

Terms of Credit Agreement with Circuit Logistics Australia Ltd.

1. Definitions

1.1 In these Terms:

AMTAC means the Australian Maritime and Transport Arbitration Commission;

AMTAC Rules means the AMTAC Arbitration Rules 2016 effective from 1 July 2016;

Australian Consumer Law or **ACL** means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Change of Control means any event such that a change occurs in the Control of the Customer, or any company which is a holding company of the Customer, from that which existed at the date an Order was placed by the Customer;

Chapter 5 Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Charges means:

- (a) the rates and other charges for Services calculated under in any quotation or rates schedule (whether agreed with the Customer or any other rates schedule issued by the Company from time to time and applicable to the Customer) or any other fees and charges agreed in writing between the Company and the Customer from time to time; and
- (b) any applicable Third Party Costs (whether or not individually itemised in any quotation or rates schedule or other contract incorporating these Terms);

Claim means any action, claim, suit, allegation, demand, loss, liability, damage or cost of whatsoever nature;

Company means Circuit Logistics Australia Limited (ABN 12 678 962 135 / ARBN 678 962 135) or any of its wholly owned subsidiaries as specified in the quotation, Order or other document which incorporates these Terms and any Related Body Corporate of the Company involved in the provision of the Services;

Company Equipment means any equipment made available to the Customer by or on behalf of the Company in connection with the provision of the Services including but not limited to ISO tanks, Flexi-tanks, and shipping containers;

Company Personnel means any officers, employees, agents or subcontractors of the Company;

Consequential Loss means loss or damage, whether direct or indirect, in the nature of loss of profits, loss of revenue, loss of production, liabilities in respect of third parties (whether contractual or not), loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a party was advised of the possibility of such loss or damage;

Contract has the meaning given to that term in clause 2.1;

Control has the meaning given in section 50AA of the *Corporations Act 2001* (Cth);

Customer means the person named in any Order form or similar document or who requests provision of the Services, any person

acting on behalf of, and with the authority (express or implied) of the Customer engaging the Services or any person who delivers Goods to the Company for Services to be carried out;

Dangerous Goods means Goods classified as such by either the IATA Dangerous Goods Regulations or the Australian Dangerous Goods Code or Goods that otherwise might injure or damage people, property or the environment. They include Goods that are or may become poisonous, corrosive, volatile, explosive, flammable, radioactive or of any other dangerous nature;

Goods means the cargo accepted from, or on behalf of, the Customer together with containers, packages, barrels, pallets, crates, cases and equipment for use in connection with the storage, handling and carriage of that cargo;

HVNL means the Heavy Vehicle National Law as from time to time adopted in any State or Territory in which the Services are performed and includes all regulations, orders, proclamations, notices or other requirements under the legislation which adopts that law in the relevant State or Territory;

Insolvency Event means if the relevant entity:

- (a) stops or suspends or threatens to stop or suspend payment of all or a class of its debts;
- (b) is insolvent within the meaning of section 95A of the *Corporations Act*;
- (c) would be presumed insolvent by a court by reason of section 459C(2) of the *Corporations Act*;
- (d) fails to comply with a statutory demand (within the meaning of section 459F(1) of the *Corporations Act*) and fails to remedy that failure within seven days after being required in writing to do so by the party issuing the statutory demand;
- (e) has an administrator appointed over all or any of its assets or undertaking or any step preliminary to the appointment of an administrator is taken;
- (f) has a controller within the meaning of section 9 of the *Corporations Act* or similar officer appointed to all or any of its assets or undertaking; or
- (g) has an application or order made, proceedings commenced, a resolution passed or proposed in a notice of meeting or an application to a court or has other steps taken for its winding up or dissolution or for it to enter an arrangement, compromise or composition with or assignment for the benefit of its creditors, a class of them or any of them;

Loss means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or arising from any Claim, against the person, however arising and whether present or future, fixed or unascertained, actual or contingent;

Order means an order, or standing appointment or engagement, for the supply of Services;

Owner means the owner of the Goods or any person holding a better proprietary interest in the Goods than the Customer;

PPSA means the *Personal Property Securities Act 2009* (Cth) and any terms used in clause 18 that have a defined meaning under the PPSA bear the same meaning in that clause;

Related Body Corporate has the meaning given to that term in the *Corporations Act 2001* (Cth);

Safety Data Sheet means a safety data sheet prepared in accordance with the WHS Laws;

Services means all of the services and operations (including cartage, transport and storage) undertaken in respect of the Goods by the Company in any capacity (including as forwarding agent, shipping agent, forwarder, carrier or bailee) for the Customer;

Terms means the terms and conditions set out in this document;

Third Party Costs means any costs, charges, fees, imposts or levies that are payable by the Company to any shipping line, port or rail terminal operator, warehouse operator, empty container park operator, toll road operator, port or regulatory authority in the performance of the Services, including but not limited to access fees, terminal infrastructure fees, port fees and charges (including but not limited to slot booking fees, energy levies), shipping line levies and charges, container handling fees and charges, empty park booking fees and tolls; and

WHS Laws means the *Work Health and Safety Act 2011* (NSW) and the *Work Health and Safety Regulation 2017* (NSW) and includes other Regulations and Codes of Practice made under or in connection with those laws.

2. The Contract

- 2.1 Subject to clauses 2.2 and 2.7, when the Company accepts a Customer's Order for Services, or accepts the Customer's Goods, a contract (Contract) is formed, comprising these Terms, any Company-generated quotation or rates schedule (whether agreed with the Customer or any other rates schedule issued by the Company from time to time and applicable to the Customer) and any associated Order form. These Terms are subject only to any service level agreement or rates agreement entered into by the Company and the Customer. Unless otherwise specifically agreed in writing by the parties, these Terms will prevail over existing or subsequent terms and conditions set out in any document (including any order form of the Customer), which the Customer directly or indirectly provides to the Company and such other terms and conditions are rejected by the Company.
- 2.2 Where the Services include carriage of Goods by sea for which either the Company or a third party carrier issues a bill of lading or sea waybill (**Bill of Lading**), then in the case of inconsistency between the Terms and the Bill of Lading, the Bill of Lading shall prevail.
- 2.3 These Terms constitute the entire agreement between the parties about its subject matter and supersede all prior correspondence and representations made between the parties.
- 2.4 The Company is not a common carrier, accepts no liability as such and the Services are subject to these Terms.

2.5 Unless specifically agreed by the Company under any accepted Order or other contract incorporating these Terms, the Company is not obliged to handle, transport or store Goods for the Customer and may, acting reasonably, refuse to handle, transport or store Goods for the Customer and without the Company having any liability to the Customer by reason of that refusal.

2.6 Unless the parties otherwise agree on any services level agreement or rates agreement incorporating these Terms, and subject to clause 2.7, these Terms may be altered or amended at any time by publication on the Company's website. It is the Customer's responsibility to review the Terms prior to placing an Order.

2.7 The Terms applying to any Order are those in force at the time the Customer placed the Order and any change will apply only in respect of Orders placed after the date of the change other than any Orders made pursuant to any services level agreement or rates agreement incorporating these Terms.

3. Subcontracting and Assignment

3.1 It may be necessary or desirable for the Company to be able to assign or subcontract its rights and obligations under an agreement entered into with the Customer in order to deliver Services and therefore:

- (a) the Company (and any subcontractor of the Company) may subcontract all or part of the Services to any person including a Related Body Corporate, provided that any subcontracting will not relieve the Company of its obligations under these Terms and the Company remains liable to the Customer for the provision of the Services by a subcontractor to the extent that the Company would have been liable under these Terms had it performed or failed to perform such Services itself; and
- (b) the Company may assign all or part of its rights or obligations to any Related Body Corporate, provided that the assignee has the resources to perform the Services in accordance with the Contract and there is no material detriment to the Customer arising from that assignment.

3.2 The Customer must not assign its rights or obligations under the Contract without the Company's prior written consent as any such assignment may increase the Company's exposure to credit or other risk. The Company will not unreasonably withhold or delay its consent to assignment by the Customer but may impose reasonable conditions to prevent detriment to the Company arising from the assignment.

3.3 The Customer agrees that the Company Personnel have the benefit of these Terms which the Company also enters into on their behalf and for their benefit, and the Company can, if requested by its Personnel, enforce these Terms on their behalf.

4. Orders

4.1 Any quotation by the Company may be withdrawn by the Company at any time prior to acceptance by the Customer and is not to be construed as an obligation on the Company to supply Services in accordance with these Terms or otherwise, until that quotation has been accepted or adopted (which the Customer may do expressly, or by their conduct (including by placing an Order)).

4.2 While the Company takes care in preparing quotations, the Company's costs of providing the Services may vary without notice to the Company. The Company is entitled to vary any

quotation at any time prior to the Customer's acceptance. The Company may also vary any quotation at any time prior to the Customer's acceptance to correct any errors and omissions in the quotation. A quotation is deemed to be withdrawn upon the issuance of a varied quotation and only the latest varied quotation is capable of acceptance.

4.3 The Company may accept or refuse any Order, and may make its acceptance of an Order conditional (e.g. upon a satisfactory credit assessment of the Customer).

4.4 Where the Company's ability to perform the Services is impacted by events or circumstances outside of the Company's reasonable control, the Company may defer the performance of the Services relating to any previously accepted Order by providing notice to the Customer (regardless of whether the Company has accepted possession of the Goods). If the Company defers the performance of Services relating to any previously accepted Order, then:

- (a) the Customer may cancel that part of the relevant Order which is deferred without any liability to the Company (other than liability for any charges due and payable to the Company in respect of any Services already performed by the Company in respect of the Goods) and clause 17.3 will apply in respect of such Goods the subject of the cancelled Services; or
- (b) where the Customer does not cancel the Order, the Company will use all reasonable endeavours to reschedule the performance of Services promptly and to minimise the impact of any deferral on the Customer.

4.5 Once placed, an Order cannot be cancelled or deferred by the Customer without the Company's prior written agreement and then only on terms that the Customer will fully indemnify the Company against any Loss suffered by it as a result of that cancellation or deferral. The indemnity in this clause 4.5 does not apply in cases where the cancellation or deferral is reasonably attributable to an act or omission of the Company or the Company Personnel.

4.6 The Customer must provide the Company with accurate details in each Order. The Company is under no obligation to enquire as to the accuracy of the details in any Order.

5. Goods and Services

5.1 Unless specifically agreed by the Company under any accepted Order or other contract incorporating these Terms, the acceptance of the Goods by the Company for storage pending shipment shall not bind the Company to ship the Goods.

5.2 If the Company has an obligation to provide Services, then it may defer the performance of Services in the circumstances and in the manner contemplated by clause 4.3.

5.3 The Company is not liable for any delay in delivery out of the Goods or in the delayed supply of Services where such delay arises directly or indirectly from any events or circumstances which are outside the reasonable control of the Company or the Company's Personnel. By notification to the Customer, the Company reserves the right to reasonably extend the date for delivery out of the Goods and the supply of Services. The Company is liable (with its liability limited as provided for in this Contract) where the negligent or wilful act or omission of the Company or the Company Personnel causes the delay in delivery out of the Goods or the delayed supply of Services (if

the Company has not extended the relevant date or deferred the performance of Services as contemplated by this Contract).

5.4 Unless storage of the Goods for a certain period of time has been specifically agreed by the Company under any accepted Order or other contract incorporating these Terms, the Company may at any time require the Customer to remove the Goods from their location of storage at the Customer's expense (whether in the case of non-shipment or otherwise) and if the Customer fails to remove the Goods within 7 days of such notice, without limiting any other right of the Company, the Customer shall be liable to pay the Company's reasonable costs of storage from the date of such notice until the date of their removal.

5.5 The Customer must provide written notice and instructions prior to the release of Goods to the Company for the performance of the Services regarding:

- (a) any special handling requirements (including temperature range) for the storage and transport of Goods; and
- (b) Dangerous Goods including a full and accurate written description of them and any relevant Product Specification Guides including a Safety Data Sheet, and the Customer accepts that the Company may vary the Charges in order to perform the Services in respect of any such Goods in accordance with clause 7.4 (including but not limit to compensating the Company for increased risk or a change in the equipment and operating procedures normally employed by the Company to perform the Services).

5.6 If, in the reasonable opinion of the Company, the Goods are Dangerous Goods or do not meet legal requirements or recommendations of relevant government agencies relating to the Goods or Services, or are unsuitable to be handled by the Company using the equipment and operating procedures normally employed by the Company in providing the Services, then the Company may:

- (a) act reasonably and in circumstances other than where the Goods are Dangerous Goods and such Goods fully match the description provided by the Customer under clause 5.5(b), meet all legal and other requirements, and are capable of being suitably handled by the Company:
 - (i) refuse to provide the Services in respect of the Goods or any part of them; and/or
 - (ii) where the Goods are in the Company's possession, request the Customer to remove the Goods from their location of storage and the Customer must immediately comply with such request at the Customer's expense;
- (b) take whatever measures (including testing or analysis of the Goods) it considers necessary (acting reasonably) at the risk and expense of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by the Company; and/or

- (c) if required by law, or by the lawful direction of a lawful authority, to protect the health and safety of any person, or to protect against damage to any property or harm to the environment, or if the Customer fails to remove the Goods in accordance with clause 5.6(a)(ii) at the cost of the Customer, destroy, dispose of or render harmless the Goods without liability to the Customer or prejudice to any of the Company's rights under these Terms, and the Customer will bear all risk of Loss arising in connection with such Goods. The Company will endeavour to give reasonable notice if it elects to do anything under this clause 5.6, but states and the Customer accepts that there may be situations where it is not reasonably practicable to give notice of additional measures being taken (such as adjusting or improving packaging of goods during transport, or taking steps to render Dangerous Goods harmless in an emergency or other incident or where there is risk of damage to any property or harm to the environment or genuine safety risk which endangers or threatens to endanger the health and safety of any person).
- 5.7 If the Customer instructs the Company to use a particular method of handling, storage or transportation of the Goods, the Company will give consideration to that method, but the Customer gives the Company authority to:
- (a) use any method for handling, transporting or storing the Goods as the Company sees fit (including by utilising Company Equipment); and
 - (b) deviate from the usual route or method of transport of the Goods which may in the reasonable discretion of the Company be necessary or desirable in the performance of the Services.
- 5.8 The Company is authorised to deliver the Goods to the address given to the Company by the Customer for delivery and the Company shall be deemed to have delivered the Goods in accordance with these Terms if at that address, the Company obtains from any person a receipt or signed delivery docket for the Goods or can otherwise reasonably substantiate delivery by other means (for example, written confirmation from the recipient or delivery site).
- 5.9 If the address given to the Company for delivery is unattended or if delivery cannot otherwise be effected by the Company at that address, the Company may at its option:
- (a) deposit the Goods at that address which shall be conclusively deemed to be delivery under these Terms; or
 - (b) store the Goods and re-deliver the Goods to the Customer at the Customer's cost.
- 5.10 The Customer must:
- (a) give prior written notice to the Company if any of the Goods are liable to customs duties or port charges or other supply chain costs and charges and pay such charges or, if agreed by the Company, reimburse the Company if it agrees to pay those costs and charges on behalf of the Customer;
 - (b) ensure that the Goods are ready for pickup so that the Company is not delayed in performing the Services.
 - (c) arrange at its cost, all necessary labour and facilities to load and unload the Goods. The Customer must ensure loading and unloading of the Goods complies with all relevant laws, and the Company's reasonable directions.
- 5.11 Both the Customer and the Company acknowledge their respective HVNL Duties and must take positive steps to facilitate the other party's ability to meet that other party's own HVNL Duties. Each party must also take care not to cause the breach of any HVNL Requirements including, for example, by requiring travel at unacceptable speeds to reach destinations, causing delays due to Goods being unprepared for loading, or engaging in other actions or behaviours which are inconsistent with the HVNL as in force in the relevant State or Territory in which the Goods were accepted by the Company for transport. In this clause 5.11:
- (a) **"HVNL Duties"** means the duty of each person involved in transport activities, imposed by the HVNL, to ensure, so far as is reasonably practicable, the safety of transport activities and to eliminate public risks (and, to the extent it is not reasonably practicable to eliminate public risks, minimize the public risks); and
 - (b) **"HVNL Requirements"** means a relevant requirement imposed by the HVNL, which includes obligations in relation to fatigue management, loading, load restraint, travel speed, record-keeping, implementing effective safety systems and other requirements.
- 6. Company Equipment**
- 6.1 The Customer acknowledges that the Company may use, or make available to the Customer for use, Company Equipment in connection with the Services in circumstances where the Customer has not arranged or supplied necessary equipment for the transport and storage of Goods.
- 6.2 The Company may include additional costs associated with the use of Company Equipment in quotations issued to Customers for the Services.
- 6.3 The Customer is liable for, and indemnifies the Company against, any and all Loss to Company Equipment that arises in connection with the Services (including but not limited to any external or internal damage to the Company Equipment, rust, pitting, or damage due to incompatibility of product with Company Equipment), except Loss:
- (a) that amounts to fair wear and tear of the Company Equipment; or
 - (b) that arises due to a defect in the Company Equipment; or
 - (c) that arises directly from negligence or the wilful misconduct of the Company or its personnel.
- 6.4 To the extent permitted by law, the Company excludes all liability for Loss to Goods that are stored and transported in Company Equipment, except where the Loss:
- (a) is due to a defect in the Company Equipment not arising as a result of the Customer handling, installing Goods in, or working with the Company Equipment (if applicable); or

- (b) occurs due to the negligence or wilful misconduct of the Company or its personnel.
- 6.5 Company Equipment is provided on an 'as is' basis and the Company makes no warranty, express or implied, with respect to the performance, durability, or integrity of Company Equipment if the Customer uses Company Equipment to store materials outside of the approved specifications communicated by the Company to the Customer.
- 6.6 The Customer shall be liable for and indemnifies the Company against any consequential damage, loss, or liability incurred as a result of improper usage of Company Equipment by the Customer, or as a result of the introduction of Goods into Company Equipment not in accordance with approved usage guidelines or specifications provided by the Company to the Customer.
- 6.7 The Customer further indemnifies and holds harmless the Company against any Claims arising out of or related to the storage of unapproved or incompatible substances in Company Equipment which are outside of the Company's approved specification.
- 6.8 The Company reserves the right to take action with respect to Goods stored and transported in Company Equipment in accordance with clause 5.6.
- 7. Charges**
- 7.1 The Charges do not include any applicable taxes (including but not limited to GST, import duties and export duties). Subject to clause 7.2, the Customer must pay any taxes, duties and government charges payable or in connection with the provision of the Services.
- 7.2 The Company may, in its sole discretion, pay any taxes, duties and government charges that arise in connection with an Order on behalf of the Customer. If that occurs, the Customer must reimburse the Company for any sums paid on the Customer's behalf. The Company will invoice the Customer directly for any sums to be reimbursed under this clause 7.2.
- 7.3 The Charges applying to an Order are those set out in the relevant quotation, rates schedule or any other contract incorporating these Terms and will be current for the period set out in a written quote or rate schedule, or term of the relevant contract, as varied in accordance with clause 7.4 and any applicable monthly fuel surcharge adjustment mechanism. If no period is specified in writing because, for example, a quote may not specify a validity period or the quote may have been given by email, the period is deemed to be 7 days. It is the Customer's responsibility to understand the applicable Charges prior to placing an Order as they may change at any time in accordance with clauses 4.2 and 7.4.
- 7.4 The Company may vary the Charges (or any other rates or charges agreed between the Company and the Customer) on the provision to the Customer of 30 days' written notice where there is a change affecting the Company's performance of the Services or if there has been a change in the Company's cost base for providing the Services including but not limited to any increase in the Third Party Costs payable by the Company in the performance of Services (**Charges Variation Notice**). The Customer will be entitled to cancel any affected Order or terminate any affected Contract made prior to the date of the Charges Variation Notice by giving the Company written notice before the varied Charges take effect without incurring any liability to the Company by reason of such cancellation or termination, and the Charges payable

by the Customer in respect of any such cancelled Order will be the Charges in effect immediately prior to the Charges Variation Notice. The varied Charges will only apply to existing Orders after expiration of the notice period or for new Orders placed after the date of the Charges Variation Notice.

- 7.5 The Charges are stated, and payment must be made, in Australian dollars (unless otherwise agreed or stated on a quote). The Company is entitled to charge a currency conversion premium when converting amounts received into Australian currency.
- 7.6 The Customer will be liable to pay to the Company the Charges for all Services performed, whether or not the Goods are delivered, damaged or lost.
- 7.7 The Company reserves the right to impose waiting time charges in respect of loading or unloading delays in excess of 30 minutes. In relation to perishable Goods, the delay period shall commence upon the Company responding for loading or unloading.
- 7.8 The Company may, at the Customer's cost (other than where required due to a negligent act or omission of the Company or the Company Personnel), expend an amount it reasonably considers necessary in order to preserve the Goods or to secure the safety, storage, carriage or shipment of the Goods.
- 8. Invoicing and Payment**
- 8.1 The Company will issue to the Customer a tax invoice for the Services and any goods supplied in accordance with the requirements of the law relating to GST and the Customer must pay the Charges as indicated on the Company's invoice or other similar document.
- 8.2 Unless otherwise expressly stated, Charges and other amounts payable are exclusive of GST. The Customer must pay GST on the Charges at the same time as payment is made under clause 8.3.
- 8.3 Unless the payment terms applying to the Customer's trading account are otherwise specified by the Company in writing, the due date for payment is 7 days from the date the invoice is issued by the Company.
- 8.4 Subject only to this clause 8.4, the Customer must pay the invoice in full without any deduction, set-off or counter-claim. Where an invoice or part of an invoice is genuinely disputed by the Customer, the Customer must provide written notice of such payment dispute before the due date for payment and may withhold payment of the disputed portion of that invoice until the dispute has been resolved. If the resolution of the dispute determines that any disputed amounts are due and payable to the Company under the Contract, then the Customer must pay that amount to the Company within 7 days of resolution of that dispute.
- 8.5 If payment remains unpaid 7 days after date of the invoice and the Customer has not notified the Company of a payment dispute in accordance with clause 8.4, the Company may, in addition to its other rights and remedies under these Terms and at law:

- (a) on the provision of 7 days' written notice, suspend performance of its obligations under the Contract until the full amount outstanding is paid in full;
 - (b) exercise a general lien over, and power of sale of, the Goods under clause 9. The Customer is still liable to pay any amount still owing to the Company after such sale; and
 - (c) on the provision of 7 days' written notice, commence legal proceedings to recover the amount owed and all costs incurred by the Company in collecting any overdue amounts including but not limited to debt collection agency fees, legal fees and court costs will be a debt due and payable by the Customer.
- 8.6 The Company is entitled to receive and retain all commissions, allowances and remuneration paid including those customarily paid by or to forwarding agents, customs agents, shipping agents, forwarders, storers, carriers or bailees.
- 8.7 If the Company makes credit available to the Customer, the Company may amend, alter or terminate the Customer's trading account, terms of credit or alter its payment terms (for example, where the Company perceives that there is a relevant change in circumstances or that the Company faces increased credit risk in connection with the Customer) on 30 days' notice and will use reasonable endeavours to provide reasons (**Payment Terms Notice**). If the Company ceases to supply the Services to the Customer on credit then all fees and charges will become payable after the expiry of this notice period. 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.
- 8.8 The Company may charge the Customer interest on any overdue amount calculated daily at 4% above the cash rate target determined by the Reserve Bank of Australia applicable during the period that the amount is overdue.

9. Lien

- 9.1 In addition to any statutory rights or remedies available to the Company and to the extent permitted by law, the Goods are accepted subject to a general and particular lien and power of sale for all charges due, or which may become due, to the Company by the Customer in respect of any Services, whether or not provided in respect of the Goods over which the lien is exercised. If the Company intends on exercising its lien over, and power of sale of, any Goods (including Goods which are stored within Company Equipment), the Company must first notify the Customer of that intention, identify the matters to which the Customer must attend in order to avoid that outcome, and allow the Customer 7 days in which to attend to those matters. If at the conclusion of that period, the lien has not been satisfied and/or the Goods are not collected, then subject to law, the Company may at its option - in the case of perishable Goods immediately and in any other case upon the expiration of a further 7 days' notice:
- (a) remove such Goods or part thereof and store them in such place and manner as the Company reasonably considers proper at the risk and cost of the Customer;
 - (b) sell by public auction or private sale such Goods or part thereof, acting reasonably, and apply the proceeds in or

- towards discharge of the lien without being liable to any person for any Loss thereby caused; or
- (c) adopt a reasonable method of disposal or destruction (at the Company's sole discretion) of abandoned Goods at the expense of the Customer; or
- (d) where Goods have been stored or transported in Company Equipment, re-possess the Company Equipment and any Goods within the Company Equipment and exercise any power granted under (a) to (c) above, without compensation being payable to the Customer other than accounting to the Customer for any balance proceeds from sale of Goods in accordance with clause 9.1(b) after any money owed to the Company (including recovery costs, the costs of sale, costs of any demurrage chargeable in respect of the uncollected or abandoned Goods), and the Customer must indemnify the Company for all reasonable costs incurred by the Company in the exercise of these rights, or that are directly or indirectly attributable to the abandonment or non-collection of Goods.

10. Force Majeure

- 10.1 If the Company is wholly or partially precluded from performing the Services or otherwise complying with its obligations under these Terms by anything outside the Company's reasonable control (the "**Force Majeure Event**"), then the Company's obligation to perform all of its obligations under these Terms will be suspended for the duration of the delay arising out of the Force Majeure Event.
- 10.2 If the Force Majeure Event (and consequential inability to perform the Contract) continues for a period longer than sixty (60) days from its initial occurrence, then either party may terminate this Contract by written notice to the other with no liability to the other as a result.

11. Limitation of Liability

- 11.1 If the Customer is a consumer as defined under the ACL, then the Company's Services come with guarantees that cannot be excluded under the ACL. For major failures with the Services, the Customer is entitled:
- (a) to cancel the Customer's Contract with the Company; and
 - (b) to a refund for the unused portion, or to compensation for its reduced value.

The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage. If the failure does not amount to a major failure, the Customer is entitled to have problems with the service rectified in a reasonable time and, if this is not done, to cancel the Contract and obtain a refund for the unused portion of the Contract.

- 11.2 The Customer notes and confirms it is aware that:

- (a) where the Services relate to the transportation or storage of Goods; and
- (b) any consignee of Goods is carrying on or engaged in a business, trade, profession or occupation in relation to the Goods,

the Services provided will be covered by s.63 of the ACL and as a result, the consumer guarantees contained in s.60 to s.62 of the ACL will not apply.

11.3 To the extent permitted by law, if the Company is liable for a breach of a guarantee imposed by the ACL then the Company and the Customer note that none of the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption, and the Company's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:

- (a) the supply of the Services again;
- (b) the payment of the cost of having the Services supplied again.

11.4 To the extent permitted by law, the Company's liability for any Claims arising out of this Contract, including liability for breach of this Contract, in negligence or in tort or for any other common law or statutory action, shall:

- (a) be limited to the extent the Loss the subject of the Claim was caused directly by the Company or its Personnel; and
- (b) in any one case be limited to the re-supply of the Services, or at the Company's option, payment of the cost of having the Services re-supplied.

11.5 To the extent permitted by law, every exemption, exclusion or limitation in these Terms applicable to the Company or to which the Company is entitled (under these Terms or otherwise) shall also be available and shall extend to protect:

- (a) all the Company Personnel; and
- (b) all persons who are or might be vicariously liable for the acts or omissions of any such person,
- (c) and for the purposes of this clause 11.5, the Company is acting as an agent on behalf of and for the benefit of all such persons and each of them shall to this extent be deemed to be parties to these Terms.

11.6 To the extent permitted by law, neither party is liable to the other party for any Claims arising out of this Contract, including liability for breach of this Contract, in negligence or in tort or for any other common law or statutory action for any Consequential Loss, provided that nothing in this clause 11.6 relieves the Customer from its obligation pay to the Company any amount payable under this Contract.

12. Notifying of Claims

12.1 Subject to any statutory rights and remedies, the Customer's rights and remedies will be subject to the following:

- (a) The Customer must as soon as reasonably practicable (and in any case within 7 days, unless agrees to a longer period) after delivery of the Goods by the Company to the Customer inspect the Goods. If the Customer believes the Company is liable for any defect in, loss of or damage to the Goods, the Customer must notify the Company in writing within 7 days of delivery of the Goods by to the Customer setting out details of any defects, loss or damage and of the reasons why the Customer believes the Company is liable. In those circumstances, the Customer must provide reasonable evidence and must promptly give the Company access to the Goods

to inspect and assess them. This procedure is necessary to:

- (i) enable the Company to assess whether it has caused or contributed to any relevant defects, loss or damage. Goods can be lost or damaged due to a variety of events or circumstances after delivery by the Company (including but not limited to conduct of third parties, natural degradation or other processes, the manner in which they are stored or handled, or other events unrelated to the Company or its performance of the Services). If the Customer does not promptly inspect the Goods and provide the required notice to the Company, the Company may not be able to determine what may have caused or contributed to such loss or damage as there would be many factors outside of the Company's reasonable knowledge or awareness.

- (ii) allow the Company to identify potential operational issues and to mitigate the potential for future damage.

If the Company does not receive a written notice from the Customer in accordance with clause 12.1(a) within 7 days of delivery of the Goods by to the Customer and the Company's interests have been compromised as a result (including as a result of relevant evidence being lost, destroyed or being otherwise not available), the Company reserves the right to reject any Claim by the Customer for any defect in, loss of or damage to such Goods and the Company will have no liability to the Customer in respect of such rejected Claim. Notwithstanding any Claim the Customer may have, the Customer remains liable to pay all of the Company's Charges.

- (b) To the extent permitted by law, where the Company is bound by a non-excludable time bar in respect of indemnity action against a third-party contracted by the Company to provide the Services, the Company will have no liability to the Customer, even if the Customer gives the Company a written notice within that time, if the Customer does not commence legal proceedings against the Company within 6 months of the date of delivery or from the date of the alleged breach of contract, whichever is earlier. Where the Goods have not been delivered, proceedings must be commenced within 12 months of the date the Goods should have been delivered. These limitations on the commencement of legal proceedings are necessary to allow for the prompt and efficient management of claims and to ensure that the Company has access to relevant Company records or other data, or to the Company Personnel or other parties who may have had an involvement in or knowledge of the matters in connection with the Claim, within the non-excludable time period binding upon the Company.

12.2 If the Customer becomes aware of any Claim made, contemplated or taken against it by any third party in

respect of Goods or the Services, the Customer must, within 7 days of becoming aware, notify the Company of that Claim and give the Company a reasonable opportunity to respond before taking any action in respect of it.

- 12.3 Before settling any third party Claim in respect of which the Customer seeks or may seek compensation or a contribution from the Company, the Customer must first notify the Company of that proposed settlement and reasonably consider feedback from the Company.
- 12.4 The Customer must not make, and must ensure the Owner does not make, any Claim against any the Company Personnel which attempts to impose upon any of them any liability whatsoever in connection with the Contract or the Services and, if any such Claim should nevertheless be made, to indemnify the Company and any of the Company Personnel against all consequences thereof.

13. Dispute Resolution

- 13.1 A party must not start court proceedings (except proceedings seeking interlocutory relief) in respect of a dispute relating to or arising out of these Terms (**Dispute**) unless it has complied with this clause 13.
- 13.2 In the event of a Dispute, the party claiming that a Dispute has arisen must deliver to the other of them a notice containing particulars of the Dispute (**Dispute Notice**).
- 13.3 During the period of 20 Business Days after delivery of the Dispute Notice, or any longer period agreed in writing by the parties (**Initial Period**), the senior executive of each of the parties must use its best efforts to resolve the Dispute by conducting good faith negotiations.
- 13.4 If the Dispute has not been resolved pursuant to clause 13.3 or an alternate method of resolving the Dispute has not been agreed within the Initial Period, or a longer period agreed by the Parties, either Party may submit the Dispute to AMTAC in accordance with the AMTAC Rules, in which case:
- (a) the seat of the arbitration will be Sydney, Australia; and
 - (b) the language of the arbitration will be English.

14. Insurance

- 14.1 The Customer is, as between the Company and the Customer, solely responsible for arranging and maintaining appropriate and adequate insurance in relation to the Goods.
- 14.2 Unless otherwise agreed in writing, the Goods are not insured by the Company nor will insurance be arranged by the Company on behalf of the Customer.

15. Warranties and Obligations

- 15.1 The Customer represents, warrants and must ensure that:
- (a) it has responded to all of the Company's questions accurately and has accurately and fully described and clearly marked the Goods and has provided all necessary instructions and accurate information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods;
 - (b) it has complied with and will continue to comply with the requirements of any applicable laws relating to the nature, condition, packaging, packing, handling, labelling, storage and carriage of the Goods and it shall provide all necessary assistance, information and

documentation to enable the Company to comply with any of its obligations under such laws;

- (c) it shall not tender any Dangerous Goods or temperature-controlled Goods for the provision of Services by the Company without complying with the requirements in clause 5.5;
- (d) the Goods are received in by the Company:
 - (i) where the Goods are temperature-controlled Goods, within the correct temperature range;
 - (ii) are packaged to withstand the risks of or incidental to the handling, transport and storage; and
 - (iii) unless the Company is responsible for packing or loading the Goods, are packed in a manner to ensure balance across and along a container or trailer and are adequately restrained to prevent movement during transport;
- (e) it alone owns the Goods, or if the Customer is not the Owner, it has the authority of the Owner to agree to these Terms and acts as the Owner's agent who agrees to the handling, transport and storage of the Goods on these Terms;
- (f) it has authorised any person who delivers any Goods to, or collects any Goods from, the Company for and on behalf of the Customer to do so;
- (g) the Goods are and will remain free of any objectionable matter or odours which may affect other Goods in storage, unless the condition of the Goods has previously been notified in writing to the Company and the Company has accepted the Goods in that condition;
- (h) the Goods are not illegal, sanctioned or contraband and the Customer has not asked the Company to handle, transport or store the Goods in any way that could be unlawful and that the actual handling, transport or storage of the Goods by the Company in the usual course will not be unlawful;
- (i) all relevant weight data will be supplied to the Company and the weight data (if any) will include all accompanying packaging (including cartons, pallets and stretch-wrap); and
- (j) the Goods are suitable for storage in and transport by the Company Equipment in accordance with any applicable specifications sheet provided by the Company (if any) and the Goods pose no undue risk to the Company Equipment's integrity or to the safety of persons and property.

16. Indemnity

- 16.1 The Customer agrees to indemnify and keep indemnified the Company and the Company Personnel against all Loss that the Company or the Company Personnel may pay, sustain or incur as a result of:
- (a) any negligence by or on behalf of the Customer; or
 - (b) any breach of clause 15.1 by the Customer breach by the Customer.
- 16.2 The indemnity in clause 16.1 does not apply to the extent that the non-performance or non-compliance reasonably arises from or is contributed to by negligence, contractual breach, or a willful, deliberate or unauthorised act or omission by the Company or the Company Personnel.

16.3 The Company may enforce this right of indemnity at any time, including before it has incurred actual Loss.

17. Default and Termination

17.1 A party (**Non-Defaulting Party**) may cancel all or any part of an Order which remains unperformed in addition and, without prejudice to its other remedies, terminate the Contract by giving written notice to the other party (**Defaulting Party**) in the event that the 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 in the reasonable opinion of the Non-Defaulting Party is capable of remedy and the Defaulting Party fails to rectify the breach within the time stipulated in a notice from the other party requiring such breach to be remedied (which must not be less than 14 days);
- (c) is affected by an Insolvency Event; or
- (d) undergoes a Change of Control.

17.2 Where the Order is wholly or partially cancelled or the Contract is terminated by the Company under clause 17.1, all Charges outstanding under any Order and any other amounts owing to the Company will, whether or not due for payment, immediately become due and payable by the Customer.

17.3 Subject to the Customer paying all outstanding amounts that are due for payment to the Company (and including, as applicable, any amounts that become due and payable in accordance with clause 17.2), where the Order is wholly or partially cancelled or the Contract is terminated by either party for any reason:

- (a) the Company must promptly make available to the Customer for collection, and the Customer must promptly collect, the Goods in the care, custody or control of the Company or the Company's Personnel; or
- (b) if agreed by both parties in writing, the Company will continue with the performance of the Services until delivery of the Goods in accordance with the Order, in which case the Terms will continue to apply in respect of such Services, and the Company is entitled to payment of the applicable Charges in respect of any Services performed after termination of this Contract (including any ongoing Services in respect of the Goods until delivery to or collection by the Customer) and the Customer must pay those amounts in accordance with clause 8.

17.4 Any accrued rights and obligations of the parties as at the date of termination will be unaffected by termination.

18. Personal Property Securities Regime

18.1 The Customer must not register a security interest against the Company without first notifying the Company in writing.

18.2 The parties agree that the subject matter referred to in section 275(1) of the PPSA (Personal Properties Securities

Act) is confidential and each party must not disclose any such information to a third party.

19. Privacy

19.1 Both the Customer and the Company agree to comply with the Australian Privacy Principles established by the Privacy Act 1988 (Cth) (**Privacy Act**).

19.2 The Customer agrees that the Company may obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company. The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (under section 18K(1)(h) of the Privacy Act).

19.3 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for any of the following purposes:

- (a) to assess an application by Customer;
- (b) to notify other credit providers of a default by the Customer;
- (c) to exchange information with other credit providers as to the status of the Customer's credit account, where the Customer is in default with other credit providers; or
- (d) to assess the credit worthiness of Customer and obtain a consumer credit report.

20. Miscellaneous

20.1 If a clause or part of a clause is illegal, unenforceable, void or invalid, that clause or part of it is to be:

- (a) read down to the minimum extent necessary to achieve its validity or intent, if applicable; or else; or
 - (b) severed from this Agreement,
- without invalidating or affecting the remaining provisions of this Agreement or the validity of that provision.

20.2 This Contract is governed by the laws of the Commonwealth of Australia and:

- (a) where this Contract relates to Services performed in any one State or Territory, that State or Territory in which the Goods were accepted by the Company for transport; or
- (b) where this Contract relates to Services performed in more than one State or Territory, New South Wales, and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in that State or Territory (as applicable)

20.3 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.