

# **Supply Chain Logistics Standard Terms and Conditions**

# Terms and Conditions

## 1. Definitions and interpretation

### 1.1 Definitions

In these Terms and Conditions, the following terms will have the following meanings:

**Assets** means all assets, Goods, documents and records of the Customer held by or in the possession or control of the Company (whether or not as part of the arrangement under these Terms and Conditions or the Service Agreement) and includes, without limitation, the Goods and shipping documents, including, without limitation, bills of lading, insurance policies, commercial invoices and certificates as to weight, quality or other attributes;

**ATD** has the same meaning as **authority to deal** as defined in section 4 of the Customs Act;

**Authority** means the authority and acknowledgement by which the Customer appointed the Company to act on its behalf in accordance with section 181 of the Customs Act;

**Company** means Supply Chain Logistics (Aust) Pty. Ltd, as holder of Customs Brokers Licence number 01941C and the nominees, agents, sub-agents and employees of the Company;

**Competition and Consumer Act** means the *Competition and Consumer Act 2010* (Cth);

**Consequential Loss** means any indirect loss, consequential loss, loss of use, loss of value, loss of revenue, loss of profits, loss of production, loss of goodwill, loss of reputation, loss of business, loss of anticipated savings, loss of contracts or loss of opportunity (in each case regardless of whether such losses are direct and/or foreseeable);

**Consumer Contract** means a contract between the Company and the Customer for a supply of Services in circumstances where the Customer is an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption, in the manner provided for under the *Competition and Consumer Act*;

**Container** includes any container, flexitank, transportable tank, flat, trailer, pallet or any article of transport used to carry or consolidate goods and any equipment connected thereto.

**Corporations Act** means the *Corporations Act 2001* (Cth);

**Customer** includes:

- (a) if there is an Authority or Service Level Agreement - the party named in the Authority or Service Level Agreement as the customer; and
- (b) the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods and the person for whom any of the Services are performed;

**Customs** means the Australian Border Force and any other agency of the Commonwealth Government responsible for the provision of customs services;

**Customs Act** means the *Customs Act 1901* (Cth) and all regulations made pursuant to the Customs Act;

**Customs Broker's Licence** means any licence granted by Customs to a party to operate as a licensed customs broker pursuant to Part XI of the Customs Act;

**Customs Duty** has the same meaning as Duty in the Customs Act;

**Customs Related Law** has the same meaning as in Section 4B of the Customs Act;

**Dangerous Goods** means any Goods, or articles or substances of which Goods are comprised, which are or which may become dangerous, volatile, explosive, inflammable, radioactive or hazardous, or which may become harmful to any person, property or the environment;

**Debts** means all amounts owing by the Customer to the Company on any account whatsoever;

**Depot Licence** has the same meaning as *depot licence* as defined in section 77F of the Customs Act;

**Excluded Interest** means any of the interests set out in section 8 of the PPSA or any interest that is not a Security Interest but encumbers the Goods;

**Fees** means the fees charged by the Company for provision of the Services, including any disbursements or other charges, levies or other costs incurred in performing the Services and passed on to the Customer;

**Goods** shall mean the goods, articles or things tendered by the Customer, or by a party on behalf of the Customer, in respect of which the Company provides a Service;

**Government Authorities** means, without limitation, any Commonwealth or State department or agency or any department or agency of a foreign government, with responsibility for the regulation of any aspect of the import and export of goods, the collection of revenue on the import and export of goods or the carriage or storage of goods including, without limitation, Customs, the Australian Taxation Office and the Department of Agriculture, Fisheries and Forestry;

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**Heavy Vehicle National Law** means the *Heavy Vehicle National Law Act 2012* (Queensland) as enacted in the Queensland Parliament and adopted by the States and Territories, including any Regulations made under that Act and any other legislation enacted by the Commonwealth, a State or a Territory, for the purpose of giving effect to the National Heavy Vehicle Law or the Council of Australian Governments' Intergovernmental Agreement on Heavy Vehicle Regulatory Reform dated 25 February 2010;

**Instruction** means any instruction received from the Customer or an agent of the Customer concerning specific aspects of the carriage, handling or storage of the Goods and/or any other Services to be provided to the Customer.

**Laws** means any laws (including subordinate or delegated legislation or statutory instruments of any kind and also foreign laws) applicable to this Agreement or the subject matter of this Agreement including, but not limited to, the Heavy Vehicle National Law, workplace health and safety, and laws regulating the carriage of goods by air, sea, road or rail;

**Licence** means any Customs Broker's Licence, Depot Licence, Warehouse Licence or any other licence issued by Customs or other Government Authority;

**Parties** means the Company and the Customer;

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

**Reporting Obligations** means the obligations of the Company to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities or which the Company, at its sole discretion, considers to be necessary to comply with the conditions or obligations of its Licences;

**Related Body Corporate** has the same meaning as under the Corporations Act;

**Security Interest** has the same meaning as under the PPSA;

**Service Agreement** includes:

- (a) the terms and conditions on the front and reverse sides of any house bill of lading or house waybill issued by the Company to the Customer (whichever applicable), but only in instances where the provision of the Services includes the Company effecting shipment of Goods by sea or air, or by more than one mode of transport which includes a sea or air component;
- (b) the Service Level Agreement (if any);
- (c) these Terms and Conditions; and
- (d) any customer credit application completed by the Customer and accepted by the Company; and
- (e) any fee, quotation or estimate that is accepted by the Customer;

**Services** means any performance of work by the Company for the Customer in any way connected with the Goods including, without limitation:

- (a) making any reports, entries and declarations required by any Government Authorities;
- (b) quoting the ABN as may be required under the GST Law;
- (c) providing all necessary information and completing all necessary documentation and reports for the purposes of any Government Authorities;
- (d) entering into contracts with Subcontractors on behalf of the Customer to enable the carriage, import, export, storage and/or transportation of the Goods; and
- (e) any other work that is ancillary to the foregoing.

**Subcontractor** means:

- (a) any third party appointed by the Company to assist in the provision of any part of the Services; and
- (b) any individual or entity, other than the Customer, which is now or hereafter a servant, agent, employee or subcontractor of any other party referred to in clause (a) of this definition;

**Warehouse Licence** has the same meaning as **warehouse licence** as defined in section 78 of the Customs Act.

## 2. Interpretation and application

- (a) This Service Agreement shall be governed and construed according to the laws of Victoria and shall be subject to the non-exclusive jurisdiction of the courts of Victoria and those courts which can hear appeals from those courts.
- (b) Subject to clause 23, all the rights, immunities and limitations of liability contained in these Terms and Conditions shall continue to have their full force and effect notwithstanding any breach of this Service Agreement by the Company and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the Authority having expired or been terminated.
- (c) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this Service Agreement, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this Service Agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.
- (d) In the interpretation of these Terms and Conditions the singular includes the plural and vice versa, and words importing corporations mean and include natural persons and vice versa.
- (e) Every variation, cancellation or waiver of this Service Agreement must be in writing, signed by a Director of the Company. Notice is hereby given that no other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of this Agreement. Any forbearance by the Company in enforcing the Terms and Conditions does not constitute a waiver. If the Company waives a breach of this Agreement, the waiver does not operate as a waiver of any subsequent breach of the same or any other term or as a continuing waiver.
- (f) If any provision in this Service Agreement is held by a court or tribunal to be valid or unenforceable, such invalidity or unenforceability shall only attach to such provision and the validity of the surviving provisions shall not be effected thereby.
- (g) Where there is an inconsistency between the terms and conditions comprising this Service Agreement, the relevant documents shall be construed in the following descending order of priority:

- (i) the terms and conditions on the front and reverse sides of any house bill of lading or house waybill issued by the Company to the Customer (whichever applicable), but only in instances where the provision of the Services includes the Company effecting shipment of Goods by sea or air, or by more than one mode of transport including sea or air;
  - (ii) the Service Level Agreement (if any) and/or any other document identifying the Services to be performed;
  - (iii) these Terms and Conditions;
  - (iv) any customer credit application completed by the Customer and accepted by the Company; and
  - (v) any fee, quotation or estimate that is accepted by the Customer.
- (h) Reference to any Laws or to any section or provision of any Laws includes any statutory modifications, re-enactments, substitutions or replacements thereof and all Laws issued thereunder.
  - (i) Reference to any Convention or any Article of any Convention includes any modifications, substitutions or replacements thereof.
  - (j) Except where expressly stated otherwise, references to clauses are references to clauses in these Terms and Conditions.
  - (k) Headings have no effect on interpretation of the Terms and Conditions or any other part of this Services Agreement.

### 3. Performance of Services

- (a) The Company is a Licensed Customs Broker under Part XI of the Customs Act. The Company is not a common carrier and will accept no liability as such. All Services provided by the Company are governed solely by this Services Agreement.
- (b) The Customer acknowledges and agrees that where Goods are shipped by air or sea, the Company's Subcontractor performing the relevant carriage will issue and rely upon terms and conditions which significantly exclude and limit the liability of the Subcontractor for loss, damage and delay.
- (c) The Customer acknowledges and agrees that the Company, its agents, employees and contractors are obliged to comply with certain conditions and Laws in respect of Licences in relation to the Goods or Services and none of the Company, its agents, employees or contractors are in breach of this Services Agreement in complying with such conditions or Laws.
- (d) Without limiting the generality of clause 3(c), the Customer further acknowledges and agrees that:
  - (i) the Company's Reporting Obligations may require the Company, its agents, employees and contractors to disclose a breach or possible breach of any Customs Related Law to any Government Authority;
  - (ii) none of the Company, its agents, employees and contractors will have any liability to the Customer or any other party arising from compliance with its Reporting Obligations; and
  - (iii) the Customer must indemnify and keep indemnified the Company, its agents, employees and contractors from all costs and liabilities they incur arising from their Reporting Obligations , including all legal costs which include, without limitation any legal costs incurred in determining whether a Reporting Obligation has arisen.

### 4. Power of Attorney

- (a) Subject to the effect of clause 4(b) of these Terms and Conditions, by entering into this Services Agreement the Customer constitutes and appoints the Company as its lawful

attorney with full irrevocable power and authority to take any and all action and to execute any and all documents and instruments, in the name of and on behalf of the Customer, as may be required or for the purpose of performing the Services.

- (b) Notwithstanding that the Customer appoints the Company as its attorney, the power and authority vested in the attorney is effective if and when the Customer fails to comply with a request within the required time or in the event of a default of the Customer.
- (c) The Customer acknowledges that the Company will not be liable for any loss or penalty incurred by the Customer as a result of:
  - (i) any delay in exercising its powers; or
  - (ii) not exercising its powers,

The Customer indemnifies and will keep indemnified the Company against any liability, loss or cost it suffers or incurs in the reasonable exercise of its powers under this power of attorney.

## 5. Communications with the Company

- (a) All written communications between the parties must be in English and may be sent by facsimile, email or such other electronic media as the parties may agree.
- (b) Wherever it is necessary for instructions to be given to the Company, such instructions will be valid only if given in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. If the Company adopts standing or general instructions, or instructions given late, for one or more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any future transaction. No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions.
- (c) Notwithstanding any prior dealings between the Company and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, or any contracts, documents and other matter (including cash, cheques, bank drafts and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company at its office address or placed in the Company's post office box, if so addressed.

## 6. Customer's warranties

The Customer warrants that:

- (a) it is either the owner or the authorised agent of the owner or the party that is entitled to lawful possession of the Goods, and that it is authorised to accept these Terms and Conditions not only for itself but also as agent for and on behalf of the owner or the person that is entitled to lawful possession of the Goods;
- (b) the description and particulars of the Goods (including but not limited to the verified gross mass) made available to the Company by or on behalf of the Customer are complete and correct;
- (c) the Goods are properly packed and labelled (having due regard to the nature of the Goods), except to the extent that the Company has agreed to pack or label the Goods.
- (d) it will provide all information, data, cooperation, assistance, instructions, internal resources and documentation (and fully and accurately complete and sign all documents) as reasonably requested by the Company and within the time specified, so that the Company can:

- (i) meet its obligations under this Service Agreement and all agreements with Subcontractors entered into in accordance with this Service Agreement;
- (ii) obtain any authorisations, approvals, permits, consents, Licences, including but not limited to Customs Duty concessions; and
- (iii) comply with any Laws (including but not limited to the Customs Act and any other Law relating to import, duties, levies or the Services) or the requirements of any Government Authority

**(Customer Information);**

- (e) if any Customer Information provided by, or on behalf of, the Customer to the Company is or becomes inaccurate, incomplete or misleading in a material respect, it will:
  - (i) promptly report such fact to the Company in writing; and
  - (ii) reimburse the Company for any costs arising out of, or in relation to, the inaccurate, incomplete or misleading information;
- (f) it will retain all documents and records relevant to the performance of the Services, in the manner required by a Government Authority;
- (g) it will observe all requirements of any relevant Government Authority;
- (h) it will maintain as confidential the terms of the Authority and this Service Agreement; and
- (i) the Goods and their carriage will not contravene any Laws.

## 7. Dangerous goods

- (a) Unless otherwise agreed in writing, the Customer shall not deliver to the Company or cause the Company or any other person appointed by the Company (in its capacity as agent for the Customer or otherwise) to deal with or handle Dangerous Goods.
- (b) If the Customer is in breach of clause 7(a) above it shall defend, indemnify and hold harmless the Company against all penalties, liability, claims, damages, costs and expenses arising out of or in connection with the breach, and the Goods may without notice be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time.
- (c) If the Company agrees to accept Dangerous Goods and then in the reasonable opinion of the Company or any other person they constitute a risk to other goods, property, life or health they may without notice be destroyed or otherwise dealt with, at the expense of the Customer.

## 8. Goods that are susceptible to temperature abuse, perishable or incapable of being delivered

- (a) The Customer shall not:
  - (i) request the Company to provide any services in relation to any Goods which require temperature control without also providing in a timely manner the temperature settings to be maintained;
  - (ii) in the case of a temperature controlled Container stuffed by or on behalf of the Customer, deliver the Container, or cause it to be delivered, to the Company or any person appointed by the Company, unless the Container has been properly pre-cooled or preheated as appropriate, the Goods have been properly stuffed in the Container and the thermostatic controls of the Container have been properly set by the Customer.

If the Customer fails to comply with any of the requirements in this clause 8(a), the Company shall not be liable for any loss of or damage to the Goods caused by such non-compliance and the Customer must defend, indemnify and hold harmless the Company

against all penalties, liability, claims, damages, costs and expenses whatsoever arising out of or in connection with the non-compliance.

- (b) Where the Goods are perishable and are not collected by the Customer or a person that is authorised by the Customer to take collection, within 72 hours of the Customer receiving notice that the Goods are ready for collection, they may be disposed of, sold or returned to the Customer, at the Company's option.
- (c) Where the Goods cannot be delivered:
  - (i) because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable;
  - (ii) because they are not collected or accepted by the Customer or a person that is authorised by the Customer to take collection; or
  - (iii) due to the non-production of a bill of lading, receipt or other document relating to carriage or storage or a failure to make any required payment,or are not otherwise collected from the agreed place of delivery by the Customer, or a person that is authorised by the Customer to take collection, within 14 days of the Customer receiving notice that the Goods are ready for collection, they may be disposed of, sold or returned to the Customer, at the Company's option. A notice from the Company or its agent to the Customer to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
- (d) In the event that the Goods are disposed of or returned to the Customer in accordance with clause 8(b) or (c), the Customer must reimburse the Company for all costs, expenses and charges reasonably incurred in taking such steps.
- (e) In the event that the Goods are sold in accordance with clause 8(b) or (c), payment to the Customer of the net proceeds of any sale after the deduction of all costs, expenses and charges reasonably incurred by the Company in effecting such sale shall be equivalent to delivery. If any sale does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Customer acknowledges that it is not released from the remainder of its liability to the Company merely by the sale of the Goods.

## 9. Insurance

No insurance shall be effected by the Company for the benefit of the Customer or any other person except upon express instructions given in writing by the Customer and acknowledged and agreed by the Company in writing. Any insurance arranged by the Company is subject to the usual exceptions and conditions of the policies of the underwriter. Unless otherwise agreed in writing, the Company shall not be under any obligation to effect a separate insurance on each consignment of Goods but may declare it on any open or general policy. The Company is an agent in respect of the effecting of insurance and should the underwriter dispute their liability for any reason the insured shall have recourse against the underwriter only and the Company shall not be under any responsibility or liability whatsoever in relation thereto.

## 10. Containers

- (a) If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the Goods if caused by:
  - (i) the manner in which the Goods have been packed or stuffed into the Container;
  - (ii) the unsuitability of the type of Container used for carriage or storage of the Goods, unless the Company has approved the suitability;
  - (iii) the defective condition of the Container provided that where the Container has been supplied by or on behalf of the Company this sub-clause (iii) shall only apply if the unsuitability or defective condition would have been apparent upon reasonable inspection by the Customer or owner or person acting on behalf of either of them;



- (iv) if the Container is not sealed at the commencement of the Carriage, except where the Company has agreed to seal the Container.
- (b) The Customer shall defend, indemnify and hold harmless the Company against all penalties, liability, loss, damage, costs and expenses arising out of or in connection with any of the matters referred to in clause 10(a).
- (c) Where the Company is instructed to provide a Container, in the absence of a written request to the contrary, the Company is not under an obligation to provide a Container of any particular type or quality.

## 11. Declarations by the Company regarding the Goods

- (a) Unless agreed by the Company in writing, the Company will not be obliged to make any declaration for the purposes of any statute, convention or contract with a Subcontractor, as to the nature or value of any Goods or as to any special interest in delivery.
- (b) Where the Company is required (by a Government Authority or otherwise) to make a declaration as to the weight of the Goods, the Company will only make such a declaration where the Customer has provided the weight declaration. The Company reserves its right to refuse to make any declaration for or on behalf of the Customer, for whatever reason, and the Company will not be liable for any loss or damage suffered as a result of the Company not making such a declaration.

## 12. Company's inability to deliver and delay

- (a) Unless otherwise agreed in writing that Goods will be collected from, or delivered to, a specified location by a particular date, the Company will not, under any circumstances, be liable for any delay concerning the Goods.
- (b) If any Goods are unable to be shipped by the mode of transport the Company intended to facilitate or use due to a weight declaration being incorrect or disputed by a carrier or any other person involved in the carriage, handling or storage of the Goods, the Customer shall be liable for and must indemnify the Company for all penalties, liability, claims, damages, costs and expenses arising out of or in connection with:
  - (i) storage of the Goods;
  - (ii) collection of the Goods and returning the Goods to the Customer;
  - (iii) fees, charges and fines imposed by a Government Authority; and
  - (iv) any other steps reasonably required to be taken by the Company in dealing with, and attempting to resolve, the dispute.

## 13. Liberties and rights of Company

- (a) The Company shall be entitled, except insofar as has been otherwise agreed in writing, to enter into contracts on behalf of itself or the Customer and without notice to the Customer for:
  - (i) the carriage of Goods by any mode of transport, route, means and/or carrier;
  - (ii) the carriage of Goods of any description whether containerised or not on or under the deck of any vessel;
  - (iii) the storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time.
  - (iv) the carriage or storage of Goods in Containers or with other goods of whatever nature.
  - (v) the performance of its own obligations and to do such acts as in the opinion of the Company may be necessary or incidental to the performance of the Company's obligations.

- (b) The Company shall be entitled, but is under no obligation to, depart from the Customer's instructions in any respect if in the opinion of the Company there is good reason to do so in the Customer's interest and it shall not thereby incur any additional liability.
- (c) The Company may at any time comply with the orders or recommendations given by any Government Authority. The responsibility of the Company in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- (d) The Company may without liability open any Container or packaging within a Container in which Goods are, or are believed to be, placed or carried, to inspect the Goods either to determine their nature or condition or to determine their ownership or destination (whether or not requested to take such action by a Government Authority).
- (e) If the Goods are delivered into the custody or control of the Company, or any servant, agent or Subcontractor of the Company, in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect thereof, no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.
- (f) If at any time the performance of the Company's obligations under this Service Agreement, in the reasonable opinion of the Company, is or is likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever and which cannot be avoided by reasonable endeavours by the Company, the Company may, on giving notice in writing to the Customer, or without notice where it is not reasonably possible to give such notice, treat the performance of its obligations as terminated and allow the Customer, owner or a person authorised by the Customer to take possession of the Goods at any place which the Company may deem safe and convenient, whereupon the responsibility of the Company in respect of the Goods shall cease.
- (g) If Goods or any part thereof are not collected by the Customer or a person that is authorised by the Customer to take collection within 72 hours of the Customer receiving notice that the Goods are ready for collection, the Company shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer and the Customer must reimburse the Company for all costs, expenses and charges reasonably incurred in arranging any additional carriage, handling or storage. This clause is not intended to limit any of the other rights available to the Company by reason of these Terms and Conditions including (but not limited to) those in clause 8.

## 14. Subcontractors

- (a) The Customer warrants that no servant or subcontractor of the Company shall in any circumstances whatsoever be under any liability to the Customer or the owner for any claims, damages, costs or expenses of any kind arising directly or indirectly from an act or omission of the servant or subcontractor while acting in connection with the Goods or any of the services provided to the Customer or the owner.
- (b) In the event that a claim of the type referred to in clause 14(a) is initiated, the Customer shall defend, indemnify and hold harmless the Company against all liability, damages, costs and expenses arising out of the claim.
- (c) Without prejudice to clauses 14(a) and 14(b):
  - (i) every exemption, limitation, condition and liberty contained in these Terms and Conditions, and every defence and immunity which the Company is entitled to rely upon by reason of these Terms and Conditions, shall also be available and shall extend to every such servant or subcontractor who shall be entitled to enforce the same against the Customer;
  - (ii) in entering into the contract, the Company does so not only on its own behalf but also as agent and trustee for such servants and sub-contractors.

## 15. Payment, Recovery of Fees and GST

- (a) Unless otherwise agreed in writing and subject to this clause 15, all Fees for services provided to the Customer in connection with the Goods will be calculated in accordance with the rates:
  - (i) agreed between the Customer and the Company; and
  - (ii) may be amended at any time and for any reason following agreement, subject to the Company providing the Customer with at least 90 days' notice of the amendments.
- (b) The Company will be at liberty to issue an invoice, or invoices, for the Fees ("Invoice") immediately after the commencement of the Services.
- (c) An Invoice must be paid no more than 30 days after it is provided to the Customer without discount, deduction, counterclaim or setoff, and regardless of any dispute between the Company and the Customer.
- (d) In the event that an Invoice is not paid in full within 30 days, the Company will be entitled to charge interest at the rate of 7 per cent per annum in relation to any unpaid amount (without prejudice to any other rights of the Company). The Customer agrees that the rate of 5 per cent per annum is a genuine and reasonable pre-estimate of the Company's loss arising from the Customer's failure to pay an Invoice within 30 days.
- (e) Every special instruction from the Customer to the effect that an Invoice will be paid by a person other than the Customer will be deemed to include a stipulation that if the person does not pay the Invoice in accordance with clause 21(c), the Invoice will be payable by the Customer on demand and the Company will not be under any obligation to provide evidence of demand and non-payment by such other person when due.
- (f) The Customer shall pay to the Company any debt collection or legal costs involved in collecting overdue amounts.
- (g) The Customer acknowledges and agrees that the Company may receive allowances, brokerages and commissions from shipping and forwarding agents, insurance brokers, airlines, and any other persons with whom the Company deals pursuant to this Agreement and that the Company shall retain all such allowances, brokerage and commission for its own account and shall not be obliged to disclose receipt of same or account to the Customer for all or any part of them.
- (h) The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request the same) and charge additional fees accordingly.
- (i) Quotations as to Fees are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by the Company. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted.
- (j) If any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the Goods or associated with the Services, quotations and Fees are subject to revision accordingly with notice or, if it is not reasonably practicable, without notice to the Customer. Without limiting the generality of this clause 15(j), if a change in law, regulation, statutory instrument or of any requirement of a Government Authority causes an increase in the costs associated with performance of the Service by the Company, including without limitation, through the introduction of fees, levies, charges, duties or tax, the Company is entitled to recover such additional costs incurred by it and the Fees are subject to revision accordingly with notice or, if it is not reasonably practicable, without notice to the Customer.
- (k) The Company shall under no circumstances be precluded from raising a debit in respect of any Fees or lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.

- (l) This clause 15(l) applies if the Company is or may become liable to pay GST in relation to any Supply under these Terms and Conditions.
- (i) Unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law.
  - (ii) The Customer shall be responsible for payment of any GST liability in respect of the Services as provided by the Company or by third parties or Subcontractors which shall be payable at the same time as the GST-exclusive consideration.
  - (iii) The Customer must also pay GST on the Taxable Supply to the Company, calculated by multiplying the GST exclusive consideration by the GST Rate.
  - (iv) GST shall be payable by the Customer without any deduction or set-off for any other amount at the same time as the GST exclusive consideration is payable.
  - (v) The Company agrees to provide the Customer with a Tax Invoice to enable the Customer to claim an Input Tax Credit.
  - (vi) If the Customer defaults in the payment on the due date of any amount payable then without prejudice to any other remedies of the Company and upon demand by the Company, the Customer shall pay to the Company an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company due to the default of the Customer.

In this clause 15(k), *GST*, *GST Rate*, *Input Tax Credit* and *Taxable Supply* have the same meaning as under the *A New Tax System (Goods and Services Tax) Act 1999* ("GST Law").

- (m) All amounts due to the Company in Australia are payable in Australian dollars. The Company is entitled to charge a currency conversion premium when converting receivables into Australian currency.
- (n) The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Company.

## 16. Lien

- (a) The Company shall have a particular and general lien on all Goods and any and all other property of the Customer coming into the Company's actual or constructive possession or control, for any amount due to:
  - (i) the Company arising out of or in connection with any Services provided in relation to the Goods and/or for any other services provided to the Customer; or
  - (ii) a Related Body Corporate of the Company, for any services provided in relation to the Goods and/or for any other services provided to the Customer.
- (b) Prior to exercising the lien, the Company shall provide written notice to the Customer of its intent to exercise its lien, the property over which the lien will be exercised and the exact amount due and owing.
- (c) Unless, within 14 days of receiving the written notice referred to in clause 16(b), the Customer pays the entire amount due and owing, the Company will have the right to sell the Goods at public or private sale or auction and apply the proceeds to the amount due and owing and also toward the costs and expenses of exercising the power of sale (including legal fees).

## 17. Personal Property Securities

- (a) The Customer acknowledges that the Company shall have a Security Interest which attaches over any Assets which are the subject of the Services and in the Company's

possession. The Customer acknowledges and consents to the registration and perfection of the interest set out in this clause 17(a) for the purposes of the PPSA.

- (b) The Customer warrants that it has rights in the Assets and the power to transfer rights in the Assets to the Company.
- (c) The Customer warrants that it has not, and that it will not grant any other Authority in respect of the Services which the Company has been granted Authority.
- (d) The Customer must not grant any other person a Security Interest in respect of the Assets.
- (e) The Customer must not allow an Excluded Interest to exist over the Goods.
- (f) To the maximum extent permitted by law, if the PPSA applies, the Customer irrevocably waives any rights the Customer may have to:
  - (i) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
  - (ii) redeem the Assets under section 142 of the PPSA;
  - (iii) reinstate these Terms and Conditions under section 153 of the PPSA; and
  - (iv) receive a verification statement (as defined in the PPSA).
- (g) The Customer must do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Company reasonably requests and considers necessary for the purposes of:
  - (i) ensuring that a Security Interest is created under these Terms and Conditions is enforceable, perfected and otherwise effective; or
  - (ii) enabling the Company to apply for any registration, or give any notification, in connection with a Security Interest created under these Terms and Conditions so that the Security Interest has the priority required by the Company,

including anything the Company reasonably asks the Customer to do in connection with the PPSA.

## 18. General indemnities

- (a) The Customer shall be liable for and shall defend, indemnify and hold harmless the Company against all penalties, liability, claims, loss, damage, costs, expenses, fines, legal or other professional fees and all or any debt incurred by the Company arising out of or in connection with:
  - (i) the Company acting in accordance with the Customer's instructions;
  - (ii) any negligent or unlawful act or omission of the Customer; or
  - (iii) a material breach of this Agreement by the Customer.
- (b) Except to the extent caused by an unlawful act or omission of the Company, the Customer shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all costs, expenses, fines, duties, taxes, imposts, levies, deposits and outlays of whatsoever nature imposed by any Government Authority arising out of or in connection with the Goods or the Services
- (c) Except to the extent caused by an unlawful act or omission of the Company, the Customer shall be liable for and shall defend, indemnify and hold harmless the Company against any loss, damage, contamination, detention or demurrage of Containers used to effect the carriage, handling or storage of Goods.
- (d) All advice and information provided by the Company is exclusively for the benefit of the Customer and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of or in connection with any other person (including the owner) relying on such advice or information.

- (e) The Customer agrees to pay any amount claimed by the Customer in accordance with this clause 18 within 21 days of demand by the Company.

## 19. Exclusion of liability

- (a) Except insofar as otherwise provided by these Conditions, the Company shall not be liable for any loss or damage whatsoever arising out of, or in connection with:
  - (i) any negligent act or omission of the Customer or owner, or any person acting on their behalf;
  - (ii) compliance with the Instructions given to the Company by the Customer or any other person authorised by the Customer to provide Instructions on their behalf;
  - (iii) any liability to pay a penalty or any other amount to a Government Authority not caused by a negligent act or omission of the Company;
  - (iv) any act of a Government Authority that is not responsive to an unlawful or negligent act or omission of the Company;
  - (v) the making of any statement, forecast or assessment, or provision of any advice, in relation to the liability (including future liability) of the Customer to pay a penalty or any other amount to a Government Authority;
  - (vi) insufficiency of the packing or labelling of the Goods except where such service has been provided by the Company;
  - (vii) handling, loading, stowage or unloading of the Goods by the Customer or any person acting on their behalf;
  - (viii) inherent vice of the Goods;
  - (ix) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
  - (x) fire, flood or storm; or
  - (xi) any cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence,
- (b) and the Company shall not be liable in any event for any Consequential Loss, whether or not it was reasonably foreseeable to the Company that such damages might be incurred.

## 20. Limitation of Liability

- (a) To the maximum extent permitted by law, all warranties and guarantees expressed or implied (whether by custom or law) in respect of the performance of the Services provided by the Company or any Subcontractor pursuant to this Service Agreement, are excluded.
- (b) In all cases where liability has not been excluded or limited by this Service Agreement or by any mandatory applicable law, the liability of the Company is limited to the lesser of:
  - (i) in the case of Goods - the lesser of: replacement of the Goods; the supply of equivalent Goods; the repair of the Goods; the payment of the cost of replacing the Goods or of acquiring equivalent Goods; the payment of the cost of having the Goods repaired; or \$100;
  - (ii) in the case of Services - the lesser of: supplying the Services again; the payment of the cost of having the Services supplied again; or AU\$100.

## 21. Notice of loss, time bar

- (a) The Company shall be discharged of all liability unless:

- (i) notice of any claim is received in writing by the Company within 21 days after the date specified in clause 21(b) below or within a reasonable time after such date if the Customer proves that it was impossible to so notify within 21 days; and
  - (ii) suit is brought in a proper forum and written notice thereof received by the Company within 10 months after the date specified in (b) below.
- (b) For the purposes of clause 21(a), the relevant date is:
- (i) in the case of loss or damage to Goods, the date of delivery of the Goods;
  - (ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
  - (iii) in any other case, the event giving rise to the claim.

## 22. Defences and limitation of liability

The defences and limits of liability provided for by these Terms and Conditions shall apply in any action against the Company whether such action be founded in contract, bailment or in tort.

## 23. Legislation

- (a) Where any legislation applies to the Services provided by the Company then:
- (i) these Terms and Conditions shall be read subject to any provision which is mandatory; and
  - (ii) the Company shall be entitled to any rights, immunities from or limitations of liability under such legislation.
- (b) Without limiting the generality of clause 23(a) or its application to legislation in jurisdictions other than an Australian State or Territory, if the *Australian Consumer Law*, as contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), is applicable, the Customer warrants that it is carrying on a business, trade, occupation or profession in relation to the Goods, unless it expressly notifies the Company otherwise.
- (i)

## 24. Guarantee, Undertaking and Indemnity by Directors and Shareholders

- (a) If the Customer is a company, the directors will guarantee the Debts, undertake to perform the obligations of the Customer and indemnify and keep indemnified the Company against the Debts.
- (b) For the purposes of clause 24(a), the Customer will ensure that its directors will sign any other documents required by the Company to evidence and confirm any guarantee, undertaking and indemnity in the form annexed to these Terms and Conditions.

## 25. Intellectual Property

The Customer acknowledges that the Company shall retain all copyright and other intellectual property in any documents or things created by the Company in the course of providing the Services.