, its employees and agents whether oral or written;
 - (e) any delay or failure in delivery of Goods and/or Services, or default, or failure in performance of the Goods and/or Services because of circumstances beyond the Supplier's control including, without limitation, a Force Majeure Event;
 - (f) any Loss suffered or incurred by the Customer arising out of a breach by the Supplier of an Order or a negligent act or omission of the Supplier or a breach of a statutory duty or obligation by the Supplier;
 - (g) any Loss suffered in the course of delivering or installing the Goods and/or Services.
- 14.4. Notwithstanding any other provision of these Conditions, the Supplier will under no circumstances be liable for any claim for Consequential Loss.

15. Notices

- 15.1. Any notice to be given under these Conditions must be in writing and may be given:
- (a) by delivering it to the address of the recipient on a Business Day during normal business hours; or
 - (b) by sending it to the address of the recipient by pre-paid post; or
 - (c) by sending it by facsimile transmission to the facsimile number of the recipient.
- 15.2. Notice shall be deemed to be given and received:
- (a) if delivered, on the day of delivery;
 - (b) if posted, three clear Business Days after the day of posting; or
 - (c) if sent by facsimile, on the date of successful transmission provided that if the facsimile is sent after 5.00 pm notice shall be deemed to be given on the next Business Day.
- 15.3. The address of the Supplier shall be that stated in Tax Invoices provided to the Customer and the address of the Customer shall in the absence of notice to the contrary be as set out in the Application for Credit, or in the case of Cash Customers or COD Customers as set out in the relevant Tax Invoice.

16. Goods and Services Tax

- 16.1. In these Conditions, in addition to other defined terms, all amounts are exclusive of GST and:
- (a) GST has the same definition as that term has in the A New Tax System (Goods and/or Services and Services Tax) Act 1999 (Cth);
 - (b) 'GST Adjustment Rate' means, in respect of each GST Review Date, the difference in the rate of GST in relation to the rate:
 - (i) on the GST Date; or
 - (ii) if there has been a previous GST Review Date, on the immediately preceding GST Review Date;
 - (iii) 'GST Date' means the date on which the Grantors liability for GST on any supply under these Conditions first arises;
 - (iv) 'GST Rate' means the rate of GST on the GST Date; and

- (v) 'GST Review Date' means any date that the rate of GST is changed so that the new rate of GST becomes the effective rate at which supplies made by the Supplier under these Conditions are taxed.

- 16.2. Despite any other provisions of this Deed, if the GST Rate increases or decreases, as the case may be, on and from:
- (a) the GST Date by the GST Rate; and
 - (b) a GST Review Date by the GST Adjustment Rate,
- the Customer must pay, or the Supplier must credit, any decrease or increase on the date the next payment under these Conditions is payable to the Supplier (on a pro rata daily basis).
- 16.3. The Supplier must give the Customer a Tax Invoice for the cost of Goods and/or Services supplied stating the amount of GST paid or payable by the Customer on that payment.
- 16.4. The Supplier warrants that the amounts referred to in any Tax Invoices the Supplier gives to the Customer are correct and will ensure that the Tax Invoices detail the amount of GST paid or payable in respect of the supply to which the invoice relates.

17. Force Majeure Event

- 17.1. Non-performance by either party (other than the failure to make payment of charges) caused by a Force Majeure Event will be excused as long as the Force Majeure Event exists.
- 17.2. If either party is affected by a Force Majeure Event, it will promptly notify the other and the parties will enter into good faith discussions to agree to alternative arrangements that are fair and reasonable.

18. Entire Agreement

These Conditions embody all of the terms binding on the parties and there have been no representations, agreements or proposal, save for those specifically recorded in them.

19. Waiver

Any waiver or forbearance in regard to the performance of these Conditions shall operate only if in writing and shall apply only to the specified instance, and shall not affect the existence and continued applicability of the terms of these Conditions thereafter.

20. Severability

If any provision of these Conditions is held by a Court to be unlawful, invalid, unenforceable or in conflict with any rule of law, statute, ordinance or regulation, the validity and enforceability of the remaining provisions shall not be thereby affected.

21. Signatory

The Customer and any person signing an Order on behalf of a Customer acknowledge and agree that the signatory is jointly and severally with the Customer liable for payment of the Supplier's account.

22. Subcontracting

- 22.1. The Supplier may in its discretion sub-contract all or part of the supply of the Goods and/or Services on such terms and conditions as it sees fit.
- 22.2. Every exemption, limitation, condition and liberty contained in these Conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Supplier or to which the Supplier is entitled under these Conditions will also be available to and will extend to protect:

- (a) all Personnel of the Supplier;
- (b) every other person (other than the Supplier) who supplies Goods and/or Services or any part of the Goods and/or Services; and

all persons who are or might be vicariously liable for the acts or omissions of any person falling within clauses 22.2(a) or 22.2(b).

22.3. For the purposes of clause 22.2, the Supplier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them. All such persons and each of them will to this extent be or be deemed to be parties to these Conditions.

23. Assignment

The Customer may not assign or purport to novate an Order whether voluntarily or otherwise without the Supplier's prior written consent. No assignment however occurring, and whether consented to by the Supplier or not will relieve the Customer of its obligations to the Supplier.

24. Variation

This Agreement may be waived, varied or added to from time to time:

- (a) By written agreement between the Supplier and the Customer; or unilaterally by the Supplier, subject to clause 24(b).
- (b) The Supplier may alter these Conditions at any time and any change will take effect 28 days from the date on which the Supplier notifies the Customer of the change. The altered Conditions shall be deemed to be accepted by the Customer and will apply to any order which the Customer places after the altered Conditions take effect.

25. Jurisdiction

The contract constituted by an Order is deemed to be made in the State of Queensland. The parties submit to the non-exclusive jurisdiction of the courts of that State.

26. Headings

Headings are included for convenience only and do not affect interpretation of these Conditions.

27. Joint and several

Where the Customer comprises two or more persons, an agreement or obligation to be performed or observed by the Customer binds those persons jointly and severally.

28. Survival

The indemnities and exclusions and limitations of liability in these Conditions survive the termination or expiration of any Order subject to these Conditions.

29. E-mail transmissions

The Supplier may correspond with the Customer by e-mail, where appropriate, unless the Customer specifically instructs the Supplier to the contrary. The Customer agrees to assume the risks associated with transmission and to release the Supplier from any claim it may have arising from transmission defects.

30. Costs

The Customer will bear its own costs in reviewing and executing these Conditions.

Please read the following conditions carefully and in their entirety. You will be bound by the conditions in this schedule if we carry or store Products for you.

This means:

- You must take out your own insurance cover over the Products.
- If both you and the consignee are both operating a business:
 - the Products will be at your sole risk and our services are priced on this basis; and
 - we will not be liable for any loss of or damage to the Products, or any other losses you suffer, regardless of the cause of such loss or damage.

SCHEDULE

CONDITIONS OF CARRIAGE AND STORAGE – CASH, COD, ACCOUNTS <\$1,000/MTH

1. Definitions

The meanings of the terms used in this Schedule (other than those defined in the Trading Terms and Conditions) are set out below.

- 1.1 **Carriage** means the whole of the operations and services undertaken by the Supplier or any person on behalf of the Supplier in respect of the Products (whether gratuitously or not) including but without limiting the generality of this definition, loading, unloading, packing, handling, transporting and storing the Products and the provision of any advice.
- 1.2 **Chain of Responsibility Law** means the Heavy Vehicle National Law as enacted in any Australian state, the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and any other state, territory or Commonwealth legislation dealing with the obligations of parties involved in road transport activities, such as consignors, transport operators, loaders, drivers and schedulers.
- 1.3 **Container** includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Products.
- 1.4 **Crane** includes any machine used for lifting Products, including a sideloader.
- 1.5 **Dangerous Goods** means Products that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever.
- 1.6 **Fuel Levy** means any sum payable to the Supplier based on movements in the price of diesel fuel, calculated on a monthly basis.
- 1.7 **Products** (for the purposes of this Schedule) means the property accepted by the Supplier from the Customer for Carriage including any container or packaging supplied by or on behalf of the Customer.
- 1.8 **Regulated Waste** means 'regulated waste' under the *Environmental Protection Regulation 2008* (Qld) and any other commercial or industrial waste (whether or not it has been immobilised or treated) where dealings with that waste are regulated by any state or federal legislation.

2. Negation of liability as a common carrier

- 2.1 The Supplier is not a common carrier and will accept no liability as such. All Products are carried, and all storage and other services are performed by the Supplier, subject only to these Conditions. The Supplier reserves the right to refuse the Carriage of Products for any person and the Carriage of any class of Products at its discretion.

3. Customer's warranties and obligations

3.1 The Customer warrants that:

- (a) the Products are fit for Carriage and have been suitably packaged for those purposes;
- (b) the Customer has the authority of all persons owning or having any interest in the Products to accept these Conditions on their behalf;
- (c) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer are correct;
- (d) there is a suitable practicable road and approach for the Supplier and the Supplier's vehicles to the place from which the Products are to be removed and the place to which the Products are to be delivered;
- (e) any place from which any Products are to be collected or to which any Products are to be delivered will have safe and adequate loading facilities and equipment available;
- (f) where the Products contain Regulated Waste, the Customer will provide to the Supplier all necessary documentation required by law to allow the transport of the Products by the Supplier;
- (g) a person with authority to accept delivery of the Products will be available to accept delivery at the delivery premises during trading hours;
- (h) the Customer will be responsible for the loading and unloading of any Products that consist of items of machinery for which a licence to operate is required;
- (i) Carriage is supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by the Customer;
- (j) the Customer has complied with all laws and regulations in relation to Carriage of the Products;
- (k) unless specifically declared in writing prior to Carriage, the Products are not Dangerous Goods or Regulated Waste; and
- (l) the Customer has effected a policy of insurance to cover any loss of or damage to the Products during Carriage.

3.2 The Customer must:

- (a) at the Customer's cost, provide any information or documents required by the Supplier to perform the Carriage;
- (b) provide sufficient instructions to allow the Supplier to adequately perform the Carriage in a timely manner;
- (c) provide any information concerning the nature of the Products and their packaging that the Supplier requests;
- (d) where the Products require special treatment (such as a particular orientation during Carriage), provide written notice to the Supplier of the special treatment required; and
- (e) where required by law, provide an accurate container weight declaration.

3.3 The Supplier relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer, but does not admit their accuracy.

4. Subcontracting

4.1 The Customer agrees that no claim or allegation may be made against any Personnel of the Supplier that imposes or attempts to impose upon such person any liability whatsoever arising out of or in any way connected with the Products or the Carriage of them whether or not arising out of negligence or a wilful act or omission on

the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Supplier against all consequences of any such claim or allegation.

5. Liability of Supplier

5.1 The Customer acknowledges and agrees that neither the Supplier nor any Personnel of the Supplier nor any other person who undertakes the Carriage of the Products at any time pursuant to these Conditions will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:

- (a) any loss of or damage to, deterioration, evaporation or contamination of the Products, or
- (b) misdelivery, delay in delivery or non-delivery of the Products or any of them,

whether in the course of Carriage or otherwise including where loss, damage, deterioration, evaporation, contamination, misdelivery, delay in delivery or non-delivery is caused or alleged to have been caused by the negligence of the Supplier or its Personnel.

5.2 The Supplier will be entitled to the benefit of the exclusion of liability provided for in clause 5.1 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

5.3 Nothing whatsoever done or omitted to be done or other conduct by the Supplier in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling the Supplier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Supplier contained in these Conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

5.4 Without limiting the generality of the foregoing, the Supplier will not be liable for any loss of or damage to Products:

- (a) caused by a Force Majeure Event;
- (b) caused by the Supplier following instructions given to it by the Customer;
- (c) caused by vermin, infestation or mould;
- (d) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including but not limited to rain, hail or storm damage;
- (e) comprising glass, internal or external fittings, plasterwork, cornices or any other fragile material or substances;
- (f) that are brittle, inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
- (g) caused by inherent vice or the nature of the Products;
- (h) where such loss or damage comprises of mechanical, electrical or electronic breakdown, derangement, or malfunction of the Products; or
- (i) caused by insufficiency or unsuitability of packing or preparation of the Products to withstand the ordinary incidents of Carriage. For the purpose of this subclause, 'packing' will be deemed to include stowage of any Products inside a building or other structure.

6. Pallets and Containers

6.1 Without limiting the generality of clause 5, the Customer:

- (a) acknowledges that the Supplier has no responsibility or liability in relation to:
 - (i) any Container or pallet used for Carriage; or

- (ii) any hire charge or demurrage charge associated with any Container used for Carriage;
- (b) must ensure that any pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
- (c) releases and indemnifies the Supplier from and against:
 - (i) any liability in relation to the loss of Containers or pallets; and
 - (ii) the failure of any party to transfer pallets on or off any hire account or to return a Container.

7. Crane/lifting services

- 7.1 Where the Supplier provides Crane services at the request of the Customer, the Customer warrants that:
- (a) the ground at the site where the Crane will be used is adequate to support the Crane;
 - (b) the ground giving access to the site is stable and firm and of a gradient to allow the Crane to be operated safely;
 - (c) sufficient clearance is afforded in respect of all overhead wires;
 - (d) the specifications and size of the Crane are suitable for the site where the Crane will be used and for the purpose required by the Customer; and
 - (e) the road surfaces, access and egress to the site are clear of obstacles at all times and will allow safe movement of the Crane.
- 7.2 The Supplier will supply a standard selection of slings, lugs and chains but accepts no responsibility for loss or delay if any slings, lugs or chains are found to be unsuitable for the purpose required by the Customer.
- 7.3 The Customer warrants that the weight of the object or objects to be lifted in any one lift and the radius of the proposed lift, measured from the radial point of the Crane, will not exceed the limits of the Crane.

8. Indemnities

- 8.1 The Customer will indemnify the Supplier:
- (a) in respect of any liability whatsoever in respect of the Products to any person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Products or any part of the Products; and
 - (b) against all Losses, or any other liability suffered or incurred by, or made or instituted against, the Supplier as a result, directly or indirectly, of:
 - (i) a breach of the Customer's obligations under these Conditions;
 - (ii) the nature or condition of the Products; or
 - (iii) any negligence, wilful misconduct or recklessness of the Customer, the consignor or the consignee.

9. Inspection

- 9.1 The Customer authorises the Supplier, but the Supplier will not be obliged, to open any document, wrapping, package or other Container in which the Products are placed or carried or that are otherwise associated with the Products, for the purpose of determining the nature, condition, ownership, destination of the Products or for any other purpose that is reasonably necessary.
- 9.2 If the Supplier is required by law to open any document, wrapping, package or other Container in which the Products are placed or carried, the Supplier will not be liable for any loss, damage or delay incurred as a result of

any opening, unpacking, inspection or repacking of the Products and will be entitled to recover the reasonable costs of such opening, unpacking, inspection or repacking.

10. Route and deviation

- 10.1 The Customer authorises any deviation from the usual route or manner of Carriage of Products that may in the absolute discretion of the Supplier be considered desirable or necessary in the circumstances.
- 10.2 If the Customer expressly or impliedly instructs the Supplier to use, or it is expressly or impliedly agreed that the Supplier will use a particular method of handling or storing the Products or a particular method of Carriage, the Supplier will give priority to that method but if it cannot conveniently be adopted by the Supplier the Customer authorises the Supplier to handle or store or to carry or to have the Products handled, stored or carried by another method or methods.

11. Delivery

- 11.1 The Supplier is authorised to deliver the Products at the address nominated to the Supplier by the Customer for that purpose. The Supplier will be conclusively presumed to have delivered the Products in accordance with these Conditions if at that address it obtains from any person a receipt or signed delivery docket for the Products.
- 11.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Supplier or the consignee otherwise fails to take delivery of the Products the Supplier may at its option deposit the Products at that place (which will be conclusively presumed to be due delivery under these Conditions) or store the Products and if the Products are stored by the Supplier the Customer will pay or indemnify the Supplier for all costs and expenses incurred in or about such storage. In the event that the Products are stored by the Supplier, the Supplier will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.

12. Storage

- 12.1 Where Products are stored by the Supplier at the request of the Customer, the Customer will provide:
- (a) an address to which notices will be sent;
 - (b) samples of the signatures of persons entitled to collect the Products; and
 - (c) an inventory of the Products to be stored.
- 12.2 The Supplier will be entitled to remove the Products from a place of storage to another place of storage at its discretion.
- 12.3 The Customer must give 48 hours' notice to the Supplier of its intention to remove Products from storage.
- 12.4 The Supplier will not be obliged to deliver any Products except to the Customer or to a person authorised in writing by the Customer to receive the Products without:
- (a) a direction in writing from the Customer; and
 - (b) payment of all amounts due by the Customer to the Supplier on any account whatsoever.
- 12.5 The Customer will remove its Products from storage within seven days of receipt of written notice from the Supplier.
- 12.6 If any identifying document or mark is lost, damaged, destroyed or defaced, the Supplier may open any document, wrapping, package or other Container in which the Products are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.

13. Delay in loading or unloading

- 13.1 The Customer will be and remain responsible to the Supplier for all its proper charges incurred for any reason. A charge may be made by the Supplier in accordance with the Supplier's schedule of rates in respect of any delay

in loading or unloading occurring other than from the default of the Supplier. Such permissible delay period will commence upon the Supplier reporting for loading or unloading.

14. Supplier's charges

- 14.1 The Supplier's charges will be deemed fully earned on receipt of the Products by the Supplier and are non-refundable in any event. The Customer agrees to pay all sums due to the Supplier without any deduction, counterclaim or set-off.
- 14.2 Any special instruction given by the Customer to the effect that charges will be paid by the consignee or any other third party will be deemed to include a stipulation that if the consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Products the Customer will pay such charges.
- 14.3 Where the Supplier stores Products for the Customer, the Customer must:
- (a) pay the Supplier's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other person;
 - (b) if any Products are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that the Supplier becomes liable to pay or pays;
 - (c) supply or pay for labour or machinery or both to load or unload the Products; and
 - (d) compensate the Supplier for any cost, expense or loss to the Supplier's property or any person caused by the Products.
- 14.4 In addition to any other charges due under these Conditions, the Customer must pay:
- (a) if the Products are at any time re-quantified, re-weighed or re-measured, any proportional additional charges; and
 - (b) all other charges incurred in relation to the Carriage of the Products, including the Fuel Levy.

15. Products requiring temperature control

- 15.1 If the Supplier agrees to the Carriage of any Products that require temperature control, the Customer must give written notice to the Supplier:
- (a) of the nature of those Products;
 - (b) of the temperature range to be maintained;
 - (c) confirming that the Products have been properly packed; and
 - (d) confirming that the Products have been properly maintained at the required temperature prior to Carriage.
- 15.2 The Customer acknowledges that:
- (a) temperature variations can occur; and
 - (b) any temperature record maintained by the Supplier will, in the absence of a manifest error, be conclusive evidence of the temperature during Carriage.

16. Dangerous Goods

- 16.1 Unless the Supplier agrees in writing with the Customer, the Supplier will not accept Dangerous Goods for Carriage. If Dangerous Goods are tendered without prior written agreement, the Dangerous Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to the Supplier's right to charge for the Carriage of the Products.

- 16.2 If the Supplier accepts Dangerous Goods for Carriage:
- (a) such Products must be accompanied by a full written declaration disclosing their nature;
 - (b) the Customer must comply with all laws, regulations, ordinances and codes that deal with the Carriage of Dangerous Goods, including but not limited to the *Australian Code for the Transport of Dangerous Goods by Road & Rail*; and
 - (c) the Customer warrants that the Products are packed in a manner adequate to withstand the ordinary risks of Carriage and Storage having regard to their nature.
- 16.3 The Customer will indemnify the Supplier against all loss, damage or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Customer was aware of the nature of the Products.
- 16.4 The indemnity in clause 16.3 extends to Consequential Loss.
- 16.5 If, in the opinion of the Supplier, any Dangerous Goods accepted under clause 16.2 become, or are likely to become, dangerous to other goods or property, or any person, the Supplier may nevertheless destroy, dispose of or abandon the Dangerous Goods without compensation to the Customer and without prejudice to the Supplier's right to charge for the Carriage of the Products.

17. Notification of claim

- 17.1 Notwithstanding any other provision of these Conditions (other than clause 3.2 of the Trading Terms and Conditions), the Supplier will in any event be discharged from all liability whatsoever in respect of the Products unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Supplier:
- (a) in the case of Products allegedly lost or damaged in the course of loading, unloading or transit, within 24 hours of delivery of the Products (if the Products are perishable) or 14 days of delivery of the Products (if the Products are not perishable) or, in the case of non-delivery, within 14 days of the time at which, in the ordinary course of business, delivery would have been effected; or
 - (b) in the case of Products allegedly lost or damaged during storage, within 14 days of the date of removal or attempted removal of the Products from storage.
- 17.2 The Supplier will be discharged from all liability whatsoever in respect of the Products unless suit is brought:
- (a) in the case of Products allegedly lost or damaged in the course of loading, unloading or transit within 12 months of their delivery or of the date on which they should have been delivered; or
 - (b) in the case of Products allegedly lost or damaged during storage, within 12 months of the date of removal or attempted removal of the Products from storage.

18. Chain of Responsibility Law

- 18.1 The Supplier and the Customer must comply with all applicable laws and regulations, including Chain of Responsibility Law.
- 18.2 The Customer must not impose any requirement on the Supplier that would directly or indirectly encourage or require the Supplier or any person on behalf of the Supplier to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner.