

## 1. Definitions

1.1 **“Carrier”** means Woodmine 2 Pty Ltd T/A RMB Logistics its successors and assigns or any person acting on behalf of and with the authority of Woodmine 2 Pty Ltd T/A RMB Logistics.

1.2 **“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.

1.3 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.

1.4 **“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.

1.5 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Customer does not wish to allow Cookies to operate in the background when using the Carrier’s website, then the Customer shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**

1.6 **“Customer”** means the person/s, entities or any person acting on behalf of and with the authority of the Customer requesting the Carrier to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and: (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and

(b) if the Customer is a partnership, it shall bind each partner jointly and severally; and

(c) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and

(d) includes the Customer’s executors, administrators, successors and permitted assigns.

1.7 **“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.

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

1.9 **“Price”** means the Price payable for the Services (plus any GST where applicable) as agreed between the Carrier and the Customer in accordance with clause 7 below.

1.10 **“Services”** means all services provided by the Carrier to the Customer to facilitate the movement of Goods from one place to another by the Carrier as may be requested by the Customer 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, leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.

1.11 **“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 Carrier may arrange for the carriage or storage of any Goods the subject of the Contract; or

(c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in 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 Customer 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 Carrier 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 Carrier: (a) rectifying the Services; or

(b) providing the Services again; or

(c) paying for the Services to be provided again.

2.4 If the Carrier 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 Carrier may refund any money the Customer 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 Customer which were not defective.

## 3. Acceptance

3.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts, Services provided by the Carrier.

3.2 These terms and conditions are to be read in conjunction with the Carrier’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Carrier to the Customer. 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 Customer acknowledges that the supply of Goods on credit shall not take effect until the Customer has completed a credit application with the Carrier and it has been approved with a credit limit established for the account.

3.5 In the event that the supply of Goods request exceeds the Customer’s credit limit and/or the account exceeds the payment terms, the Carrier reserves the right to refuse delivery.

#### 4. Electronic Transactions Act

4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW), Section 9 of the Electronic Communications Act 2000 (SA), Section 9 of the Electronic Transactions Act 2001 (ACT), Section 9 of the Electronic Transactions (Victoria) Act 2000, Section 9 of the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (TAS), Section 10 of the Electronic Transactions Act 2011 (WA) or any other applicable provisions of that Act or any Regulations referred to in that Act.

#### 5. Errors and Omissions

5.1 The Customer acknowledges and accepts that the Carrier 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 Carrier 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 Carrier in respect of the Services.

5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of the Carrier; the Customer shall not be entitled to treat this Contract as repudiated nor render it invalid.

5.3 In circumstances where the Customer is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Customer 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) ("**Customer Error**"). The Customer must pay for all Services it orders from the Carrier notwithstanding that such Services suffer from a Customer Error and notwithstanding that the Customer has not taken or refuses to take delivery of such Services. The Carrier is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Customer Errors.

#### 6. Change in Control

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

#### 7. Price and Payment

7.1 At the Carrier's sole discretion, the Price shall be either; (a) as indicated on invoices provided by the Carrier to the Customer in respect of Services provided; or

(b) the Price as at the date of delivery of the Goods according to the Carrier's current price list; or

(c) the Carrier's quoted Price (subject to clauses 7.2 and 7.3) which shall be binding upon the Carrier provided that the Customer shall accept in writing the Carrier's quotation within seven (7) days.

7.2 The Carrier may, by giving notice to the Customer, increase the Price of the Services to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier (including, without limitation, roads impassable due to floods, breakdowns and/or accidents, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, fuel or warehousing costs).

7.3 The Carrier may charge freight by weight, measurement or value, and 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.

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

7.5 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Carrier, which may be: (a) on or before delivery of the Goods;

(b) on completion of the Services;

(c) by way of instalments in accordance with the Carrier's payment schedule;

(d) thirty (30) days following the end of the month in which a statement is posted to the Customer'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 Customer by the Carrier.

7.6 Payment may be made by electronic/on-line banking or by any other method as agreed to between the Customer and the Carrier.

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

7.8 The Customer acknowledges and agrees that the Customer's obligations to the Carrier for the supply of Services shall not cease until: (a) the Customer has paid the Carrier all amounts owing for the particular Services; and

(b) the Customer has met all other obligations due by the Customer to the Carrier in respect of all contracts between the Carrier and the Customer.

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

7.10 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Carrier 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 Customer must notify the Carrier in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as the Carrier investigates the disputed claim, no credit shall be passed for refund until the review is completed.

Failure to make payment may result in the Carrier placing the Customer's account into default and subject to default interest in accordance with clause 24.1.

7.11 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to the Carrier an amount equal to any GST the Carrier must pay for any provision of Services by the Carrier under this Contract or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer 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.

## **8. Freight Forwarding**

8.1 Except to the extent that any of the Services shall be actually performed by the Carrier, the Carrier shall act as a forwarding agent only. The Carrier shall be entitled, to enter into contracts on behalf of and as agent for the Customer and without notice to the Customer, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Carrier may be necessary or desirable to the performance of the Services. The Customer hereby appoints the Carrier the agent of the Customer for the purpose of entering into any contract, upon such terms and conditions, as the Carrier may in its absolute discretion think fit. The Customer shall be bound by the terms of any consignment note, air waybill or other contractual document which the Carrier may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Customer, the Carrier, or any other person.

## **9. The Carrier is not a Common Carrier**

9.1 The Carrier 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 Carrier subject only to these terms and conditions and the Carrier 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.

## **10. Customer-Packed Containers**

10.1 If a container has not been stowed by or on behalf of the Carrier, the Carrier shall not be liable for loss of or damage to the Goods caused by:

- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.

## **11. Nomination of Sub-Contractor**

11.1 The Customer hereby authorises the Carrier (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Carrier shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

## **12. The Carrier's Servants or Agents**

12.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Carrier 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 Carrier and any such servant or agent against all consequences thereof.

## **13. Method of Transport**

13.1 If the Customer instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method designated but if that method cannot conveniently be adopted by the Carrier the Customer shall be deemed to authorise the Carrier to carry or have the Goods carried by another method or methods.

## **14. Route Deviation**

14.1 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.

**15. Charges Earned** 15.1 The Carrier's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

## **16. Demurrage**

16.1 The Customer will be and shall remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period shall commence upon the Carrier reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Customer or Consignee.

## **17. Consignment Note**

17.1 It is agreed that the person delivering any Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note for the Customer.

## 18. Customer's Responsibility

18.1 The Customer expressly warrants, represents, confirms and/or acknowledges that:

- (a) the Carrier has relied upon the Customer in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, the Carrier accepts no liability for any discrepancy that may arise with the description;
- (b) unless specified otherwise in writing, the Carrier has relied upon the Customer's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Customer has complied with all applicable laws and regulations and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) the Customer 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 by entering into this Contract the Customer accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Customer 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 Customer's description of the Goods; and
- (e) it is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

## 19. Delivery

19.1 The Carrier is authorised to deliver the Goods at the address given to the Carrier by the Customer for that purpose and it is expressly agreed that the Carrier shall be taken to have delivered the Goods in accordance with this Contract if at that address the Carrier obtains from any person a receipt or a signed delivery docket for the Goods.

19.2 Further to clause 19.1, the Carrier shall upon delivery of the Goods take a photograph of the delivered Goods. The Customer shall then be required to sign a delivery docket stating that the Goods have been delivered, accepted and free of any defects.

19.3 The Carrier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.

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

19.5 At the Carrier's sole discretion, the cost of delivery is included in the Price.

19.6 Any time specified by the Carrier for the delivery of Goods is an estimate only and the Carrier will not be liable for any loss or damage incurred by the Customer 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 Carrier is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then the Carrier shall be entitled to charge the Customer any additional costs incurred by the Carrier as a direct consequence of any resultant delay or rescheduling of the delivery.

## 20. Loss or Damage

20.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including, but not limited to, chilled, refrigerated or perishable Goods): (a) the Carrier shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Carrier or not) nor for 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; and

(b) the Customer will indemnify the Carrier against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the Goods.

## 21. Insurance

21.1 The Customer acknowledges that: (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of the Carrier; and

(b) the Carrier is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and

(c) under no circumstances will the Carrier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Carrier for failure to arrange or ensure that the Goods are insured adequately or at all.

**22. Claims** 22.1 Notwithstanding clauses 20 and 21 in the event that the Customer believes that they have any claim against the Carrier then they must lodge any notice of claim for consideration and determination by the Carrier within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.

22.2 The failure to notify a claim within the time limits under clause 22.1 is evidence of satisfactory performance by the Carrier of its obligations.

## 23. Compliance with Laws

23.1 The Customer and the Carrier shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

23.2 For the purposes of clauses 23.2 to 23.7: (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.

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

23.4 Whether the Customer is a Reporting Entity or not, the Customer 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 Customer becomes aware of Modern Slavery practices in its operations and supply chains, the Customer must as soon as reasonably practicable take all reasonable steps to address or remove these practices;
- (d) provide to the Carrier 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 Carrier's request (or such longer period as the Carrier agrees), provide to the Carrier any information or assistance reasonable requested by the Carrier; (i) concerning the Customer's compliance with the Act;
- (ii) concerning the Customer's operations and supply chains;
- (iii) to enable the Carrier to prepare a Modern Slavery Statement or otherwise comply with the Act; or
- (iv) to enable the Carrier to assess and address risks of Modern Slavery practices in its operations and supply chains.

23.5 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 Carrier will be able to terminate the Contract for any breach by the Customer.

23.6 The Customer warrants that any information supplied to the Carrier is true and accurate and may be relied upon for the purposes of the Act.

23.7 The Customer shall indemnify the Carrier against any loss or liability suffered by the Carrier as a result of the Customer's breach of this clause 23.

#### **24. Default and Consequences of Default**

24.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Carrier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

24.2 If the Customer owes the Carrier any money the Customer shall indemnify the Carrier from and against all costs and disbursements: (a) incurred; and/or

(b) which would be incurred and/or

(c) for which by the Customer would be liable;

24.3 Further to any other rights or remedies the Carrier may have under this Contract, if the Customer has made payment to the Carrier, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Carrier under this clause 24 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under this Contract.

24.4 Without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Carrier shall, whether or not due for payment, become immediately payable in the event that: (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Customer will be unable to meet its payments as they fall due; or

(b) the Customer has exceeded any applicable credit limit provided by the Carrier;

(c) the Customer 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 Customer or any asset of the Customer. in regard to legal costs on a solicitor and own client basis, internal administration fees, the Carrier'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.

#### **25. Carrier's Lien**

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

25.2 Notwithstanding clause 25.1 nothing shall prejudice the Carrier's rights to use any of the Carrier'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 25.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

#### **26. Personal Property Securities Act 2009 ("PPSA")**

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

26.2 Upon assenting to these terms and conditions in writing the Customer 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 Carrier, over which the Carrier invokes a lien; and

(b) all Services that will be supplied in the future by the Carrier to the Customer; and

(c) all the Customer's present and after acquired property being a charge, including anything in respect of which the Customer 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 Customer to the Carrier for Services – that have previously been provided and that will be provided in the future by the Carrier to the Customer.

26.3 The Customer undertakes to: (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Carrier may reasonably require to: (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 26.3(a)(i) or 26.3(a)(ii);

(b) indemnify, and upon demand reimburse, the Carrier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of the Carrier.

26.4 The Carrier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

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

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

26.7 Unless otherwise agreed to in writing by the Carrier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

26.8 The Customer shall unconditionally ratify any actions taken by the Carrier under clauses 26.3 to 26.5.

26.9 Subject to any express provisions to the contrary (including those contained in this clause 26), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

## **27. Security and Charge**

27.1 In consideration of the Carrier agreeing to supply Services, the Customer 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 Customer either now or in the future, and the Customer grants a security interest in all of its present and after-acquired property for the purposes of, including but not limited to registering the Carrier's security interest over the Customer on the PPSA, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

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

27.3 The Customer irrevocably appoints the Carrier and each director of the Carrier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 27 including, but not limited to, signing any document on the Customer's behalf.

## **28. Privacy Policy**

28.1 All emails, documents, images or other recorded information held or used by the Carrier is Personal Information, as defined and referred to in clause 28.3, and therefore considered Confidential Information. The Carrier acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Carrier acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Customer's Personal Information, held by the Carrier that may result in serious harm to the Customer, the Carrier will notify the Customer in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Customer by written consent, unless subject to an operation of law.

28.2 Notwithstanding clause 28.1, privacy limitations will extend to the Carrier in respect of Cookies where the Customer utilises the Carrier's website to make enquiries. The Carrier agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Customer's: (a) IP address, browser, email client type and other similar details;

(b) tracking website usage and traffic; and

(c) reports are available to the Carrier when the Carrier sends an email to the Customer, so the Carrier may collect and review that information ("collectively Personal Information")

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

28.4 The Customer agrees that the Carrier may exchange information about the Customer with those credit providers and with related body corporates for the following purposes: (a) to assess an application by the Customer; and/or

(b) to notify other credit providers of a default by the Customer; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.

28.5 The Customer consents to the Carrier being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.

28.6 The Customer agrees that personal credit information provided may be used and retained by the Carrier for the following purposes (and for other agreed purposes or required by): (a) the provision of Goods; and/or

(b) analysing, verifying and/or checking the Customer'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 Customer; and/or

(d) enabling the collection of amounts outstanding in relation to the Goods.

If the Customer consents to the Carrier's use of Cookies on the Carrier's website and later wishes to withdraw that consent, the Customer may manage and control the Carrier's privacy controls via the Customer's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

28.7 The Carrier may give information about the Customer to a CRB for the following purposes: (a) to obtain a consumer credit report;

(b) allow the CRB to create or maintain a credit information file about the Customer including credit history.

28.8 The information given to the CRB may include: (a) Personal Information as outlined in 28.3 above;

(b) name of the credit provider and that the Carrier is a current credit provider to the Customer;

(c) whether the credit provider is a licensee;

(d) type of consumer credit;

(e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

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

(g) information that, in the opinion of the Carrier, the Customer has committed a serious credit infringement;

(h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).

28.9 The Customer shall have the right to request (by e-mail) from the Carrier: (a) a copy of the Personal Information about the Customer retained by the Carrier and the right to request that the Carrier correct any incorrect Personal Information; and

(b) that the Carrier does not disclose any Personal Information about the Customer for the purpose of direct marketing.

28.10 The Carrier will destroy Personal Information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

28.11 The Customer can make a privacy complaint by contacting the Carrier via e-mail. The Carrier will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).

## 29. Cancellation

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

29.2 The Carrier 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 Customer. On giving such notice the Carrier shall repay to the Customer any sums paid in respect of the Price. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.

29.3 The Customer may cancel delivery of the Goods, or the provision of the Services, by written notice served within twenty-four (24) hours of placement of the order. In the event that the Customer cancels the delivery of Goods, or the provision of any Services outside of this timeframe, then the Customer shall be liable for any loss incurred by the Carrier (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

## 30. Service of Notices

30.1 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.

30.2 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.

### 31. Trusts

31.1 If the Customer 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 Carrier may have notice of the Trust, the Customer covenants with the Carrier as follows: (a) the Contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;

(b) the Customer 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 Customer against the Trust or the trust fund. The Customer 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 Customer will not without consent in writing of the Carrier (the Carrier will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events: (i) the removal, replacement or retirement of the Customer 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.

### 32. General

32.1 Any dispute or difference arising as to the interpretation of these terms and conditions or as to any matter arising herein, shall be submitted to, and settled by, mediation before resorting to any external dispute resolution mechanisms (including arbitration or court proceedings) by notifying the other party in writing setting out the reason for the dispute. The parties shall share equally the mediator's fees. Should mediation fail to resolve the dispute, the parties shall be free to pursue other dispute resolution avenues.

32.2 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.

32.3 These terms and conditions and any contract to which they apply shall be governed by the laws in which state the Goods and/or Services were provided by the Carrier to the Customer however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Courts in the state of Victoria in which the Carrier has its principal place of business.

32.4 Subject to clause 2, the Carrier shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Carrier of these terms and conditions (alternatively the Carrier's liability shall be limited to damages which under no circumstances shall exceed the Price).

32.5 The Carrier may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Customer's consent.

32.6 The Customer cannot licence or assign without the written approval of the Carrier.

32.7 The Carrier 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 Customer agrees and understands that they have no authority to give any instruction to any of the Carrier's Sub-Contractors without the authority of the Carrier.

32.8 The Customer agrees that the Carrier may amend their general terms and conditions for subsequent future contracts with the Customer by disclosing such to the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for the Carrier to provide Goods to the Customer.

32.9 Where the Carrier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Carrier, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, 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 Carrier gives the Customer prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Carrier.

32.10 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or 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.

32.11 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.

32.12 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.