AM Ross Transport Pty Ltd – Terms & Conditions

1. Definitions

1.1 "**Client**" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Company to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a partnership, it shall bind each partner jointly and severally; and
(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(d) includes the Client's executors, administrators, successors and permitted assigns.

1.2 "**Company**" means AM Ross Transport Pty Ltd ATF Ross Transport Discretionary Trust T/A AM Ross Transport Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of AM Ross Transport Pty Ltd ATF Ross Transport Discretionary Trust T/A AM Ross Transport Pty Ltd.

1.3 "**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.

1.4 "**Consignee**" means the person to whom the Goods are to be delivered by way of the Services.

1.5 "**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.

1.6 "**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 Client does not wish to allow Cookies to operate in the background when using the Company's website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**

1.7 "**Dangerous Goods**" means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this Contract) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in the legislation governing cartage by road or rail in the States and Territories of Australia.

1.8 "**Goods**" means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services, or for storage by the Company

1.9 "**GST**" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

1.10 "**Price**" means the Price payable for the Services (plus any GST where applicable) as agreed between the Company and the Client in accordance with clause 6 below.

1.11 "**Services**" means all services provided by the Company to the Client to facilitate the movement of Goods from one place to another by the Company as may be requested by the Client from time to time (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, transhipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.

1.12 "**Sub-Contractor**" means and includes:
(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 Company 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 sub-clauses (a) and (b).

2. The Commonwealth Competition and Consumer Act 2010 ("CCA") and Fair Trading Acts ("FTA")

2.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

2.3 Liability of the Company arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the CCA or howsoever arising, is limited to any of the following as determined by the Company:
(a) rectifying the Services; or
(b) providing the Services again; or
(c) paying for the Services to be provided again.

2.4 If the Company is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.3 or the CCA, but is unable to do so, then the Company 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.

3. Acceptance

3.1 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 Company.

3.2 These terms and conditions are to be read in conjunction with the Company's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Company to the Client. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

3.4 The Client acknowledges that the supply of Services on credit shall not take effect until the Client has completed a credit application with the Company and it has been approved with a credit limit established for the account.

3.5 In the event that the supply of Services request exceeds the Client's credit limit and/or the account exceeds the payment terms, the Company reserves the right to refuse delivery.

3.6 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 or any other applicable provisions of that Act or any Regulations referred to in that Act.

4. Errors and Omissions

4.1 The Client acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
(a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this Contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Services.

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Company; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4.3 In circumstances where the Client is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services (whether they are made to order Incidental Items or not) ("**Client Error**"). The Client must pay for all Services it orders from the Company notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. The Company is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

5. Change in Control

5.1 The Client shall give the Company 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, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss incurred by the Company as a result of the Client's failure to comply with this clause.

6. Price and Payment

6.1 At the Company's sole discretion, the Price shall be either;
(a) as indicated on invoices provided by the Company to the Client in respect of Services provided; or
(b) the Price as at the date of delivery of the Goods according to the Company's current price list; or
(c) the Company's quoted Price (subject to clauses 6.2) which shall be binding upon the Company provided that the Client shall accept in writing the Company's quotation within seven (7) days.

6.2 The Company may, by giving notice to the Client, increase the Price of the Services:
(a) if a variation to the Company'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 Company, delivery times or date or otherwise, etc.);
(b) to reflect any increases to the Company in the cost of providing the Services which are beyond the reasonable control of the Company (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in fuel, fuel levies, taxes or customs duties or insurance premiums or warehousing costs);
(c) for any delay over fifteen (15) minutes in either loading and/or unloading (from when the Company arrives onsite), occurring other than from the Company's default; or
(d) where the Price is calculated by weight, measurement or value, the Company may at any time 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.

6.3 At the Company's sole discretion, a non-refundable deposit may be required.

6.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Company, which may be:
(a) on or before delivery of the Goods; or
(b) on completion of the Services; or
(c) by way of instalments in accordance with the Company's payment schedule;
(d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
(e) the date specified on any invoice or other form as being the date for payment; or
(f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Company.

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

6.6 Receipt by the Company 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 Company's ownership or rights in respect of the Services shall continue.

6.7 The Client acknowledges and agrees that the Client's obligations to the Company for the supply of Services shall not cease until:
(a) the Client has paid the Company all amounts owing for the particular Services; and
(b) the Client has met all other obligations due by the Client to the Company in respect of all contracts between the Company and the Client.

6.8 The Company may in its discretion allocate any payment received from the Client towards any invoice that the Company determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Company may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Company, payment will be deemed to be allocated in such manner as preserves the maximum value of the Company's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

6.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify the Company in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Company investigates the dispute claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in the Company placing the Client's account into default and subject to default interest in accordance with clause 18.1.

6.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this Contract 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 Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

7. Provision of the Services

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

7.2 It is agreed that the person delivering any Goods to the Company for carriage or forwarding is authorised to sign the consignment note for the Client.

7.3 The Client authorises the Company (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, entering into contracts and arranges with any third party to perform or carry out the Services (or any part thereof). In so engaging such third parties, the Company has or will represent to such third parties that the terms of this Contract, including the benefit of any terms conferred upon the Company, shall extend to such third parties in providing their goods and/or services;
(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.

7.4 The Company'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.

8. Client-Packed Containers

8.1 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; and
(b) the Company is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.

9. The Company's Servants or Agents

9.1 Notwithstanding clauses 12.1(b) and 14.1(e), the Client undertakes that no claim or allegation shall be made against any servant or agent of the Company which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Company and any such servant or agent against all consequences thereof.

10. Dangerous Goods

10.1 Dangerous Goods are Goods which are or may become of a dangerous, noxious, explosive, inflammable, radio-active or damaging nature and include Goods likely to harbour or encourage vermin or other pests. Unless agreed in writing, the Client shall not deliver to the Company, or cause the Company to deal with or handle, Dangerous Goods.

10.2 If the Client is in breach of clause 10.1:
(a) the Client, and any person delivering the Goods to the Company, or causing the Company to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified the Company against all loss, damages, claims and costs (howsoever arising) incurred by the Company in connection therewith; and
(b) the Goods may be destroyed or otherwise dealt with as determined by the Company in its absolute discretion at the expense of the Client (or by any other person in whose custody they may be at the relevant time also at the expense of the Client), and neither the Company nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Goods.

10.3 Where the Company agrees to accept Dangerous Goods, if during the period of cartage, the Company, it's Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clause 10.2 shall apply.

11. Client's Responsibility

11.1 The Client expressly warrants, represents, confirms and/or acknowledges that:
(a) the Company has relied upon the Client in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, the Company accepts no liability for any discrepancy that may arise with the description; and
(b) unless specified otherwise in writing, the Company has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
(c) 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 of cartage and/or storage and by entering into this Contract the Client accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Client is acting;
(d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
(e) the person handing over the Goods to the Company is authorised to sign and accept these terms and conditions; and
(f) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

12. Delivery

12.1 The Company:
(a) shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Client in writing, or at any other location directed by the Client orally;
(b) shall have no liability, implied or otherwise, in respect of COD payments which may be collected by any of its servants or agents on behalf of the Client or any of its clients when making deliveries, and if, notwithstanding this clause, any such liability does attach to the Company, then the Client will indemnify the Company in respect of any such liability;
(c) is authorised to deliver the Goods at the address given to the Company by the Client for that purpose and it is expressly agreed that the Company shall be taken to have delivered the Goods in accordance with this Contract if at that address the Company obtains from any person a receipt or a signed delivery docket for the Goods; and
(d) 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.

12.2 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.

12.3 Any time specified by the Company for the delivery of Goods is an estimate only and the Company will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Company is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then the Company shall be entitled to charge the Client any additional costs incurred by the Company as a direct consequence of any resultant delay or rescheduling of the delivery.

13. Conditions of Storage

13.1 The Company 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 Company, 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 Company will be entitled to make a reasonable additional charge.

13.2 The Company is authorised to remove the goods from one warehouse to another without cost to the Client. The Company 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 Company reasonable notice to inspect the Goods in store, but a reasonable charge may be made by the Company 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 Company not less than five (5) working days' notice. If the Client gives the Company less than the required notice the Company 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 Company to do so. In default, the Company shall provide the Client with written notice of the Company's intention to SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty not less than fourteen (14) days after such notice being issued, apply the net proceeds in satisfaction of any amount owing by the Client to the Company in accordance with the Storage Liens Act 1935.

14. Loss or Damage

14.1 Subject to clause 2, and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Company shall not be under any liability for:
(a) any loss or damage suffered by the Client (or any third party) as a result of the Client contravening clause 11;
(b) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure;
(c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), 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 Company 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 delay;
(e) any act or omission whether wilful, reckless, negligent or otherwise of the Company, or its servants or agents or Sub-Contractors;
(f) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
(g) any act, omission, or neglect of the Client, including any breach of its obligations under this Contract, insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.

14.2 Subject to clause 2, the Company 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 Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price).

15. Insurance

15.1 The Company is under no obligation whatsoever to effect insurance on any Goods, nor arrange for any Subcontractor or agent engaged in the course of providing the Services to effect such insurance, and the Client acknowledges that:
(a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Company; and
(b) the Company 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; and
(c) under no circumstances will the Company be under any liability with respect to the arranging of any such insurance and no claim will be made against the Company for failure to arrange or ensure that the Goods are insured adequately or at all.

16. Claims

16.1 Notwithstanding clauses 14 and 15 in the event that the Client believes that they have any claim against the Company then they must lodge any notice of claim for consideration and determination by the Company within twenty-four (24) hours of the date of delivery, or for non-delivery within twenty-four (24) hours 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 Company of its obligations.

17. Compliance with Laws

17.1 The Client and the Company 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.

Modern Slavery

17.2 For the purposes of clauses 17.2 to 17.7:
(a) "**Act**" means the *Modern Slavery Act 2018 (cth)*.
(b) "**Modern Slavery**", "**Modern Slavery Statement**" and "**Reporting Entity**" have the meanings given by the Act.

17.3 If the Client is a Reporting Entity, it shall comply with all of its obligations under the Act.

17.4 Whether the Client is a Reporting Entity or not, the Client shall:
(a) use reasonable endeavours to identify, assess and address risks of Modern Slavery practices in its operations and supply chains;
(b) use its reasonable endeavours to ensure that the personnel responsible for managing the operations and supply chains used for the purposes of the Contract have undertaken suitable training to identify and report Modern Slavery;
(c) use its reasonable endeavours to ensure that if at any time the Client becomes aware of Modern Slavery practices in its operations and supply chains, the Client must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
(d) provide to the Company a copy of any Modern Slavery Statement that it submits under the Act within seven (7) days of so doing; and
(e) within seven (7) days of the Company's request (or such longer period as the Company agrees), provide to the Company any information or assistance reasonable requested by the Company;
(i) concerning the Client's compliance with the Act;
(ii) concerning the Client's operations and supply chains;
(iii) to enable the Company to prepare a Modern Slavery Statement or otherwise comply with the Act; or
(iv) to enable the Company to assess and address risks of Modern Slavery practices in its operations and supply chains.

17.5 The parties agree that in the circumstances a breach arises pursuant to this clause or the terms of the Act, the parties will try and resolve the breach by way of remediation and the Company will be able to terminate the Contract for any breach by the Client.

17.6 The Client warrants that any information supplied to the Company is true and accurate and may be relied upon for the purposes of the Act.

17.7 The Client shall indemnify the Company against any loss or liability suffered by the Company as a result of the Client's breach of this clause 17.

18. Default and Consequences of Default

18.1 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 Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

18.2 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements:
(a) incurred; and/or
(b) which would be incurred and/or
(c) for which by the Client would be liable;
in regard to legal costs on a solicitor and own client basis, internal administration fees, the Company's contract fees owing for breach of these terms and conditions, including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.

18.3 Further to any other rights or remedies the Company may have under this Contract, if the Client has made payment to the Company, 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 Company under this clause 18 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.

18.4 Without prejudice to the Company's other remedies at law the Company 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 Company shall, whether or not due for payment, become immediately payable in the event that:
(a) any money payable to the Company becomes overdue, or in the Company'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 Company;
(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.

19. Lien

19.1 The Company shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of the Company (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to the Company (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and the Company shall have the right to sell such Goods or cargo by public auction or private treaty after giving written notice to the Client. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

19.2 Notwithstanding clause 19.1 nothing shall prejudice the Company's rights to use any of the Company's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 19.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

20. Personal Property Securities Act 2009 ("PPSA")

20.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

20.2 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:
(a) all Goods being transported, carried or handled by the Company, over which the Company invokes a lien; and
(b) all Services that will be supplied in the future by the Company to the Client; and
(c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Company for Services – that have previously been provided and that will be provided in the future by the Company to the Client.

20.3 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 Company 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 20.3(a)(i) or 20.3(a)(ii);
(b) indemnify, and upon demand reimburse, the Company 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 Company;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Company.

20.4 The Company 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.

20.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

20.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

20.7 Unless otherwise agreed to in writing by the Company, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

20.8 The Client shall unconditionally ratify any actions taken by the Company under clauses 20.3 to 20.5.

20.9 Subject to any express provisions to the contrary (including those contained in this clause 20), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

21. Security and Charge

21.1 In consideration of the Company agreeing to supply 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, and the Client grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Company's security interest over the Client on the PPSA, 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).

21.2 The Client indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.

21.3 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on the Client's behalf.

22. Privacy Policy

22.1 All emails, documents, images or other recorded information held or used by the Company is Personal Information, as defined and referred to in clause 22.3, and therefore considered Confidential Information. The Company 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 Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Company that may result in serious harm to the Client, the Company will notify the Client 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 Client by written consent, unless subject to an operation of law.

22.2 Notwithstanding clause 22.1, privacy limitations will extend to the Company in respect of Cookies where the Client utilises the Company's website to make enquiries. The Company 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 Client'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 Company when the Company sends an email to the Client, so the Company may collect and review that information ("collectively Personal Information")
If the Client consents to the Company's use of Cookies on the Company's website and later wishes to withdraw that consent, the Client may manage and control the Company's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

22.3 The Client agrees for the Company 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 Client in relation to credit provided by the Company.

22.4 The Client agrees that the Company may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

22.5 The Client consents to the Company being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

22.6 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other agreed purposes or required by):
(a) the provision of Goods; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Goods.

22.7 The Company may give information about the Client 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 Client including credit history.

22.8 The information given to the CRB may include:
(a) Personal Information as outlined in 22.3 above;
(b) name of the credit provider and that the Company is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client'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 (provided the Company is a member of an approved OAIC External Disputes Resolution Scheme), 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 Client no longer has any overdue accounts and the Company 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 Company, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

22.9 The Client shall have the right to request (by e-mail) from the Company:
(a) a copy of the Personal Information about the Client retained by the Company and the right to request that the Company correct any incorrect Personal Information; and
(b) that the Company does not disclose any Personal Information about the Client for the purpose of direct marketing.

22.10 The Company will destroy Personal Information upon the Client'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.

22.11 The Client can make a privacy complaint by contacting the Company via e-mail. The Company 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 Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

23. Cancellation

23.1 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.

23.2 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice the Company shall repay to the Client any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.

23.3 In the event that the Client cancels the delivery of Goods, or the provision of any Services, then the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

24. Service of Notices

24.1 Any written notice given under this Contract shall be deemed to have been given and received:
(a) by handing the notice to the other party, in person;
(b) by leaving it at the address of the other party as stated in this Contract;
(c) by sending it by registered post to the address of the other party as stated in this Contract;
(d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
(e) if sent by email to the other party's last known email address.

24.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

25. Trusts

25.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not the Company may have notice of the Trust, the Client covenants with the Company as follows:
(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
(c) the Client will not without consent in writing of the Company (the Company will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
(i) the removal, replacement or retirement of the Client as trustee of the Trust;
(ii) any alteration to or variation of the terms of the Trust;
(iii) any advancement or distribution of capital of the Trust; or
(iv) any resettlement of the trust property.

26. General

26.1 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.

26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Company has its principal place of business and are subject to the jurisdiction of the courts in that state.

26.3 The Company may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

26.4 The Client cannot licence or assign without the written approval of the Company.

26.5 The Company may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Company's Sub-Contractors without the authority of the Company.

26.6 The Client agrees that the Company 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 Company to provide Goods to the Client.

26.7 Where the Company is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, 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, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and the Company 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 Company.

26.8 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons of causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.

26.9 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.

26.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.

Please note that a larger print version of these terms and conditions is available from the Company on request.

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