

**1 Definitions**

- 1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 "Carrier" means Bill Kerry Machinery Transport Pty Ltd ATF The Kerry Family Discretionary Trust T/A Bill Kerry Machinery Transport Pty Ltd. its successors and assigns or any person acting on behalf of and with the authority of Bill Kerry Machinery Transport Pty Ltd ATF The Kerry Family Discretionary Trust T/A Bill Kerry Machinery Transport Pty Ltd..
- 1.3 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
  - (b) any other person or entity with whom the Carrier may arrange for the carriage or storage of any Goods the subject of the Contract; or
  - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.4 "Client" means any person/s requesting the Carrier to provide the Services, or person/s acting on behalf of and with the authority of the Client (including any sender, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents) entering into this Contract (and is not limited to the person/s identified in the schedule) both in its own personal capacity and for and on behalf of any principal(s) or trust(s), whether or not disclosed to the Carrier. Where the Client comprises two or more persons, the obligations imposed and rights conferred upon the Client by this Contract shall be imposed and conferred upon each person forming the Client, severally and all of them jointly, including all charges for Services provided by the Carrier.
- 1.5 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Carrier's Services.
- 1.6 "Services" shall mean all services supplied by the Carrier to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto), including the offering of any advice or recommendations.
- 1.7 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Carrier's Services, or for storage by the Carrier.
- 1.8 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Customer does not wish to allow Cookies to operate in the background when ordering from the website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Services via the website.**
- 1.10 "Charges" shall mean the cost of the Services (plus any GST where applicable) as agreed between the Carrier and the Client subject to clause 4 of this Contract.
- 1.11 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

**2 Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by, the Carrier.
- 2.2 These terms and conditions are to be read in conjunction with the Carrier's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Carrier to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 These terms and conditions together with any printed on the reverse side hereof, contain the whole of the contract between the Client and the Carrier in relation to the provision of Services and any previous contracts are hereby negated.
- 2.5 The use of a Client's own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the Contract so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 2.6 The Client shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to this Contract.
- 2.7 None of the Carrier's agents or representatives are authorised to make any representations, statements, promise, warranty, conditions or contracts not expressed by the manager of the Carrier in writing, nor is the Carrier bound by any such unauthorised statements.
- 2.8 Any time specified by the Carrier for provision of the Services is an estimate only and the Carrier will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Carrier is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Carrier shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 2.9 Except under special arrangements previously made in writing, the Carrier will not accept or deal with any:
- (a) Dangerous Goods. Any person delivering such Goods to the Carrier, or causing the Carrier to handle or deal with any such Goods, shall be liable for all loss or damage caused thereby and shall indemnify the Carrier against all penalties, claims, damages, costs and expenses arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the sole discretion of the Carrier (or any other person in whose custody they may be at the relevant time such Goods are accepted) if they become dangerous to other goods or property;
  - (b) bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and the Carrier will not accept any liability whatsoever for any such Goods.

2.10 Any handling, installation, removal, assembly or erection of any kind included in the provision of the Services is undertaken on the basis that the Carrier accepts no liability whether in contract, tort, bailment or otherwise for any loss, damage or injury of any kind whatsoever, howsoever arising (including but not limited to, any negligence or breach of contract by the Carrier) caused or incurred or occurring during any part of such activity including any loss, damage or injury to any person, property or thing or any Goods.

### **3 Electronic Transactions Act**

3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales & South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions Act 2003 (Western Australia), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (Tasmania), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

### **4 Change in Control**

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

### **5 Charges and Payment**

5.1 At the Carrier's sole discretion the Charges shall be either;

- (a) as indicated on invoices provided by the Carrier to the Client in respect of Services provided;
- (b) calculated at the Carrier's current hourly rates (and including mileage) from the time the Carrier departs from, and until they return to, their normal place of work; or
- (c) the Carrier's quoted Charges (subject to clause 5.2) which shall be binding upon the Carrier provided that the Client shall accept in writing the Carrier's quotation within thirty (30) days (quarantine and statutory charges or origin or destination additional charges are not included, unless specifically stated at the time of quoting);
- (d) have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Client. The Carrier may, at any time, open any container or any other package or unit in order to re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.

5.2 The Carrier reserves the right to change the Charges:

- (a) if a variation to the Carrier's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of the Carrier, delivery times or date or otherwise, etc.);
- (b) to reflect any increases to the Carrier in the cost of providing the Services which are beyond the reasonable control of the Carrier (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, administration costs (including photocopying, postage, etc.), or increases in fuel costs, taxes or customs duties, insurance premiums or warehousing costs, or for any other services, facilities or resources provided by the Carrier);
- (c) for any delay over thirty (30) minutes in either loading and/or unloading (from when the Carrier arrives onsite), and/or any overnight or extended storage occurring other than from the Carrier's fault.

5.3 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by the Carrier, which may be:

- (a) on the Carrier's receipt of the Goods;
- (b) the date specified on any invoice, consignment note, airway bill, manifest, or any other form as being the date for payment; or
- (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice, consignment note, airway bill, manifest, or any other form given to the Client by the Carrier.

5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Carrier.

5.5 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Carrier nor to withhold payment of any invoice because part of that invoice is in dispute.

5.6 The Client shall be liable for and pay to the Carrier any additional costs or expenses the Carrier may incur and for any loss or damage occasioned either directly or indirectly to the Carrier as a result of the Carrier relying upon the description and particulars provided by the Client or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.

5.7 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to the Carrier an amount equal to any GST the Carrier must pay for any provision of Services by the Carrier under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.

5.8 Receipt by the Carrier of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Carrier's ownership or rights in respect of the Services, and this Contract, shall continue.

5.9 Where the Client requesting or organising the Carrier to provide the Services is acting on behalf of any third party, and that third party is intended to be responsible for the payment of the Charges, then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Charges as if they had contracted for the provision of the Services on their own behalf.

### **6 Provision of the Services**

6.1 The Carrier is not a "Common Carrier" and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

6.2 The Client authorises the Carrier (in its discretion at any time without notice to the Client) to:

- (a) license or sub-contract all or any part of its rights and/or obligations, including using the services of others where necessary to ensure safety of other road users and property and/or compliance with lawful authority requirements and/or Police or private escorts, road closures and/or transport control, and using specialist equipment such as special cooling, etc.;
  - (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever;
  - (c) comply with any order or direction or recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.
- 6.3 The Client acknowledges and agrees:
- (a) the Carrier contracts with the Client both on its own behalf and on the behalf of the Carrier's servants, agents and subcontractors, and the Client undertakes that the Client will not make any claims against such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission by any of them;
  - (b) in respect of any clause herein which excludes, or in any way limits, the liability of the Carrier in respect of the Services, the Carrier, in addition to acting for itself, is acting as an agent of, and trustee for, each of its employees and also any other person or company with whom the Carrier arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this Contract in so far as to the exclusions or indemnities that are contained herein are concerned and, in so far as may be necessary to give effect to this clause, the Carrier will hold the benefit of these terms and conditions for its employees and so any such person or company and their employees;
  - (c) the Client shall indemnify the Carrier against:
    - (i) the consequences of such claim or allegation thereof;
    - (ii) all claims or demands whatsoever by whomsoever made in respect of any loss, damage, or injury howsoever caused whether or not by negligence or wilful act or omission of the Carrier, its servants, agents or subcontractors.
- 6.4 The Carrier's Charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises or despatched from third party premises as directed by the Client in order to fulfil the carriage of the Goods.
- 6.5 Should the Client require the Carrier to collect the Goods upon the Client's behalf from a third party, any receipt the Carrier may give that third party when effecting collection is no more than a record of the collection and cannot be construed as confirmation of the quality or condition of the Goods.
- 7 Client-Packed Containers**
- 7.1 The Carrier may open at the Client's risk and expense any document or any packaging or container in which the Goods are placed or carried to inspect the Goods to determine their nature or condition or to determine their ownership or destination where any consignment note or identifying mark is lost, damaged, destroyed, defaced or otherwise.
- 7.2 Subject to any written special instructions to the contrary:
- (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure;
  - (b) the Carrier is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.
  - (c) the Client must provide accurate container weight documentation to comply with the Heavy Vehicle National Law (HVNL).
- 7.3 Goods requiring special appliances for loading and/or unloading are accepted for carriage only on condition that such appliances are made available by the Client at the collection and/or delivery address. If the Carrier is, without prior arrangement, called upon to load and/or unload such Goods, the Carrier shall not be liable to the Client for any loss whatever, howsoever caused, arising out of such loading and/or unloading and the Client shall indemnify the Carrier against all claims and demands whatsoever which could not have been made if such assistance had not been given.
- 8 Dangerous Goods**
- 8.1 Unless otherwise agreed in advance in writing with the Carrier the Client or their authorised agent shall not tender for carriage any Dangerous Goods, or anything which may encourage vermin or pests. The Client shall be liable for and hereby indemnifies the Carrier for all loss and damage and all additional charges and expenses incurred or sustained by the Carrier arising out of the carriage of the Goods, any false, misleading or inaccurate information or description of such Dangerous Goods, or any default or failure of the Client to declare the Goods and Dangerous Goods and provide full particulars thereof.
- 8.2 Where Dangerous Goods and/or anything likely to encourage vermin or pests are accepted for carriage the Client warrants that the carriage thereof is not prohibited and they have fully disclosed in writing to the Carrier before the Carrier has taken possession of the Goods the full particulars and description of the Goods, the nature and value of the Goods, all requirements of lawful authorities for such carriage and all other relevant information.
- 8.3 The Carrier may, at its discretion, at the Client's expense and without compensation thereto or to any other person with an interest in the Goods and without prejudice to its charges or any other rights hereunder:
- (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Client or any other person with an interest thereto;
  - (b) dispose of or destroy or abandon or render harmless any Goods which the Carrier believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination, or any declared Dangerous Goods which are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature.
- 9 Client's Responsibility**
- 9.1 The Client expressly warrants to the Carrier that:
- (a) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract, and by entering into this Contract the Client accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Client is acting;

- (b) the Goods are fit for carriage, comply with any applicable legal requirements relating to the nature, condition and/or packaging of the Goods (and that the expenses of complying with such requirements or any other lawful requirements of any authority, other body or the company shall be at the Client's cost) and are not Dangerous Goods;
  - (c) the person handing over the Goods to the Carrier is authorised to sign and accept these terms and conditions;
  - (d) it is solely the Client's responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
  - (e) any packaging, labelling and/or marking by the Client accurately describes the Goods as to content, weight and method of handling or otherwise, complies with applicable dangerous goods codes, any other applicable laws and with any relevant Australian or international standards, including but not limited to, the Heavy Vehicle National Law (HVNL);
  - (f) at the Carrier's discretion, where differences or omissions between address and/or contact information written on the consignment and/or other documentation or in any form of communication (including, but not limited to, email and telephone) provided by the Client to the Carrier, the Carrier shall reserve the right to choose which delivery information is followed and shall not be held liable for any associated costs in relocation of the Goods if this address is the incorrect one.
- 9.2 The Client shall indemnify the Carrier against any loss (including any fine, levy, charge or other monetary imposition to which the Carrier may become liable incidental to the carriage) damage, death or injury, including loss or damage to the Carrier's containers and/or equipment arising out of:
- (a) the Client's unreasonable detention of any vehicle container or other equipment of the Carrier;
  - (b) any breach of the Client's warranties under clause 9.1, including the failure to comply with clause 9.1(e).

## 10 Insurance

- 10.1 The Carrier will not, without the Client's written instruction, **and the Carrier's written approval**, insure the Goods, and:
- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Carrier;
  - (b) subject to sub-clause (c):
    - (i) the Carrier is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all;
    - (ii) under no circumstances will the Carrier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Carrier for failure to arrange or ensure that the Goods are insured adequately or at all.
  - (c) any such insurance is at the Client's own expense. Where the Client's instruction does not specify the class of insurance to be effected, the Carrier may in its discretion affect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
    - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
    - (ii) loss, damage or expensed proximately caused by delay;
    - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
    - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
    - (v) any exclusion common to that class of insurance;
    - (vi) any other exclusion advised by the Client to the Carrier, detailed in the special instructions.

## 11 Delivery of the Goods

- 11.1 The Carrier is authorised to deliver the Goods at the Client's nominated delivery address and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this Contract:
- (a) if at that address the Carrier obtains from any person a receipt or a signed delivery docket for the Goods; or
  - (b) that even if the Client is not present at the nominated delivery address, that it is deemed that delivery has occurred even without the Carrier obtained a signed receipt or delivery docket.
- 11.2 The Carrier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 11.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
- 11.4 Perishable Goods, which are not taken up immediately upon arrival, or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Client, and payments or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Client.
- 11.5 Non-perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee, may be sold (as per clause 17 or returned at the Carrier's option at any time after expiration of twenty-one (21) days from a notice in writing sent to the address which the Client gave to the Carrier for delivery of the Goods. A communication from any agent or correspondent of the Carrier to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
- 11.6 Instructions to collect payment on delivery of the Goods (COD), in cash or otherwise, are accepted by the Carrier upon the condition that the Carrier in the matter of such collection will be liable for the exercise of reasonable diligence and care only.

## 12 Loss or Damage

- 12.1 Subject to clause 17 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Carrier shall not be under any liability for:
- (a) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or any confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process;
  - (b) compliance with the directions of any person or lawful authority entitled to give them;
  - (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, mis-delivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of the Carrier or not)
  - (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of any delay in delivery, forwarding or transit or failure to deliver the Goods; and

- (e) any act or omission whether wilful, reckless, negligent or otherwise of the Carrier, or its servants or agents or subcontractors;
- (f) any failure to follow instructions given to the Carrier by, or on behalf of, the Client, whether or not such failure is wilful;
- (g) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
- (h) any act, omission or neglect of the Client, including insufficient or improper packaging, labelling or addressing or quality of description of the Goods, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.

12.2 In the case of carriage by sea or air, no optional declaration of value to increase the Carrier's liability under either the Carriage by Civil Aviation (Carrier's Liability) Act 1959, Article 22(2) of Schedule 1 as amended by Schedule 2, or Article IV Rule 5(a) of Schedule 1 of the Carriage of Goods by Sea Act 1991, will be made except upon express instructions given in writing to the Client. In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purposes of extending liability, and Goods will be forwarded or dealt with at the Client's risk or other minimum charges unless express instructions in writing to the contrary are given by the Client.

### 13 Conditions of Storage

- 13.1 The Carrier will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Carrier, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case the Carrier will be entitled to make a reasonable additional charge.
- 13.2 The Carrier is authorised to remove the Goods from one warehouse to another without cost to the Client. the Carrier will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 13.3 The Client is entitled upon giving the Carrier reasonable notice to inspect the Goods in store but a reasonable charge may be made by the Carrier for this service.
- 13.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving the Carrier not less than five (5) working days' notice. If the Client gives the Carrier less than the required notice the Carrier will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 13.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Carrier to do so. In default, the Carrier may sell any or all of the Goods as per clause 15.

### 14 Indemnities

- 14.1 The defences and exclusions of liability in these conditions general including clause 12 apply in any action (whether based on Contract, tort, bailment or any other cause of action howsoever arising) against the Carrier even if it is resulted from an act or omission of the Carrier done wilfully or recklessly with knowledge that damage would or would probably result.
- 14.2 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under any circumstances constitute either a breach going to the root of this Contract, or a deviation or departure therefrom or a repudiation thereof such as to have effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other protections herein which shall continue to have full force and effect in any event whatsoever.
- 14.3 Subject to clause 17, but without prejudice to any other provision hereof, this Contract and any other Contract the Carrier makes under its authority and any Contract made by any person whom the Carrier has delegated such authority, shall be made by the Client or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage thereof (including storage by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit). All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 5.

### 15 Lien

- 15.1 In addition to its rights under the Warehouseman's Liens Act 1958, the Carrier shall have and retain a general lien on any Goods submitted by the Client to the Carrier for the provision of Services by the Carrier (including where done so in the capacity of any sender, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents), and in the possession or control of the Carrier (and any documents relating to those Goods), for pecuniary obligations owing from time to time by the Client on any account whatsoever to the Carrier (including, but not limited, to payment of the Charges), and the Carrier shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Carrier's right to recover from the Client any charges due or payable in respect of the carriage or such detention and sale.

### 16 Claims

- 16.1 Notwithstanding clauses 10 and 12, in the event that the Client believes that they have any claim against the Carrier then they must lodge any notice of claim for consideration and determination by the Carrier within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 16.2 The failure to notify a claim within the time limits under clause 16.1 is evidence of satisfactory performance by the Carrier of its obligations hereunder.

### 17 The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts

- 17.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 17.2 The Carrier acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.

- 17.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Carrier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. The Carrier's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.4 If the Client is a consumer within the meaning of the CCA, the Carrier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.5 If the Carrier is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then the Carrier may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 17.6 If the Client is not a consumer within the meaning of the CCA, the Carrier's liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Carrier at the Carrier's sole discretion;
  - (b) otherwise negated absolutely.

## **18 Cancellation**

- 18.1 Without prejudice to any other remedies the Carrier may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Carrier may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. The Carrier will not be liable to the Client for any loss or damage the Client suffers because the Carrier exercised its rights under this clause.
- 18.2 The Carrier may cancel any Contract to which these terms and conditions apply or cancel the provision of the Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice the Carrier shall repay to the Client any sums paid in respect of the Charges. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.3 In the event that the Client cancels the provision of the Services, then the Client shall be liable for any loss incurred by the Carrier (including, but not limited to, any loss of profits) up to the time of cancellation.

## **19 Compliance with Laws**

- 19.1 The Client and the Carrier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including but not limited to, the Heavy Vehicle National Law (HVNL) and any works, health and safety laws relating, or any other relevant safety standards or legislation pertaining to the Services.

## **20 Default and Consequences of Default**

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Carrier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes the Carrier any money the Client shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Carrier's contract default fees, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the Carrier may have under this Contract, if a Client has made payment to the Carrier, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Carrier under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 20.4 Without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Carrier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client has exceeded any applicable credit limit provided by the Carrier;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## **21 Personal Property Securities Act 2009 ("PPSA")**

- 21.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all:
- (i) Goods that have previously been carried and any Goods that will be carried in the future by the Carrier to the Client; and/or
  - (ii) collateral (account), being a monetary obligation of the Client to the Carrier for Services that have previously been provided, and will be provided in the future by the Carrier to the Client.
- 21.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Carrier may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 21.3(a)(i) or 21.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, the Carrier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Carrier.

- 21.4 The Carrier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 21.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 21.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 21.7 Unless otherwise agreed to in writing by the Carrier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 21.8 The Client must unconditionally ratify any actions taken by the Carrier under clauses 21.3 to 21.5.
- 21.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **22 Security and Charge**

- 22.1 In consideration of the Carrier agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 22.2 The Client indemnifies the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Carrier's rights under this clause.
- 22.3 The Client irrevocably appoints the Carrier and each director of the Carrier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 22 including, but not limited to, signing any document on the Client's behalf.

## **23 Privacy Policy**

- 23.1 All emails, documents, images or other recorded information held or used by the Carrier is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. The Carrier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Carrier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Carrier that may result in serious harm to the Customer, the Carrier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Carrier in respect of Cookies where transactions for purchases/orders transpire directly from the Carrier's website. The Carrier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's:

- (a) IP address, browser, email client type and other similar details;
- (b) tracking website usage and traffic; and
- (c) reports are available to the Carrier when the Carrier sends an email to the Customer, so the Carrier may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Carrier's website.

- 23.3 The Customer agrees for the Carrier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Customer in relation to credit provided by the Carrier.

- 23.4 The Customer agrees that the Carrier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:

- (a) to assess an application by the Customer; and/or
- (b) to notify other credit providers of a default by the Customer; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

- 23.5 The Customer consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit.

- 23.6 The Customer agrees that personal credit information provided may be used and retained by the Carrier for the following purposes (and for other agreed purposes or required by):

- (a) the provision of Services/Equipment; and/or
- (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services/Equipment; and/or
- (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
- (d) enabling the collection of amounts outstanding in relation to the Services/Equipment.

- 23.7 The Carrier may give information about the Customer to a CRB for the following purposes:

- (a) to obtain a consumer credit report;
- (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

- 23.8 The information given to the CRB may include:

- (a) Personal Information as outlined in 23.3 above;
- (b) name of the credit provider and that the Carrier is a current credit provider to the Customer;
- (c) whether the credit provider is a licensee;
- (d) type of consumer credit;
- (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
- (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

the Customer no longer has any overdue accounts and the Carrier has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

- (g) information that, in the opinion of the Carrier, the Customer has committed a serious credit infringement;
  - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.9 The Customer shall have the right to request (by e-mail) from the Carrier:
- (a) a copy of the Personal Information about the Customer retained by the Carrier and the right to request that the Carrier correct any incorrect Personal Information; and
  - (b) that the Carrier does not disclose any Personal Information about the Customer for the purpose of direct marketing.
- 23.10 The Carrier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.11 The Customer can make a privacy complaint by contacting the Carrier via e-mail. The Carrier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 24 Confidential Information/Conflict of Interest

- 24.1 The Client assumes liability for all loss or damage suffered by the Carrier as a result of breach of confidentiality undertaken by itself, or its employees or agents.
- 24.2 The obligations of confidentiality shall survive the finalisation or discontinuance of any agreement between the Client and the Carrier.
- 24.3 Neither party will use the other party's confidential/personal Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this Contract, and a party may only disclose the other party's confidential/personal Information:
- (a) if required by law;
  - (b) to exercise their rights under this Contract;
  - (c) if necessary to perform their obligations under this Contract;
  - (d) if the other party has provided their written consent to the disclosure;
  - (e) if the confidential/personal Information is already in the public domain (otherwise than as a result of disclosure in breach of this Contract).
- 24.4 The Carrier is obliged to remain vigilant to, and to advise the Client of, any conflict of interest that may potentially impact or harm the Client. To avoid conflict of interest and commercial sensitivities, it is agreed by the Carrier that any and all information regarding the Client (and their business, commercial agenda and employees) shall remain confidential at all times and shall only be disclosed in the event of legal order or obligation.
- 24.5 The obligations of confidentiality shall survive the finalisation or discontinuance of any agreement between the Client and the Carrier.
- 24.6 The Client agrees to indemnify the Carrier on a continuing, full indemnity basis from and against any liability, loss, expense and demand for or arising from any false, misleading, non-descriptive representation or statement made by the Client in respect of the Goods to any third party (including but not limited to, the Australian Border Force where Goods are subject to customs inspection). This indemnity survives termination of this Contract.

## 25 General

- 25.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 These terms and conditions and any Contract to which they apply shall be governed by the laws of Victoria, the state in which the Carrier has its principal place of business, and are subject to the jurisdiction of the Courts in that state.
- 25.3 Subject to clause 17, the Carrier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Carrier of these terms and conditions (alternatively the Carrier's liability shall be limited to damages which under no circumstances shall exceed the Charges).
- 25.4 The Client agrees that the Carrier may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Carrier to provide Services to the Client.
- 25.5 Where the Carrier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Carrier, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this Contract and the Carrier gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Carrier.
- 25.6 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.