

**CUSTOMER TERMS AND CONDITIONS
SILK CONTRACT LOGISTICS PTY LTD
ACN 006 444 355**

Important Notification

By completing an Account Application, or otherwise using Our Services, You agree to be bound by these Terms.
If You do not agree to these Terms, then You must not use Our Services.

1. Definitions and Interpretation

1.1 In these Terms, the following definitions apply:

- (a) **Account Application** means the form completed by the Customer in respect of the Customer's trading account with Us;
- (b) **Business Day** means a day that is not a Saturday, Sunday or public holiday in the State or Territory that the Services are provided;
- (c) **Business Hours** means between 9.00 am and 5.00 pm on a Business Day;
- (d) **Chain of Responsibility** has the meaning described in the Heavy Vehicle National Law and recognises the duties of each participant in a supply chain to ensure the safety of any road transport and ancillary services.
- (e) **Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, loss, cost, expense or liability however arising whether present or future;
- (f) **Consequential Loss** means any loss or damage suffered by a party or any other person which is indirect or consequential including any loss of income, economic loss, loss of profits, loss of revenue, loss of production, loss of reputation, loss or impairment of goodwill, loss due to delay, loss of business, loss of customers, loss of an opportunity or chance, loss of value, loss of use, loss of anticipated savings, increased costs of work or materials, or the cost of defending and settling any claim, demand or proceeding brought by any third party;
- (g) **Consignment Note** means a consignment note issued by Us and accepted by the Customer with respect to the Services;
- (h) **Container** means any container, trailer, transportable tank, lift van, flat, pallet or any similar article of transport used to consolidate Goods;
- (i) **Controller** means an administrator, receiver, receiver and manager, trustee, provisional liquidator, liquidator, or any other person holding or appointed to a similar office or acting or purporting to act in a similar manner whether under any statute, the order or authority of any court or other government agency, an encumbrance or otherwise;
- (j) **Customer, You, or Your** means the customer

identified in the Account Application, Purchase Order, Quote, Consignment Note or other document issued by Us from time to time with respect to the Services;

- (k) **Dangerous Goods** means goods, substances, mixtures or articles that present an immediate or potential hazard to people, property or the environment, including those:
 - (1) classified as such by either the IATA Dangerous Goods Regulations or the Australian Dangerous Goods Code, being goods which are, or contain substances or materials capable of being explosive, flammable or toxic gasses, flammable solids or flammable liquids, oxidising or water- reactive, organic peroxides, corrosive, combustible, toxic or infectious substances, noxious, or of a miscellaneous dangerous nature; or
 - (2) capable by their nature of causing damage or injury to other goods, to any persons or animals, to the environment, to property or any packaging in which those goods are carried or stored and are subject to controls or restrictions in accordance with any Law applicable to the Goods or the Services;
- (l) **Fees** means:
 - (1) the fees and charges for Services calculated under the Rates Schedule or any other fees and charges agreed in writing between Us and the Customer from time to time;
 - (2) any taxes, duties and government charges levied on or in respect of the Services; and
 - (3) any costs incurred by Us in complying with the requirements of any market, harbour, dock, railway, airline, shipping, excise, customs or warehouse authority or any Government Authorities (including any container detention fee, demurrage, fine or penalty) in respect of the Services and the costs of loading, unloading, maintaining or protecting the Goods;
- (m) **Force Majeure Event** means an event or cause which is beyond the reasonable control of the party claiming force majeure and not able to be overcome by the exercise of reasonable care, and includes but is not limited to any:
 - (1) act of war (whether declared or not) or

- terrorism, the mobilisation of armed forces, civil commotion or riot;
- (2) natural disaster including any earthquake, cyclone, flood, landslide, storm, explosion, fires, pandemic, epidemic or act of God;
- (3) any border closure or road closure or complete unavailability of diesel fuel or adblue or any accident, collision or breakdown of a vehicle;
- (4) strikes, labour dispute or other industrial dispute or disturbance;
- (5) any quarantine or customs restriction, derailment, power, port or rail outage;
- (6) any unlawful act against public order or authority;
- (7) any act of a third party, not reasonably anticipated, which is outside of a party's direct control or influence that has an adverse impact on that party's ability to perform its obligations under these Terms; or
- (8) a Government Authority restraint.
- (n) **Goods** means the goods picked up or received from the Customer or on the Customer's behalf by Us or as otherwise dealt with as part of the Services;
- (o) **Government Authority (or Authorities)** means all government departments and agencies including those with responsibility for the import and export of goods, the collection of revenue on the import and export of goods and the transport of goods, including those port, airport, municipality, State, Territory and Commonwealth government authorities in Australia responsible for road safety and the laws governing the transportation of goods by road;
- (p) **Insolvency Event** means in respect of a party:
- (1) an application is made to a court for an order, or an order is made appointing a liquidator, provisional liquidator (or proceedings are commenced or a resolution passed or proposed in a notice of meeting for any of those things);
- (2) proceedings are initiated with a view to obtaining an order for the winding up or similar process, or an order is made or any effective resolution is passed for the winding up of a party;
- (3) except to reconstruct or amalgamate while solvent on terms approved by the non-defaulting party, a party enters into, or resolves to enter into, a scheme of arrangement, deed of company arrangement or composition with, or assignment for the benefit of, all or any class of its creditors, or it proposes a reorganisation, moratorium or other administration involving any class of its creditors;
- (4) a Controller is appointed to or over or takes possession of all or a substantial part of the assets or undertakings of a party;
- (5) a party is or is deemed or presumed by law or a court to be insolvent; or
- (6) anything analogous or having a substantially similar effect to any of the events specified above happens under the law of any applicable jurisdiction;
- (q) **Interest Rate** means, at any time, an annual rate of interest equal to the Reserve Bank of Australia Cash Rate Target (as most recently published by the Reserve Bank of Australia from time to time) plus six per cent (6.00%) per annum, calculated daily, compounding monthly, from the due date until payment in full
- (r) **Law** means common law, equity, and policies of the Commonwealth of Australia or any State, Territory government or local authority and includes any statutory modification, substitution or re-enactment of any of them;
- (s) **Load Restraint Guide** means the "Load Restraint Guide: Guidelines and Performance Standards for the Safe Carriage of Loads on Road Vehicles" Third Edition 2018 and includes any subsequent editions.
- (t) **Loss** means any damage, loss, liability, outgoing, debt, demand, claim, cost and expense (including reasonable legal expenses) but does not include Consequential Loss;
- (u) **Modern Slavery** has the meaning given to it in the *Modern Slavery Act 2018 (Cth)*.
- (v) **Modern Slavery Laws** means any law, statute or regulation which prohibits exploitation of a worker, human trafficking, slavery, servitude, forced labour, debt bondage or deceptive recruiting for labour or services, or similar types of conduct, and applicable or otherwise in force in the jurisdiction in which We or the Customer is registered or conducts business or in which activities relevant to these Terms are to be performed.
- (w) **Purchase Order** means an order placed, and each order placed, by the Customer with Us for particular services to be provided by Us in relation to Goods or any other Service;
- (x) **Rates Schedule** means Our rates schedule agreed with the Customer, or any other rates schedule issued by Us from time to time and applicable to the Customer;
- (y) **Services** means any storage, transportation, picking or packing, logistics, fumigation or other services which We provide to the Customer with

respect to the Goods or otherwise and in accordance with these Terms;

- (z) **SOLAS** means the International Convention for the Safety of Life at Sea published by the International Maritime Organisation.
- (aa) **Subcontractor** means any person or organisation We arrange to provide Services in respect of the Goods and any person who is an employee, agent or subcontractor of that person; and
- (bb) **Terms** means the agreement created by the acceptance of this document (including these terms and conditions, the Rate Schedule and any associated Account Application, Quote, Purchase Order or Consignment Note) whether by conduct or in writing by the Customer.
- (cc) **We, Our, Us or the Company** means Silk Contract Logistics Pty Ltd ACN 006 444 355 and its related bodies corporate within the meaning of that expression in section 9 of the Corporations Act 2001 (Cth) and their officers, employees, agents and Subcontractors;
- (dd) **VGM** means verified gross mass as set out in Chapter VI, Part A, Regulation 2 of SOLAS and given effect by Marine Order 42 (cargo, stowage and securing) 2014.

1.2 In these Terms, unless the context requires otherwise:

- (a) headings are only for convenience and do not affect interpretation of these Terms;
- (b) words in the singular include the plural and vice versa;
- (c) words of one gender include any gender;
- (d) an expression indicating an individual includes a company, partnership, joint venture, association, corporation or other body corporate;
- (e) a reference to a party in these Terms includes that party's executors, administrators, successors and permitted assigns;
- (f) a reference to a clause, party, schedule, annexure or exhibit is a reference to a clause of, and a party, schedule, annexure, and exhibit to, these Terms and a reference to these Terms includes any schedule, annexure or exhibit;
- (g) a reference to a right includes a remedy, power, authority, discretion or benefit;
- (h) a reference to legislation includes any amendment to that legislation, any consolidation or replacement of it, and any subordinate legislation made under it;
- (i) a reference to a document (including these Terms) includes all amendments or supplements to, or replacements or novation of, that document;
- (j) a promise on the part of 2 or more persons binds

them jointly and severally;

- (k) a reference to a body (statutory or not), which ceases to exist or whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions;
- (l) no rule of construction applies to the disadvantage of a party merely because that party was responsible for the preparation of these Terms or any part of it;
- (m) if a word or phrase is defined, another grammatical form of that word or phrase has a corresponding meaning;
- (n) an amount of money is a reference to the lawful currency of Australia; and
- (o) a reference to "includes", "including" or "such as" are not to be interpreted as words of limitation, and when such words introduce an example, they do not limit the meaning of the words to which the example relates, or to examples of a similar kind.

2. Not a common carrier

- 2.1 We are not a common carrier, and We do not accept any liability as a common carrier and We exclude all liability for any Loss or Claim (whether direct, indirect or consequential and whether accrued or paid) to third party cargo.

3. Services

- 3.1 We agree to provide Services in accordance with these Terms.
- 3.2 We do not offer or provide insurance cover for the Customer's Goods whilst such Goods are in Our possession or control. The Customer is solely liable for holding and maintaining appropriate and adequate insurance cover with respect to the Goods.
- 3.3 The Customer acknowledges and agrees that We:
 - (a) rely on the details supplied to Us by the Customer or the Customer's agent in the provision of the Services and accordingly We do not warrant the accuracy or completeness of such details and Our signature is only an acknowledgement for the number of items collected or received by Us;
 - (b) may (acting reasonably) deviate from any usual route or method of transport to provide the Services;
 - (c) may subcontract the whole or any part of the Services;
 - (d) may (acting reasonably) dispose, destroy or otherwise appropriately deal with the Goods if We consider the Goods are misdescribed, or if the Customer has failed to provide Us with an appropriate declaration about the Goods, or if the Goods are or have become Dangerous Goods;

- (e) may lease, hire or enter into any agreement for, or use, any aircraft, ship, Container or rail wagon to provide the Services;
- (f) may, on behalf of the Customer or otherwise, complete and execute any documents required to comply with any Law; and
- (g) is not responsible for the return or de-hire of pallets or containers, nor is it required to exchange any pallets or containers. The Customer must not transfer any pallet or container to Our pallet or container account unless We otherwise agree in writing. The Customer is solely responsible for the return or de-hire of pallets or containers and We accept no liability for the non-return or failure to de-hire of pallets or containers.

3.4 If any Goods the subject of the Services require temperature controls:

- (a) the Customer must notify Us in writing prior to release of those Goods to Us of additional arrangements (including temperature range requirements) that may need to be made by Us to ensure the Goods the subject of the Services are maintained at the temperatures within accepted tolerance levels;
- (b) We will use reasonable endeavours to provide the Services at temperatures within accepted tolerance levels, but the Customer acknowledges temperature variations can occur; and
- (c) any temperature record maintained by Us (including a recording of a faulty reading) will be conclusive evidence of the temperatures during the Services.

4. Delivery

4.1 We are deemed to have delivered the Goods if, at the delivery address, We obtain an acknowledgement of delivery, or if delivery occurs under clause 4.2.

4.2 If the delivery address that the Customer or the Customer's agent gives Us is unattended during Business Hours or the prearranged delivery time or period or if the recipient of the Goods does not take delivery of the Goods, then We may, at Our option and at the Customer's sole risk and expense:

- (a) leave the Goods at the delivery address;
- (b) store the Goods; or
- (c) return the Goods to the sender,

each of which constitutes delivery and the completion of Our obligations under these Terms.

4.3 If We store the Goods, whether under clause 4.2 or otherwise, We:

- (a) may require the Customer to remove the Goods, at the Customer's expense, if the Customer fails to pay the Fees when due;

(b) do not have to make the Goods available until all Fees have been paid and the Customer signs, or a person authorised in writing by the Customer signs, a receipt for the Goods; and

(c) may return the Goods to the Customer at the Customer's last known address if the Customer fails to remove the Goods when We reasonably require after We give the Customer notice to remove the Goods.

5. Fees

5.1 You agree to pay Us the Fees in consideration of the Services provided under these Terms.

5.2 Subject to clause 5.3, We may amend the Fees (or any other rates or fees agreed between Us and the Customer) on the provision to the Customer of 30 days' written notice (**Rates Notice**).

5.3 You may terminate the Services upon the provision of 30 days' written notice from the date of the Rates Notice in the event that it does not agree with the Rates Notice. Amended rates or fees will only apply to services provided from the date the amended rates apply (after expiration of the notice period).

6. Payment

6.1 All invoices payable by You shall be paid in accordance with the Account Application, unless otherwise agreed in writing by Us.

6.2 We reserve the right to charge interest on any overdue amount at the Interest Rate specified from time to time.

6.3 The Customer agrees to indemnify Us against all costs We may incur in collecting any overdue amounts including, but not limited to, debt collection agency fees, legal fees and court costs.

6.4 The Customer must not set-off or deduct from any Fees payable by the Customer under these Terms, any amounts which it believes are payable by Us to the Customer (whether under these Terms or otherwise).

6.5 We reserve the right to suspend or cease providing the Services on the provision of 7 days written notice if the Customer fails to pay for the Services in accordance with this clause 6 or under these Terms.

6.6 We may amend, alter or terminate the Customer's trading account, terms of credit or alter its payment terms on the provision to the Customer of 60 days' written notice (**Payment Terms Notice**). The Customer may terminate the Services upon the provision of 30 days' written notice from the date of the Payment Terms Notice in the event that it does not agree with the Payment Terms Notice.

7. Lien

7.1 We shall have a general and special lien over the Goods in its possession (belonging to, or held on trust by, the Customer) and shall have a right, exercisable only after 14 days prior written notice to the Customer, to sell such Goods, by public or private sale, in the

event that the Customer fails to pay an amount owed to Us for the Services provided under these Terms or costs, fees, debts or other amounts incurred by Us in carrying out the Services. In addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of sale and reasonable legal fees.

7.2 We shall pay to the Customer any surplus proceeds that are released by it from a sale of any such items after discharging in full all monies outstanding to Us.

8. Security Interests

8.1 Terms that are defined in the Personal Property Securities Act 2009 (Cth) (**PPSA**) have the same meaning in this clause.

8.2 The Customer agrees and acknowledges that, for the purposes of the PPSA, We have a security interest in the Goods and in any right to or derived from the Goods.

8.3 We may register its security interests under clause 8.

8.4 The Customer waives the right to receive a verification statement under the PPSA.

8.5 The Customer agrees that, if Chapter 4 of the PPSA applies to the enforcement of Our security interests, the following provisions of the PPSA will not apply to that enforcement: section 95 to the extent it requires Us to give notice to the Customer; section 96; section 130 to the extent it requires Us to give notice to the Customer; subsection 132(3)(d); subsection 132(4); section 135; section 142 and section 143.

8.6 Subject to subsection 275(7) of the PPSA, neither party may disclose information of the kind referred to in subsection 275(1) of the PPSA.

8.7 The Customer acknowledges and agrees that:

- (a) it will do all things necessary to facilitate registration of Our Security Interest in the Goods; and
- (b) the Security Interest is not discharged, nor the Customer's obligations affected by the Customer becoming subject to an Insolvency Event.

9. Customer warranties and obligations

9.1 **Warranties.** The Customer represents and warrants to Us that:

- (a) the Customer is either the owner or the authorised agent of the owner of the Goods and has authority to enter into these Terms;
- (b) the Customer has rights in the Goods and the power to transfer rights in the Goods to Us;
- (c) the Customer or the Customer's agent have fully and accurately described the Goods and their value;
- (d) the Goods can be safely handled, stored and

transported and are packed to withstand any risks incidental to the handling, transportation and storage of the Goods in connection with the provision of the Services;

- (e) it has not granted any other person a Security Interest in respect of the Goods;
- (f) the Customer will provide all documents, information and assistance reasonably required by Us to comply with the requirements of any Law and the requirements of any Government Authorities in an accurate and timely fashion as required by the relevant Law and Government Authority;
- (g) the Customer will retain all documents or records in the manner required by Law and Government Authorities;
- (h) it will observe all requirements of any applicable Law and Government Authority;
- (i) the Goods and their packaging, transportation and storage does not contravene any Law and the Customer has complied with all Laws and requirements of Government Authorities relating to the nature, condition, packaging, handling, storage and transportation of the Goods;
- (j) subject to clause 9.2(c) and 9.2(d), the Goods are not Dangerous Goods;
- (k) the Customer will notify Us of any issues or requirements under Law in relation to the Goods or the Services of which We should be aware, or which may be relevant to Our compliance with any Law;
- (l) The Customer warrants that the Goods comply with the requirements of any applicable law (including the *Australian Code for the Transport of Dangerous Goods by Road and Rail* and the *Aviation Transport Security Act 2004*, Regulations and Air Navigation Orders in force from time to time) relating to the consigning and packaging of the Goods and the expenses and charges of the Company in complying with the provisions of any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the Customer.
- (m) The Customer warrants that it will ensure, so far as is reasonably practicable, the safety of any road transport performed for or on behalf of the Customer and that it will meet its obligations under the Heavy Vehicle National Law Chain of Responsibility provisions where the Customer is acting as a Consignor or Consignee or Loader or Packer of Goods.
- (n) The Customer warrants that any Goods that are delivered to the Company or that are to be directly received by the Company are secured for road transport in accordance with the Load Restraint Guide.

- (o) The Customer warrants that any gross verified container weight declaration provided to Us is timely, compliant and accurate and has been calculated in accordance with an approved method and the Customer will indemnify Us against all loss, damages and expenses arising from a failure to supply a timely, compliant and accurate VGM in accordance with the requirements of Navigation Act 2012, including but not limited to the requirements of Marine Order 32 and Marine Order 42.

9.2 Additional obligations of the Customer. In addition to any other obligations of the Customer under these Terms, the Customer must, or must cause its agent to:

- (a) provide Us with all necessary documentation for the Services and fully, accurately and legibly complete the label on the Goods (if there is one) or any of the Company's, or the Customer's, documentation;
- (b) comply with Our policies (as amended and advised from time to time) and as reasonably required by Us;
- (c) notify Us in writing prior to release of any Dangerous Goods to Us (including full description of the Dangerous Goods and disclosing their nature) and obtain written consent from Us to the release of said Dangerous Goods;
- (d) the Customer warrants that it has complied with all applicable laws relating to Dangerous Goods by fully describing in writing whether on the consignment note or separately the name and nature and the value of all goods of a noxious dangerous or inflammable nature or capable of causing damage or injury to any other goods, to any person or animal, or to any store, vessel, vehicle, wagon, aircraft, or conveyance of any kind whatsoever with which they may be loaded, carried, packed or stored which are liquid or partly liquid and additional freight charges shall be paid on such Goods if deemed necessary by the Company; and
- (e) if the Customer is not the recipient of the Goods, tell Us what steps are necessary to make the Goods conform to the receiver's requirements.

10. Indemnity from Customer to the Company

10.1 The Customer indemnifies Us, and will keep it indemnified against any Claim (including a third-party Claim) or Loss arising out of or in connection with:

- (a) loss or damage to property (including the Goods) or illness, injury or death caused by an act or omission of the Customer;
- (b) any breach by it of any applicable Laws;
- (c) any infringement of any intellectual property rights of any third party;
- (d) any breach by the Customer of its obligations

under, or a representation or warranty made by it under, these Terms; or

- (e) any negligent or unlawful act or omission or wilful misconduct of the Customer or the receiver of the Goods or any person acting for the Customer or the receiver of the Goods.

10.2 Limitation of liability of Customer to the Company:

- (a) Subject to clause 10.2(b), the Customer's total aggregate liability to the Customer for any Claim or Loss under or in connection with these Terms is limited to the amount paid by the Customer to Us under these Terms during the financial year ending 30 June immediately prior to a Claim being made;
- (b) The limitation in clause 10.2(a) does not apply to the liability of the Customer in relation to:
 - (i) any Fees properly owed by the Customer to Us under these Terms;
 - (ii) a breach of clause 9.2(c);
 - (iii) personal injury or death from a negligent act or omission of the Customer;
 - (iv) loss or damage to tangible property;
 - (v) fraud, wilful misconduct, unlawful or illegal acts; or
 - (vi) liability that otherwise cannot be excluded at law.

11. Limitation of liability

11.1 Loss or damage to Goods

- (a) Subject to clauses 11.1(b) and 11.1(c), and only to the extent that such loss or damage was directly caused by Our negligent act or omission, We shall be liable to the Customer for any loss or damage to the Goods whilst in Our possession.

- (b) To the extent permitted by Law, Our liability to the Customer for loss or damage to the Goods howsoever arising is limited to compensating the Customer for the manufactured cost of the Goods only and is capped per incident at the lesser of:

- (i) \$2.00 per kilogram; or
- (j) \$10,000 per incident, and

Our total aggregate liability to the Customer in any 12-month period shall not exceed \$30,000.

- (c) Unless caused or contributed to by Our negligent act or omission, We do not accept any liability to the Customer or any other person for any loss of or damage to Goods if such loss or damage is caused by ordinary loss in weight or volume, shrinkage, ordinary leakage,

ordinary wear and tear, insufficient and/or unsuitable packing or preparation, electrical or mechanical derangement or the Customer or the Customer's agent overloads or incorrectly loads a transport vehicle.

11.2 Limitation of liability of the Company to the Customer

(a) To the extent permitted by Law, the Company:

- (i) expressly excludes all conditions, warranties, terms and guarantees whether express or implied, statutory or otherwise. If any condition, warranty, term or guarantee applies or is implied into these Terms under any Law, and providing it is reasonable to do so, Our liability for breach of the condition, warranty, term or guarantee will be limited to either resupplying the Services, or paying the cost of resupplying the Services, in respect of which the breach occurred and otherwise will be limited to the maximum extent permitted by Law;
- (ii) does not accept any liability to the Customer arising from the use by Us of any Container or Containers provided by the Customer (pursuant to contracts with third parties or otherwise) including cleaning costs and/or detention or demurrage charges;
- (iii) does not accept any liability to the Customer arising from a delay to the performance of the Services caused directly or indirectly by, without limitation, a port operator, a container park operator, a Government Authority, the Customer or any combination of these or other third parties except, and to the extent, such Claim or Loss are directly attributable to a breach of these Terms by Us;
- (iv) does not accept any liability to the Customer arising from any delay; and
- (v) limits its total aggregate liability to the Customer for any Claim or Loss under or in connection with these Terms or the Services to an amount equal to the amount paid by the Customer under these Terms during the financial year ending 30 June immediately prior to a Claim being made.
- (vi) agrees that the limitation in clause 11.2(a)(v) does not apply to the liability of the Company in relation to:
 - A. personal injury or death arising from a negligent act or omission of the Company;
 - B. loss or damage to tangible property (excluding Goods);
 - C. fraud, wilful misconduct, unlawful or illegal acts; or

D. liability that otherwise cannot be excluded at law.

11.3 Consequential Loss

Neither party shall be liable to the other party under these Terms for any Consequential Loss.

11.4 Bar on Claims

(a) To the extent permitted by Law:

- (i) We accept no liability with respect to any Claim or Loss incurred by the Customer under these Terms unless the Customer provides notice in writing of such Claim or Loss within 120 days of the event giving rise to the Claim or Loss, or, on first becoming aware of any Claim or Loss.
- (ii) For the purposes of Clause 11.4(a), the applicable dates are:
 - A. in the case of loss or damage to Goods, the date of delivery of the Goods,
 - B. in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
 - C. in any other case, the event giving rise to the claim.

11.5 General Average

The Customer shall defend, indemnify and hold harmless the Company in respect of any claims of a General Average nature, including any claims or demands for General Average security which may be made on the Company, and the Customer shall forthwith provide such security as may be required by the Company in this connection.

11.6 Australian Consumer Law

(a) The parties acknowledge and agree:

- (i) the Australian Consumer Law which is Schedule 2 of the Competition and Consumer Act 2010 confers rights on consumers and in respect of consumer contracts and small business contracts. If the Customer is a "Consumer" or a "Small Business" within the meaning of the Australian Consumer Law, it will be entitled to the benefit of such rights and guarantees which cannot be excluded;
- (ii) these Terms do not affect any rights the Customer may have under the Australian Consumer Law; and
- (iii) to the extent that any term or a part thereof of these Terms are rendered

inapplicable or void by the Australian Consumer Law or any other legislation, it shall be rendered inapplicable or void only to the extent required to give effect to that legislation but not further.

and

- (g) will provide information as requested by the Company from time to time which is reasonably required to comply with the Company's obligations under Modern Slavery Laws.

12. Small Business Contract

12.1 Upon negotiation with the Customer in writing, the Company may agree to greater responsibility and liability than set out in clauses 13 and 14/ herein upon payment of additional charges by the Customer as required. Applicable charges for greater responsibility and liability are subject of discussion and negotiation between the parties. Should the Customer choose not to or does not agree to pay the Company to take greater responsibility and liability for the Services for an additional charge pursuant to this clause, the parties agree that the Company provides its Services at a level on the premise that it has the right to exclude and/or limit liability and/or seek indemnity as provided for in this Agreement.

13.2 The Customer shall promptly notify Us in writing if it becomes aware of a potential, suspected or actual breach by it or its Personnel of any Modern Slavery Laws in connection with these Terms.

13.3 If We notify the Customer of its belief or suspicion that there has been a violation of any of the provisions in this clause, the Customer shall respond promptly and in reasonable detail to any such notice and cooperate in good faith with Us and Our representatives.

13.4 If the Customer or its Personnel breach this clause, then:

- (a) the Customer must promptly take appropriate remedial actions, keep Us notified of the actions and the extent to which they address the relevant breaches; and
- (b) a breach of this clause 13 is a substantial breach of these Terms and We may terminate this agreement immediately by notice to the Customer.

13. Ethical Business Conduct

13.1 The Customer represents and warrants that it:

- (a) and its Personnel comply and shall continue to comply with all applicable laws concerning ethical business conduct, including Modern Slavery Laws;
- (b) will do all things reasonably necessary to minimise Modern Slavery risks in its operations and supply chains;
- (c) has adequate documented processes in place to ensure that the Customer and its Personnel act in accordance with Modern Slavery Laws;
- (d) shall ensure that all of its Personnel undertake training necessary to ensure such persons or parties are able to carry out its obligations and provide the Goods in compliance with the requirements of this clause;
- (e) has not, and its Personnel have not, been found guilty or entered a plea of guilty in respect of any criminal offence and have not otherwise been notified or become aware that they are the subject of any official investigation or inquiry or proceedings into alleged violations of laws, statutes or regulations relating to bribery and corruption, Modern Slavery or any other criminal conduct or conduct relevant to business ethics;
- (f) will incorporate into each contract it holds with any Personnel provisions no less onerous than those set out in this clause and that such contracts may be terminated where the Company has reasonable grounds to believe there has been a breach of any applicable Modern Slavery Laws;

14. Termination

14.1 A party (**Non-defaulting party**) may terminate these Terms immediately in the event that the other party (**Defaulting Party**):

- (a) commits a breach of these Terms which in the reasonable opinion of the Non-defaulting Party is incapable of remedy;
- (b) commits a breach of these Terms which is capable of remedy, but the Defaulting Party fails to remedy said breach within 14 days of written notification by the Non- defaulting Party; or
- (c) becomes subject to an Insolvency Event.

14.2 Either party may terminate these Terms by the provision of 90 days' written notice to the other party. The Customer remains liable to pay any Fees outstanding for Services provided prior to termination.

15. Consequences of termination

15.1 On termination all monies (including Fees) owing to Us will become immediately due and payable by the Customer;

15.2 Subject to receiving full payment of all amounts owed to it in respect to the Services and under these Terms, We will, within a reasonable timeframe, make available for collection any Goods in its possession, custody or control.

15.3	Any accrued rights and obligations of the parties as at the date of termination will be unaffected by termination.	17.4	<p>Timing of GST Payment</p> <p>The Customer will pay the amount referred to in clause 16.3 in addition to and, at the same time, that the consideration for the supply is to be provided under this document.</p>
16. Dispute Resolution		17.5	<p>Reimbursement</p> <p>Where a party is required under this document to pay or reimburse an expense or outgoing of another party, the amount to be paid or reimbursed by the first party will be the sum of:</p> <p>(a) the amount of the expense or outgoing less any input tax credits in respect of the expense or outgoing to which the other party is entitled; and</p> <p>(b) if the payment or reimbursement is subject to GST, an amount equal to that GST.</p>
16.1	If a dispute arises in relation to the Services or these Terms, the parties to the dispute expressly agree to endeavour to settle the dispute by mediation administered by the Australian Disputes Centre (ADC) before having recourse to litigation.	18. General provisions	
16.2	The mediation shall be conducted in accordance with the ADC Guidelines for Commercial Mediation (Guidelines) which are operating at the time the matter is referred to the ADC.	18.1	<p>Inconsistency</p> <p>If there is any inconsistency between these Terms and/or any terms and conditions set out in the Customer's order or Account Application, these Terms will prevail to the extent of such inconsistency.</p>
16.3	The Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved.	18.2	<p>Acceptance</p> <p>By engaging Us to provide the Services, the Customer is deemed to have accepted these Terms, and to have agreed that they apply to the exclusion of all others.</p>
16.4	The terms of the Guidelines are hereby deemed incorporated into these Terms.	18.3	<p>Governing Law</p> <p>(a) These Terms are governed by the laws of New South Wales.</p> <p>(b) Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales.</p>
16.5	During the period in which the dispute is being resolved, the parties must continue to perform all of their obligations under these Terms which are not under dispute, and which are able to be performed by the parties.	18.4	<p>Force Majeure Event</p> <p>(a) An obligation of a party under these Terms is suspended for the time and to the extent that that party is prevented from or delayed in complying with that obligation by a Force Majeure Event.</p> <p>(b) Neither party shall have any liability to the other for any to the other for any Claim or Loss suffered as a result of a Force Majeure Event.</p> <p>(c) Either party may by 20 Business Days' written notice to the other party, terminate these Terms if a Force Majeure Event continues for at least 30 days.</p>
16.6	Nothing in this clause 13 prevents either party from obtaining any injunctive or other interlocutory relief from a court of appropriate jurisdiction.	18.5	<p>Entire Agreement</p> <p>These Terms contain the entire agreement between the parties in relation to its subject</p>
17. GST			
17.1	<p>Construction</p> <p>(a) In this clause:</p> <p>(i) Words and expressions which are not defined in this document but which have a defined meaning in GST Law have the same meaning as in the GST Law; and</p> <p>(ii) GST Law has the same meaning given to that expression in A New Tax System (Goods and Services Tax) Act 1999 (Cth).</p>		
17.2	<p>Consideration GST Exclusive</p> <p>Unless otherwise expressly stated, all Fees, prices or other sums payable or consideration to be provided under this document are exclusive of GST.</p>		
17.3	<p>Payment of GST</p> <p>If GST is payable by the Customer or by the representative member for a GST group of which the Customer is a member, on any supply made under this document, the Customer will pay to Us an amount equal to the GST payable on supply.</p>		

matter, and there are no other oral or written representations, stipulations, warranties, agreements, or understandings which apply in respect of the Services.

18.6 **Survival**

The following provisions survive the performance or termination of these Terms: 6, 7, 8, 10, 11, 14, 15 and 18.4.

18.7 **Variation**

Any variation or modification of these Terms must be in writing and agreed by both parties.

18.8 **No Waiver**

A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right. A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.

18.9 **Severability**

If any provision of these Terms are deemed invalid, unenforceable or illegal for any reason, the remainder of these Terms remain otherwise in full force and effect apart from such provision which will be deemed severed to the extent of its invalidity, unenforceability or illegality.

18.10 **Assignment**

Neither party may assign, novate or transfer any of its rights or obligations under these without the prior written consent of the other party, which consent shall not be unreasonably delayed or withheld.