

Clique Logistics Pty Ltd ACN 165 258 435
58B Greenhill Road, Wayville, SA 5034
Telephone: (08) 8443 8213



Terms and Conditions

1. APPLICATION OF TERMS

- 1.1 These Ts & Cs apply to the provision of all Services by the Carrier to the Customer, whether gratuitous or not. All agreements for provision of Services, whether implied, oral or in writing, are entered into by the Carrier subject to these Ts & Cs, unless expressly excluded in writing by the Carrier.
- 1.2 The Customer acknowledges and agrees that:
- it has had the opportunity to have, receive and review a copy of the Ts & Cs; and
 - any terms and conditions contained in any order, offer, acceptance or other document of the Customer are expressly excluded to the fullest extent permitted by law.
- 1.3 The Customer warrants that it is either the owner or authorised agent of the owner and any other person having any interest in the Goods and is authorised to and does accept these Ts & Cs on behalf of all such persons. A breach of these Ts & Cs by any such persons shall be deemed to be a breach of the Customer.
- 1.4 Every exemption, limitation, defence, immunity, warranty, right of indemnity or other benefit contained in these Ts & Cs to which the Carrier is entitled shall also be available and extend to protect and/or benefit all Personnel and Subcontractors of the Carrier and the Carrier enters into this Agreement as trustee for all such persons.

2. PROVISION OF SERVICES

- 2.1 Subject to any mandatory law not able to be excluded, the Carrier will provide the Services in accordance with these Ts & Cs.
- 2.2 The Carrier is not a common carrier and accepts no liability as such.
- 2.3 No request for Services submitted by the Customer is deemed to be accepted by the Carrier unless and until confirmed in writing by an authorised representative of the Carrier. No order which has been accepted by the Carrier may be cancelled by the Customer. The Carrier reserves the right to accept or reject (in whole or in part), in its absolute discretion, any request for Services received by it from the Customer. The Carrier will not be liable for any Claim or Damage the Customer may suffer as a result of any acceptance or rejection.
- 2.4 Time is of the essence in these Ts & Cs in respect only of any date or period for payment determined under the or other thing to be done by the Customer.
- 2.5 The Carrier may perform all or any part of the Services using one or more Subcontractors.

3. DELIVERY

- 3.1 The Carrier may:
- provide the Service by any method which the Carrier, in its absolute discretion, deems fit notwithstanding any instructions of the Customer that the Services are to be provided or supplied by some particular method;
 - in its absolute discretion, carry, store, re-direct, handle, remove, assemble, erect, pack, unpack, load, unload or consolidate the Goods howsoever it deems fit, at the risk and expense of the Customer;
 - sub-contract the Services (in whole or in part) on any terms, and the Carrier is or shall be deemed to be acting as agent of the Customer; and
 - comply with any orders, directions or recommendations made by any government agency in relation to the Goods and/or the Services without recourse by, and at the risk and expense of, the Customer.
- 3.2 Where the Services involve the delivery of goods, the Carrier is authorised by the Customer to deliver the goods at the address given to the Carrier by the Customer, and the Carrier will be deemed to have duly delivered the goods if at such address the Carrier obtains from any person an acknowledgement of delivery. If the Customer or any nominated receiver fails to accept delivery of the Goods, the Carrier shall be entitled to store the Goods howsoever it deems fit, at the risk and expense of the Customer.
- 3.3 Any date quoted for delivery is an estimate only notwithstanding any prior guarantee of a delivery date.

- 3.4 The Customer agrees to accept any Goods and Services despite any failure by the Carrier to deliver by a particular date and written advice given by the Carrier to the Customer is deemed the supply of the Goods or the Services and the Customer must pay for those Goods or Services in accordance with these Ts & Cs.
- 3.5 The Customer agrees that the Carrier may deliver the Goods or Services in parts or instalments and any such delivery by part or instalment does not give the Customer any right to terminate any order or promise to accept or pay for the Goods or Services.
- 3.6 The Carrier may at any time comply with any direction or order of any Authority, without incurring any additional liability to the Customer.

4. DANGEROUS GOODS

- 4.1 The Customer must make prior written declaration to the Carrier declaring any Goods that are or may be Dangerous Goods and if the Carrier agrees to accept them for carriage, they must be classified, packed, marked, labelled and documented in accordance with all laws and applicable statutory regulations for the carriage of the Dangerous Goods declared.
- 4.2 If, in the Carrier's opinion, the Goods are or may become Dangerous Goods, the Carrier may, in its absolute discretion, refuse to provide the Services in respect of such Goods or refuse to continue to provide the Services in respect of such Goods, return to the Customer or destroy, dispose of, abandon or render harmless such Goods without compensation to the Customer and at the expense of the Customer.
- 4.3 If, in the Carrier's opinion, it is necessary and reasonable to do so to render any Goods or Services in relation to any Goods safe, the Carrier may without notice or liability to the Customer open any Goods, container, package, wrapping or document.
- 4.4 Irrespective of whether the Carrier has been informed that any Goods are Dangerous Goods, if the Carrier reasonably consider that the goods may cause or pose a risk of injury or damage to any other goods, property, life or health, or are tendered in breach of this clause, the Carrier can do anything that it considers appropriate to avoid or reduce any such risk, including disposing of, rendering harmless, abandoning, returning to the Customer or destroying all or any part of the Goods, without notice or liability and at the Customer's risk and expense.

5. LOADING AND UNLOADING

- 5.1 Unless the Carrier has agreed in writing to the contrary with the Customer:
- the Carrier shall not be under any obligation to provide any plant, power or labour, other than that carried by the collecting or delivering vehicle, required for loading or unloading the Goods;
 - the Customer warrants that any plant, power or labour required for the loading or unloading of the Goods which is not carried by the vehicle will be provided by the Customer or on the Customer's behalf;
 - the Carrier shall be under no liability whatsoever to the Customer for any damage whatsoever, howsoever caused, if the Carrier is instructed to load or unload any Goods requiring plant, power or labour which, in breach of the warranty in sub-clause (b), has not been provided by the Customer or on the Customer's behalf; and
 - the Carrier shall not be required to provide any Services beyond the usual place of collection or delivery and if any such Service is given it shall be at the sole risk of the Customer and shall be deemed to be provided pursuant to these Ts & Cs, form a separate contract for Services and may be separately invoiced and becomes payable and must be paid at the same time and manner as the original Services.

6. SIGNED RECEIPTS

The Carrier may, if required, sign a document or electronic record prepared by, or on behalf of, the Customer acknowledging the receipt or delivery of the Goods but the burden of proving the condition of the Goods and their nature,

quantity or weight at the time of collection shall rest with the Customer, the Customer hereby releases and holds harmless the Carrier from such burden and the Carrier may plead this clause in bar to any proceedings commenced by the Customer against the Carrier.

7. TRANSIT

- 7.1 Transit commences when the Carrier takes possession of the Goods at the point of collection or at the Carrier's premises.
- 7.2 Transit shall end (unless otherwise previously determined) when the Goods are tendered at the usual place of delivery at the Customer's designated address within customary cartage hours being 7am to 6pm or such other time as set out in a notice by the Carrier to the Customer provided that:
- if no safe and adequate access or no adequate unloading facilities there exist or are reasonably available, then transit is hereby deemed to end at the expiry of one clear day after the Carrier gives notice (including by telephone) of the arrival of the Goods at the Customer's designated address has been sent to the Customer; and
 - when for any other reason whatsoever Goods cannot be or have not been delivered or when Goods are held by the Carrier 'to await order' or 'to be kept until called for' or upon any like instructions and such instructions are not then given or the Goods are not called for within a one day, then transit shall also be deemed to end.
- 7.3 The Customer shall be liable to pay demurrage for unreasonable detention of any vehicle, trailer, Container or other equipment at the Carrier's current rates of demurrage and the rights of the Carrier against any other person in respect thereof shall remain unaffected.

8. UNDELIVERED OR UNCLAIMED GOODS

- 8.1 If the Carrier is unable, for any reason, to deliver the Goods, or by virtue of clause 7.2(b), transit is deemed to be at an end, the Carrier may:
- store the Goods in the open or under cover without liability and at the Customer's risk and expense; or
 - sell the Goods (and any cargo, items or documents relating to such Goods) by public auction or by private treaty, and may retain the sums due to it by the Customer, in addition to any charges incurred in the detention and sale of such Goods, cargo or items from their proceeds and shall pay any surplus to the Customer.
- 8.2 The sale in accordance with sub-clause 8.2 discharges the Carrier from, and this may be pleaded in bar to any proceedings against the Carrier for, all liability in respect of such Goods and Services provided that the Carrier shall do what is reasonable to obtain the fair value for the Goods.
- 8.3 The Carrier will not exercise the power of sale in this clause 8 if the Carrier knows the name and address of the Customer, until it has given reasonable notice to the Customer that the Goods will be sold unless within the time specified in the such notice (being a reasonable time in the circumstances from the giving of such notice) the Goods are collected or other reasonable instructions are given to the Carrier for the disposal of the Goods.

9. CUSTOMER'S WARRANTIES

- 9.1 The Customer warrants that:
- it has complied with all applicable laws relating to Dangerous Goods;
 - it has accurately and fully described the Goods to the Carrier and has provided all necessary instructions and information to the Carrier regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods;
 - any person who, on behalf of the Customer, provides or purports to provide instructions to the Carrier for the performance of the Services is authorised by the Customer to do so and is further authorised by the Customer to sign any contract on its behalf;
 - the Goods are packed in a manner adequate to withstand the ordinary risks of cartage having regard to their nature;

- the Goods comply with all Applicable Laws including in relation to the consignment and packaging of the Goods and any and all expenses and charges of the Carrier in complying with the provisions of any such Applicable Laws or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other Authority or company shall be paid to the Carrier by the Customer promptly on receipt of an invoice;
- it has not relied on any statement, warranty or representation made by, for or on behalf of the Carrier other than those that are expressly set out in the Quotation; and
- other than a Claim against the Carrier, no Claim shall be made by any person (including the Customer) against any Sub-contractor, which imposes or attempts to impose any liability whatsoever and howsoever arising in connection with the provision of the Services or the Goods.

10. CHAIN OF RESPONSIBILITY

- 10.1 Without limiting any other provision of this Agreement, the Customer must at all times during the term and relating to the performance of this Agreement warrant that it has and will:
- ensure, so far as reasonably practicable, the safety of its Transport Activities, within the meaning of the CoR Laws;
 - not do or require or refrain from doing or requiring anything which would directly or indirectly cause or encourage any person to breach any CoR Law; and
 - develop and implement suitable policies and working procedures (including training/education, compliance performance monitoring and reporting) to, so far as reasonably practicable, eliminate or, where not possible, minimise risks to the public arising from the conduct of its Transport Activities.
- 10.2 The Customer must:
- comply with any compliance policy, working practices or reasonable direction of the Carrier in relation to compliance with the CoR Laws, which form part of this Agreement as if they were set out in full within it;
 - manage and retain copies of all Transport and Journey Documentation s required under the CoR Laws;
 - promptly advise the Carrier of any facts or circumstances which come to its attention which may give rise to any breach or allegation of breach of the CoR Laws, including without limitation any warning or caution, request for information or documents, infringement notice, fine or the commencement of prosecution proceedings by any regulatory Authority;
 - promptly make available all information or documentation reasonably requested by the Customer for the purpose of monitoring or auditing compliance with the provisions of this clause, including Transport and Journey Documentation, vehicles and loads.
- 10.3 In addition to any other right of the Carrier under and despite anything to the contrary contained in any other provision of this Agreement, in the event of any breach or suspected breach of the provisions of this clause by the Customer, the Carrier will be entitled, in its sole and absolute discretion, to:
- not provide any further Services to any person responsible for any breach;
 - suspend the performance of this Agreement (or any part of it) until such time as the breach is remedied to the reasonable satisfaction of the Carrier; and/or
 - terminate this Agreement with immediate effect by giving notice in writing to the Customer.

11. INDEMNITY TO THE CARRIER

- 11.1 The Customer shall indemnify the Carrier against:
- Any and all Claims and Damages incurred by the Carrier by reason of any error, omission, mis-statement or misrepresentation by the Customer or any other owner of the Goods or by any servant or agent of either of them, insufficient or improper packing, labelling or addressing of the Goods or fraud; and

- (b) any and all Claims whatsoever (including for the avoidance of doubt claims alleging negligence) by whomsoever made and howsoever arising (including but not limited to Claims caused by or arising out of the carriage of Dangerous Goods) in excess of the liability of the Carrier under the in respect of any loss or Damage whatsoever to, or in connection with, the Goods and Services whether or not caused or contributed to directly or indirectly by any act, omission, neglect or other wrongdoing on the part of the Carrier.

12. LIMITATION OF LIABILITY

- 12.1 Subject to any mandatory law not able to be excluded and clause 12.2, the Carrier shall not be liable for any Claim or Damage whatsoever arising howsoever from or in connection with this Agreement and the Customer hereby waives and releases the Carrier from any such liability, except to the extent caused or contributed to by any breach of this Agreement or, negligent act or omission of the Carrier or its Personnel.
- 12.2 Subject to any mandatory law not able to be excluded, and except in so far as otherwise expressly provided by these Ts & Cs:
- (a) the liability of the Carrier, howsoever arising, shall not exceed the lesser of in the case of:
- (i) Services – the:
- (A) supplying of the Services again;
- (B) payment of the cost of supplying the Services again; or
- (C) amount of AUD500;
- (ii) Goods – the:
- (A) replacement of the Goods or the supply of equivalent Goods;
- (B) repair of the Goods;
- (C) payment of the cost of replacing the Goods or of acquiring equivalent Goods value of the Goods lost, damaged, misdirected, misdelivered, delayed or in respect of which any Damage or Claim arises; or
- (D) amount of AUD500,
- (b) the Carrier will not be liable for any Consequential Loss.

13. FRAUD

- 13.1 The Carrier shall not in any circumstances be liable in respect of Goods or Services where there has been fraud on the part of the Customer or the owner of the Goods, or the servants or agents of either, unless and only insofar as the fraud has been contributed to by the reckless complicity of the Carrier.

14. TIME LIMITS FOR CLAIMS

- 14.1 Notwithstanding any other provision in these Ts & Cs, and subject always to clause 12.1, the Carrier shall not in any event be liable to any person whatsoever, and the Customer hereby releases and forever holds the Carrier harmless from any Claim for liability, for:
- (a) damage to the whole or part of the Goods, or physical loss, mis-delivery or non-delivery of part of the Goods unless the Customer gives written notice thereof in writing within 7 days of the date of delivery, or due date for delivery in the case of mis-delivery or non-delivery, and the claim is made in writing within 7 days of such notice; and
- (b) any other loss unless advised thereof in writing within 28 days of the date of delivery, or due date for delivery in the case of mis-delivery or non-delivery, and the claim is made in writing within 35 days of such notice.
- 14.2 The Carrier shall in any event be discharged from all liability whatsoever and howsoever arising, and the Customer hereby releases and forever holds the Carrier harmless from any Claim for liability, in respect of the Goods and Services unless suit is brought and notice in writing thereof given to the Carrier within one year of the date of delivery, or due date for delivery in the case of mis-delivery or non-delivery.

15. LIEN

The Carrier shall have a particular lien on the Goods (and any cargo, items or documents relating to such Goods) and a

general lien against the Customer for any unpaid sums, including, without limitation, any Charges. If such lien, whether particular or general, is not satisfied within 28 days after notice is given to the Customer, the Carrier may sell such Goods (and any cargo, items or documents relating to such Goods) by public auction or by private treaty, and may retain the sums due to it by the Customer, in addition to any charges incurred in the detention and sale of such Goods, cargo or items from their proceeds and shall pay the balance remaining (if any) to the Customer.

16. DEALINGS WITH THIRD PARTIES

- 16.1 If the Carrier, at the request of the Customer, collects Goods from a third party then, despite any subsequent agreement to the contrary between the Carrier and the Customer, any conformation or receipt the Carrier may give the third party is no more than a record and is not, and the Customer releases the Carrier from any claim regarding, confirmation or otherwise of the quality, acceptability or condition of the Goods.
- 16.2 The Customer acknowledges that the Carrier will not be bound by any instruction by the Customer or a third party to collect any Charges from any third party. Any Charges billed, at the request of the Customer, to third parties who do not have an account with the Carrier will be calculated using the Carrier's non-account schedule rates and the Customer will be liable for any Charges if payment is not promptly made by such third party.

17. CONTAINERS

- 17.1 The Customer shall be responsible for the return of any Container to the person who owns or is otherwise entitled to possession of a Container, or its agent, and the Customer hereby indemnifies and will keep indemnified the Carrier against any claim, demand or liabilities which may arise as a result of or relate to any failure by the Customer with respect to the Container or to failure to observe or not contravene any rights or interests of any owner or other person making a claim with respect to the Container.
- 17.2 Any Container supplied by the Carrier shall be inspected by the Customer prior to packing and stowage and returned to the Carrier clean and undamaged to the location and by the date nominated by the Carrier, failing which the Customer shall be liable for, and shall indemnify the Carrier against, any and all resulting costs and expenses incurred by, or levied by any person against, the Carrier.
- 17.3 If the Goods are packed or stowed into a Container by the Customer or its agent, the Carrier shall not be liable for, and the Customer releases and holds harmless the Carrier against any claim regarding any liability, damage or loss arising from, the unsafe or improper packing or stowage of such Goods.

18. RISK & INSURANCE

- 18.1 The Goods shall at all times remain at the risk of the Customer.
- 18.2 The Customer shall ensure that it, and any agent or Subcontractor engaged by the Customer in relation to the Goods or Services, obtains and maintains all insurances required by all applicable laws with reputable insurers and all such other insurances as the Carrier may deem necessary. Any deficiencies in the cover or policy limits of insurances of such agents or Subcontractors shall become the sole responsibility of the Customer to procure.

19. QUOTATIONS

- 19.1 Any Quotation offered by the Carrier:
- (a) is offered on an immediate acceptance basis and is subject to withdrawal or revision without notice at the discretion of the Carrier;
- (b) excludes all Disbursements; and
- (c) includes only those Services for which rates have been quoted or fixed – any additional Services which may be performed by the Carrier are charged at the Carrier standard rates as it may publish and vary from time to time - and if any costs of the Carrier underlying those Services that were quoted or fixed increase, the Carrier will pass on to the Customer, and the Customer undertakes to pay, those increases including any standard margin of the Carrier.

20. CHARGES AND PAYMENT

- 20.1 The Carrier may base its Charges by reference to freight weight, volume or value and the Carrier may, at any time, re-weigh or re-measure or re-value or require the Goods to be re-weighed or re-measured or re-valued and apply additional freight Charges accordingly.
- 20.2 Despite any other clause of these and any other agreement between the Carrier and the Customer that does not expressly, in writing, waive or vary this sub-clause, the Carrier may vary the price, cost and any quote or fixed fee for any of its Services at any time and for any reason and without notice.
- 20.3 The Customer shall reimburse the Carrier for all Disbursements, if any, which are properly and reasonably incurred by the Carrier in the provision of the Services or in respect of the Goods.
- 20.4 Unless otherwise agreed in writing with the Carrier, the Carrier's Charges must be paid in full within 30 days of the date of any invoice issued by the Carrier for any Disbursement and/or Carriage Fee. The Customer must pay the relevant amount by providing the Carrier with cleared funds without any set-off, abatement, counter-claim, deduction or withholdings whatsoever, irrespective of any dispute between the Carrier and the Customer in respect of any Goods and/or Services.
- 20.5 The Carriage Fee shall be deemed as earned as soon as the Goods are delivered to the Carrier, or when the Services begin to be performed by the Carrier, whichever is the earlier, and under no circumstances shall that Carriage Fee be refunded.
- 20.6 The Customer agrees to indemnify the Carrier for any costs or expenses incurred by the Carrier in recovering any Charges from the Customer, including but not limited to fees paid to solicitors instructed to act on behalf of the Carrier, and the Customer agrees that any such costs or expenses will be deemed to have been reasonably incurred by the Carrier in recovering the Charges.

21. GRANT OF CREDIT OR ACCOUNT

- 21.1 The Carrier may grant, or vary the terms on which the credit is given, or withdraw credit at any time, without prior notice, for any reason, in the Carrier's absolute discretion.
- 21.2 The Carrier may at any time, including after any approval to grant credit, require the Customer to provide security in a form acceptable to the Carrier, including but not limited to payment of a deposit or pre-payment, as a condition for a grant of credit, a further grant of credit or continuance of a grant of credit, or for any order (including any special order).

22. PAYMENT TERMS

The Customer must, without set-off or deduction of any kind whatsoever, make full payment of the Carrier's invoices within 14 days after the date of the invoice (or such alternative period agreed by the Carrier in writing).

23. ACTION

If the Customer does not strictly comply with the terms of these T&Cs, the Carrier may take immediate action to recover any money owed by the Customer to the Carrier.

24. EXPENSES

- 24.1 The Customer must pay any credit card surcharge incurred by the Carrier from time to time if the Customer makes any payment to the Carrier using a credit card.
- 24.2 The Customer must pay the Carrier, on a full indemnity basis as a liquidated debt, the full amount of any bank fees or other expenses associated with any dishonoured payments or cheques and any legal, debt recovery or other expenses incurred by the Carrier associated with any action by the Carrier to exercise any right or remedy under these T&Cs.

25. OVERDUE AMOUNTS

- 25.1 The Carrier may charge the Customer interest on any overdue amounts owed by the Customer at a rate of 12.5% per annum, compounded monthly.
- 25.2 In addition, the Carrier may charge the Customer the Administration Costs on any overdue amounts owed by the Customer.

26. SECURITY INTEREST

- 26.1 To secure the punctual payment of all amounts owed by the Customer to the Carrier, the Customer grants to the Carrier:

- (a) a security interest (as defined under the PPSA) over all present and after-acquired property of the Customer in relation to which the Customer can be a grantor of a security interest under the PPSA, whether or not the Customer has title to the property, including but not limited to all PPSA retention of title property (as defined under section 51F of the *Corporations Act*); and
- (b) a fixed charge over all present and after-acquired property of the Customer in relation to which the Customer cannot be a grantor of a security interest under the PPSA.

- 26.2 The Customer agrees and acknowledges the Carrier may (without limiting the Carrier's other rights under these \, at law or otherwise) lodge caveats over the Customer's property and take any other action to secure and enforce the Carrier's security under clause 26.1.
- 26.3 The Carrier's security under clause 26.1 may become enforceable without the need for any demand or notice to the Customer.
- 26.4 If the Carrier's security under clause 26.1 has become enforceable, the Carrier may appoint a Receiver of secured property or exercise any power exercisable by a Receiver even if a Receiver has not been appointed.
- 26.5 The Customer agrees on demand, and irrevocably appoints the Carrier, each director and secretary of the Carrier and any Receiver (as independent and several appointments) as the Customer's agent and attorney, to execute any document (including, without limitation, any mortgage or transfer) or undertake any act, at the Customer's cost, that the Carrier considers necessary or desirable to:
- (a) better secure the security under clause 26.1 in a manner consistent with any Document; or
- (b) assist in the completion, execution of, or exercise of any power under, any Document.

27. GST

- 27.1 To the extent that a party makes a Taxable Supply under or in connection with this Agreement, the consideration payable by a party under or in connection with this Agreement represents the value of the Taxable Supply for which payment is to be made and on which GST is to be calculated.
- 27.2 If a party makes a Taxable Supply under or in connection with this Agreement for a consideration, which represents its value, then the party liable to pay for the Taxable Supply must also pay at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
- 27.3 the right of a party to payment under this clause is subject to a tax invoice being issued and delivered by the supplier of the taxable supply to the recipient.

28. PERSONAL PROPERTY SECURITIES

- 28.1 The Customer agrees that moneys received by the Carrier will be applied, after satisfaction of any claim that the Carrier or Receiver is aware ranks in priority, in the following order:
- (a) first in payment of all expenses that the Carrier or Receiver incurs in the exercise of a power or otherwise in relation to any Document;
- (b) then in payment of any other outgoings that the Carrier or Receiver considers appropriate to pay;
- (c) then in payment to the Receiver of any remuneration;
- (d) then in payment to the Carrier or Receiver of any amount necessary to give effect to any indemnity under any Document; and
- (e) then in payment to the Carrier of all amounts owed by the Customer to the Carrier.
- 28.2 The Customer:
- (a) agrees with the Carrier that neither the Customer, nor the Carrier, will disclose information of the kind specified in section 275(1) of the PPSA (except in the circumstances required by sections 275(7)(b) to (e) of the PPSA);
- (b) agrees that, to the extent permitted under section 115(1) of the PPSA, the following provisions of the PPSA do not

apply: sections 95, 118, 121(4), 125, 130, 132(3)(d), 135, 138B(4), 142 and 143;

- (c) agrees that, to the extent permitted under section 115(7) of the PPSA, the following provisions of the PPSA do not apply: sections 127, 129(2), 129(3), 132, 134(2), 135, 136(5) and 137;
- (d) acknowledges that the Carrier may, at the Customer's cost, register one or more financing statements in relation to any security under any Document;
- (e) waives, if permitted under the PPSA, the Customer's right under section 157 of the PPSA to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement; and
- (f) will not, without prior written notice to the Carrier, change the Customer's name or initiate any change to any documentation registered under the PPSA.

29. TRUST

29.1 If the Customer is acting as the trustee of any trust in making the Application for Commercial Credit or any request for the supply of Goods and Services, the Customer acknowledges and agrees that the obligations arising herein are entered into in the Customer's personal capacity and as a trustee of each and every trust of which the Customer as trustee requested the supply of the Goods and Services and the Customer covenants with the Carrier as follows:

- (a) the provisions of these Ts & Cs and/or the Application for Commercial Credit as applicable shall extend not only to any property (including land) of which the Customer is the beneficial owner but also all property (including land) wheresoever situate both present and future of the trust;
- (b) the Customer has full and complete power and authority pursuant to the trust to enter into these Ts & Cs and any Application for Commercial Credit and to grant security over the trust property and the provisions of the trust do not purport to exclude or take away the right of indemnity of the trustee against the trust, and the Customer will not release such right of indemnity or commit any breach of trust or be a party to any other action which might prejudice such right of indemnity;
- (c) notwithstanding anything in the trust documentation the Customer shall be and at all times remain personally liable to the Carrier to the performance of all covenants on the part of the Customer contained in these Ts & Cs or an Application for Commercial Credit;
- (d) the acceptance of these Ts & Cs and/or the execution of an Application for Commercial Credit is and shall be deemed to be for the benefit of both the trust and/or one or more of the beneficiaries of the trust; and
- (e) during the currency of these Ts & Cs and/or any Application for Commercial Credit or of any mortgage collateral to these Ts & Cs or any Application for Commercial Credit, the Customer will not without the consent in writing of the Carrier cause, permit or suffer to happen any of the following events:
 - (i) the removal replacement or retirement of the Customer as sole 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;
 - (iv) any resettlement of the trust property; or
 - (v) if the trust is a unit trust, any transfer if any units of the trust.

29.2 The Customer further covenants with the Carrier that in the event that the Customer is guilty of any breach of duty in respect of the trust or ceases to be the sole trustee of the trust or otherwise suffers removal, replacement or retirement as trustee of the trust or in the event that there should be any breach of the covenants contained in clause 29.1 then immediately upon any such events the Customer will, at the option of the Carrier (notwithstanding anything in these Ts & Cs and/or an Application for Commercial Credit), be deemed to be in default of the provisions of the Ts & Cs and/or an Application for Commercial Credit (notwithstanding any delay

or previous waiver of the provisions of this clause by the Carrier).

30. RELEASE AND INDEMNITY

- 30.1 Neither the Carrier nor any person appointed by the Carrier under any Document will be liable for any loss that the Customer suffers as a direct or indirect result of:
- (a) the exercise or attempted exercise of, or failure to exercise, any rights under any Document; or
 - (b) any release or dealing with any security interest.
- 30.2 The Customer will indemnify the Carrier, each member of the Carrier's Personnel and each Receiver or any other person appointed by the Carrier in relation to any losses, liabilities, expenses (including but not limited to legal expenses on a full indemnity basis) or taxes incurred in connection with:
- (a) the exercise or attempted exercise of any powers, rights, discretions or remedies vested in the person under any Document or the Corporations Act;
 - (b) any proceedings, claims or demands in relation to any secured property; or
 - (c) any negligence, breach of these or Event of Default by the Customer or any member of the Customer's Personnel.

31. DEFAULT

If an Event of Default occurs, the Carrier may (without limiting the Carrier's other rights under these, at law or otherwise) demand immediate payment of any money owed by the Customer, retain any money paid by the Customer, cease any further supply of Goods and Services to the Customer and take possession of any Goods and/or Services for which the Customer has not paid.

32. APPLICATION OF MONEY

If the Carrier or Receiver receives money under or because of any Document, and applies the money in payment of monies owing to the Carrier, the Carrier or Receiver may apply different parts of the money received to different parts of the monies owing in the absolute discretion of the Carrier or Receiver regardless of any appropriation by the Customer.

33. PURPOSE

The Customer warrants that any credit provided to the Customer by the Carrier is to be applied wholly or predominately for commercial purposes. The Customer acknowledges, agrees and warrants that the Services are being acquired solely for business purposes and that the Carrier is relying on the accuracy of all the information and representations provided by the Customer in this Application for Commercial Credit.

34. JOINT AND SEVERAL

If the Customer consists of more than one person, each person will be jointly and severally bound by the terms of these.

35. PRIVACY NOTICE AND CONSENT

- 35.1 The Carrier may, before, during or after the provision of credit to the Customer, give any of the following information about the Customer, to a credit reporting agency:
- (a) identity particulars - name, sex, address (and previous two addresses), date of birth, name of employer, and driver's licence number;
 - (b) the Customer's application for credit - the fact that the Customer has applied for credit and the amount;
 - (c) the fact that the Carrier is a current credit provider to the Customer;
 - (d) payments which are overdue by more than 60 days, and for which debt collection action has started;
 - (e) advice that payments are no longer overdue in respect of any default;
 - (f) information that, in the opinion of the Carrier, the Customer has committed a serious credit infringement (that is, acted fraudulently or shown an intention not to comply with credit obligations); and
 - (g) dishonoured cheques - cheques drawn by the Customer for \$100 or more which have been dishonoured more than once,

- for the purpose of obtaining a consumer credit report, or allowing the credit reporting agency to create or maintain a credit information file containing information, about the Customer or for any related purpose.
- 35.2 The Carrier may obtain:
- information about the Customer from a business which provides information about the commercial creditworthiness of persons; and
 - a consumer credit report containing information about the Customer from a credit reporting agency,
- for the purpose of assessing the Customer's application for credit or a grant of any ongoing credit or for any related purpose.
- 35.3 The Carrier may, but is not obliged to, give a credit report containing information about the Customer to any person:
- who is currently a guarantor; or
 - whom the Customer has indicated is considering becoming a guarantor,
- for the purpose of a person deciding whether to act as guarantor or keeping a guarantor informed about any guarantee or for any related purpose.
- 35.4 The Carrier may exchange information about the Customer with those credit providers and suppliers (including trade references):
- named in the Commercial Credit Application;
 - named in a consumer credit report issued by a credit reporting agency; and
 - of which the Carrier is, or becomes, aware,
- for the purpose of assessing an application for credit, notifying other credit providers (including trade references) of a default, exchanging information with other credit providers (including trade references) as to the status of credit where the Customer is in default with other credit providers (including trade references), or assessing the Customer's creditworthiness or for any related purpose.
- 35.5 The information obtained or disclosed about the Customer in accordance with these Ts & Cs may include a credit report and anything about the Customer's creditworthiness, credit standing or credit history or any related information.
- 35.6 Without limiting the foregoing, the Customer consents and authorises the Carrier at any time and from time to time to:
- obtain information about the Customer's commercial activities and personal or commercial credit worthiness from:
 - the bank or trade referee as disclosed by the Customer to the Carrier in the Application for Commercial Credit and/or from time to time; or
 - any other credit provider; or
 - any credit reporting agency; and
 - use, disclose or exchange with other credit providers information about the Customer's personal or commercial credit arrangements in order to assess the Application for Commercial Credit, monitor credit worthiness and collect overdue accounts;
 - disclose to any credit opening agency any personal or commercial information (including an opinion) relating to the Customer to maintain or create a credit information file containing information about the Customer; and
 - disclose the contents of a credit report by credit reporting agency to contractors or agents of the Carrier, including the Carrier's solicitors or collection agents for collection purposes.
- 35.7 This notice and consent and the Carrier's Privacy Policy [INSERT LINK OR URL] applies to any and each and every Customer or other party named in the Commercial Credit Application and the Customer hereby warrants it has the express agency and authority to accept this notice and give consent (whether alone, as trustee, or a member of a partnership or as a director of an applicant company) of any party named in this Agreement and/or the Application for Commercial Credit and that it has read the Carrier's Privacy Policy.

36. FORCE MAJEURE

- 36.1 If either party is prevented or delayed (directly or indirectly and in whole or part) from performing any obligation arising under this Agreement (other than the Customer making any payment to any person or taking delivery of any Goods) by reason of any Force Majeure Event, then that party's obligations will be suspended and the time for their performance extended for the duration of such Force Majeure Event upon the affected party providing notice and particulars of the Force Majeure Event and its expected duration to the other party. If a party is prevented or delayed from performing any obligation by an such notified Force Majeure Event for more than 14 days, the other party may terminate this Agreement.

37. TERMINATION

- 37.1 The Carrier may terminate these, or any right under them, at any time without cause, upon 90 days notice to the Customer and the Customer hereby releases the Carrier from all Claims or and any liability whatsoever and howsoever arising directly or indirectly from any event that has or may occur on or after the date of notice of termination and from the termination by the Carrier of the or any right under them.

38. DISPUTE RESOLUTION

- 38.1 If either party alleges that a Dispute has arisen, it may issue a notice of dispute providing particulars of the Dispute.
- 38.2 Within fourteen (days) of receipt of the notice of dispute, the parties shall confer at least once to attempt to resolve the Dispute or to agree on methods of resolving the Dispute by other means. At any such conference, each party shall be represented by a person having authority to agree to a resolution of the Dispute.
- 38.3 If the dispute is not resolved within fourteen (14) days of receipt of the notice of dispute, or such further time as the parties mutually agree, the parties may (but not must) jointly refer the Dispute to arbitration pursuant to the *Commercial Arbitration Act 2011* (SA), such arbitration to be conducted by a single arbitrator jointly appointed by the parties, failing which, appointed by the Chair of the Resolution Institute and conducted in accordance with the resolution Institute Arbitration Rules in force at the time and held in Adelaide.
- 38.4 Nothing in this Agreement shall prejudice the right of a party to institute proceedings to seek injunctive or urgent declaratory relief in respect of any Dispute or any matter arising under this Agreement.

39. LAW AND JURISDICTION

- 39.1 This Agreement to be construed according to the laws of South Australia. The parties agree to submit any Dispute to the non-exclusive jurisdiction of the courts of South Australia and any courts that may hear appeals from those courts.

40. NOTICES

- 40.1 Any communication (including each notice, consent, approval, request and demand) under or in connection with this Application for Commercial Credit:
- must be in writing;
 - must be signed by the party making it on (on that party's behalf) by the solicitor for, or any attorney, director, secretary, or authorised agent of that party;
 - must be delivered by hand or posted by prepaid post to the address, or sent by fax to the number, of the addressee, set out in this Application for Commercial Credit or notified by that party to each other party from time to time; and
 - is taken to be received by the addressee:
 - in the case of prepaid post sent to an address in the same country - on the third day after the date of posting;
 - in the case of prepaid post sent to an address in another country - on the fifth day after the date of posting by airmail;
 - in the case of facsimile or email - at the time in the place to which it is sent equivalent to the time shown on the transmission confirmation report produced by the transmission device from which it was sent; and

(iv) in the case of delivery by hand- on delivery; but if the communication is taken to be received on a day that is not a business day or after 5:00pm, it is taken to be received at 9:00am on the next business day ("business day" meaning a day that is not a Saturday, Sunday or public holiday and on which banks are open for business generally, in the place to which the communication is posted, sent or delivered).

41. GENERAL

- 41.1 A certificate signed by a director or secretary of the Carrier stating that an amount of money is payable by the Customer to the Carrier will be prima facie evidence of the fact and the Customer will not object to the admissibility of such a certificate in any legal proceedings.
- 41.2 If any provision of these is unenforceable, the provision will be severed and the remaining provisions will continue to apply.
- 41.3 The Carrier may assign any rights or benefits under these to any third party.
- 41.4 The Customer may only assign any rights or benefits under these with the Carrier's prior written consent.
- 41.5 If there is any inconsistency or ambiguity between the terms of these and any other terms of any other agreement, the terms of these will take precedence and will prevail to the extent of any inconsistency.
- 41.6 The Customer agrees (at its own expense) to promptly execute and deliver all such documents, and do all such things, or procure the execution and delivery of all documents and doing of all such things as are required by, or on behalf of, the Carrier to give full effect to and the transactions contemplated by it.
- 41.7 The rights of the Carrier under these may be exercised as often as necessary, are cumulative and not exclusive of rights or remedies provided by law, and may be waived only expressly and in writing. Delay in exercising or non-exercise of any such right is not a waiver of that right. All rights, immunities, indemnities, exclusions and limitations of liability in these standing for the benefit of the Carrier shall continue to have their full force and effect in all circumstances and notwithstanding any breach (including a fundamental breach) of the by the Carrier or any other person entitled of the benefit of such provisions.
- 41.8 Every provision of these, including, without limitation, every exemption, limitation, condition, right, defence and immunity available to the Carrier under these shall benefit, be available to, and extend to protect, any sub-contractor of the Carrier or any person who is or may be vicariously liable for the acts or omissions of the Carrier or any sub-contractor thereto, and, in agreeing to, the Carrier shall be taken to have done so not only on its own behalf but also as agent for such persons.
- 41.9 A provision of these, or any right created under them, may not be varied except in writing, expressed to amend these and signed by the Carrier.

42. DEFINITIONS

In these Ts & Cs:

"**Administration**" means any of the following, or any analogous, events:

- any step is taken to appoint an administrator, receiver, receiver and manager, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;
- any person, or agent of a person, who holds any security interest (whether or not under the PPSA) takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA); or
- a court or other authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;

"**Administration Costs**" means the costs likely to be incurred by the Carrier in managing the full payment of the Carrier's invoices within 30 days after the date of the invoice which the parties have reasonably estimated to be the liquidated sum of \$100 per notice sent to the Customer by or on behalf of the

Carrier per invoice remaining unpaid by 30 days or more at the time of the Carrier's issue of the notice.

"**Agreement**" means these Ts & Cs together with the Quotation and the terms of any contract or agreement incorporating or subject to them;

"**Applicable Law**" means, as the case may be, legislation, regulations, codes or conventions applicable to this agreement or otherwise to the Goods;

"**Application for Commercial Credit**" means the application for commercial credit which the Carrier may subsequently request the Customer to complete;

"**Australian Consumer Law**" means the Australian Consumer Law at Schedule 2 of the Competition and Consumer Act 2010 (Cth);

"**Authority**" means any government or government department, a governmental, semi-governmental or judicial person or a person (whether autonomous or not) charged with the administration of any Applicable Law;

"**Business Day**" means a day that is not a Saturday or Sunday or public special or bank holiday in Adelaide, South Australia or any place in which any relevant part of this Agreement is performed;

"**Carriage Fee**" means the Carrier's charges for any Services provided for or on behalf of the Customer as notified to the Customer in the Carrier's Quotation and as amended from time to time by agreement between the Carrier and the Customer;

"**Carrier**" means any entity that grants credit to the Customer pursuant to these;

"**Charges**" means any Disbursement or Carriage Fee;

"**Claim**" includes any claim, notice, demand, costs (including legal costs and expenses), debts, dues, liabilities, damages, losses, taxes, duties, fees, suits, action, demands, proceeding, litigation or judgement, however it arises and whether pursuant to tort, contract, equity or legislation;

"**Consequential Loss**" means any special or pure economic loss, expense or damage including loss of production, profit, use or opportunity, whether direct or indirect, suffered by a party or a third person as a result of any act or omission of a party arising from or in connection with this Agreement;

"**Container**" means any container, trailer, transportable tank, pallet, flat rack, bolster or any device otherwise used to consolidate or carry for the Goods and any equipment of or connected thereto;

"**CoR Laws**" means any laws in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness and maintenance and including the HVNL;

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

"**Customer**" means the applicant named in the Quotation and includes, in respect of anything done or to be done by the Customer, the Customer's Personnel;

"**Damage**" means any loss of, damage to, deterioration of, or mis-delivery of, or non-delivery of, or delay in delivery of the Goods and any other loss or damage arising therefrom or in relation to this Agreement;

"**Dangerous Goods**" means any Goods which are dangerous, inflammable, radio-active or of a damaging nature, Goods likely to harbour or encourage vermin or other pests and Goods the carriage, handling or storage of which is illegal, prohibited or otherwise regulated by any law or regulation of a State, Territory or the Commonwealth; ;

"**Disbursement**" means any monies paid to any person by the Carrier for, on behalf of or at the request of the Customer in the course of, or incidental to, the provision of the Services by the Carrier;

"**Dispute**" means any dispute or disagreement arising out of or in relation to this Agreement, including as to its formation, terms, performance, non-performance or breach, but does not include its termination or purported termination;

"**Document**" means the Application for Commercial Credit, the T&Cs and any document contemplated by such documents;

"Event of Default" means any of the following, or any analogous, events:

- (a) the Customer fails to pay any amount due and payable under any Document when the amount is due and payable;
- (b) the Customer fails to comply with any obligations under any Document;
- (c) any representation, warranty or statement by the Customer in connection with any Document is untrue or misleading (whether by omission or otherwise) or fraudulent; or
- (d) the Customer becomes subject to Administration;

"Force Majeure Event" means any event, cause or occurrence outside a party's control and not caused or contributed to by it and which is not able to be avoided or overcome by due diligence, including strike; lockout; labour dispute or shortage; interruption in the supply of essential services, utilities or infrastructure; trade dispute; fire; breakdown; flood; serious inclement weather; cyclone; natural disaster; earthquake; lightning; explosion; accident; road or rail closure; rail derailment; wharf delays; act or omission of air traffic control; act of god; act of war; act of public enemies; terrorist acts; sabotage; epidemic; pandemic; quarantine restriction; riots and civil commotion;

"Goods" means the cargo, baggage, equipment, machinery plant or items in relation to which any part of the Services have been or are to be performed, and any receptacle, Container, package, packaging or item in which they are contained with or with which they are stored or handled;

"HVNL" means the Heavy Vehicle National Law and Regulations and any other laws of any State/Territory which give effect to any of them, Road Traffic (Administration) Act

2008 (WA) and Road Traffic (Vehicles) Act 2012 (WA) and any similar laws in any State/Territory and any replacement or modification of any of the foregoing;

"Personnel" means in relation to a party, any of its officers, employees or agents;

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

"Receiver" means a receiver or receiver and manager (or an additional receiver or receiver and manager);

"Quotation" means the quote or fixed fee offered by the Carrier to the Customer for the provision of the Services.

"Services" means the whole or any part of the services provided from time to time by the Carrier for the Customer in accordance with the terms of this Agreement which may include but are not limited to the carriage, storage, loading, unloading, packing, unpacking, freight forwarding, customs clearance or deconsolidation of any Goods or any Container for or on behalf of the Customer; and

"Subcontractor" means, in relation to a party, any contractor, subcontractor, consultant or representative, at any level, engaged to perform all or any part of the Services on behalf of that party;

"Ts & Cs" means these terms and conditions of sale as may be amended by the Carrier from time to time.

"Transport Activities" has the meaning given to it in the HVNL;

"Transport and Journey Documentation" means any Transport Documentation or Journey Documentation as defined in the HVNL.