

## 1. Definitions

In these conditions:

**Agreed Storage Period** has the meaning given in clause 5(a);

**Business Hours** means 8:00 am to 5:00 pm local time on Monday to Friday except on days which are public holidays in the relevant State or Territory in which an action is to be performed as specified in these conditions;

**Chain of Responsibility Law** means the *Heavy Vehicle National Law Act 2012* of Queensland and its equivalent enacted in relevant territories and states and in the case of Western Australia means the *Road Traffic (Vehicles) Act 2012* and any other relevant law or regulation in any State or Territory relating to chain of responsibility obligations in respect of driver fatigue, mass, dimension, load restraint and dangerous goods;

**Charges** means the costs, expenses, and charges (including the Taxes) published by the Supplier or notified by the Supplier to the Customer from time to time;

**Confidential Information** has the meaning given in clause 11(a);

**Consequential Loss** means:

- (a) any loss or damage suffered by a party which is indirect or consequential;
- (b) which results from any special circumstance or supervening event;
- (c) any loss of profits, loss of production, loss of revenue, loss of interest, loss of goodwill, loss of credit, loss of use, loss of business reputation, loss of any contract or loss or denial of opportunity of any kind;
- (d) any increased or wasted overhead costs; or
- (e) any punitive or exemplary damages,

regardless of whether or not anything was foreseeable at the time this Contract was entered into;

**Contract** has the meaning given in clause 2(b) and **this Contract** means the relevant Contract created between the Supplier and the Customer;

**Contract Documents** means the Quotation, Purchase Order, Order Confirmation and the terms and conditions set out in this document;

**Customer** means the Person who has placed an order with the Supplier to provide Services as set out in clause 2;

**Delivery Address** means the address to which the Customer has notified the Supplier in writing that the Products are to be delivered;

**Gross Default** means such wanton and reckless conduct as constitutes a complete and knowing disregard for the material, harmful, obvious, proximate and easily avoidable consequences which result or are likely to result from it.

**GST** has the meaning defined in *A New Tax System (Products and Services Tax) Act 1999 (C'th)*;

**Intellectual Property** means all intellectual and industrial property rights, including trademarks, copyright, (including future copyright), inventions, patents, designs, circuits and other layouts, database rights and other intellectual property rights as defined in *Article 2 of the Convention establishing the World Intellectual Property Organisation dated 14 July 1967* (as amended from time to time), including any application or right to apply for registration of any of these rights;

**Order Confirmation** has the meaning given in clause 2(b);

**Person** includes any person, firm or corporation and, where relevant, government, local authorities, statutory authorities and government agencies;

**PPSA** means the *Personal Property Securities Act 2009 (C'th)*;

**Price** means the itemised price for the Products and each of the Services as specified in the Quotation which shall be exclusive of Taxes and Charges;

**Products** means the Products described in the Quotation, Purchase Order or Order Confirmation;

**Purchase Order** means a purchase order issued by the Customer to the Supplier;

**Quotation** means the written quotation issued by the Supplier in relation to the Products (which can be included in an exchange of emails), and the quotation will be valid for the period as specified therein;

**Recipient** means the Person to whom the Products are to be delivered, who may be the Customer or another Person as nominated by the Customer in the relevant Purchase Order or otherwise in writing;

**Related Body Corporate** has the meaning given in the *Corporations Act 2001 (C'th)*;

**Services** means the Supply, Transport and Storage of the Products as set out in the Contract Documents;

**Storage** means storage or warehousing of the Products by the Supplier and **Store** shall have the same meaning;

**Subcontractor** means any Person the Supplier arranges to Transport or Store the Products and includes any agent of the Supplier;

**Supplier** means Lionel Samson Packaging Co Pty Ltd (ACN 154 967 469).

**Supplier IP** means all Intellectual Property owned by the Supplier (including but not limited to in respect of the Products or any process or equipment in relation to the Products and their design and manufacture) together with all Intellectual Property in relation to the Services which the Supplier discloses or makes available to the Customer pursuant to or during the term of the Contract;

**Supply (or Supplied)** means the sale and supply of the Products to the Customer by the Supplier;

**Taxes** means all taxes, fees, levies, duties, charges, penalties, fines, levies and other charges imposed or assessed by any government authority wherever located in connection with the Services including GST; and

**Transport** means the operations and services undertaken by Supplier for the Customer in respect of the Products including carriage by road, rail, sea or any other mode, loading and unloading.

## 2. Contract Between the Customer and the Supplier

(a) Following the issue of a valid Quotation by the Supplier to the Customer, the Customer may place an order for the Services with the Supplier by issuing a Purchase Order to the Supplier for the Services.

(b) A contract (**Contract**) is created between the Customer and the Supplier when the Customer issues a Purchase Order and the Supplier accepts the Purchase Order by issuing an order confirmation (**Order Confirmation**) to the Customer.

(c) The Purchase Order must specify:

- (i) the number of the Quotation;
- (ii) a description of the Products;
- (iii) the quantity of Products (number and/or weight as applicable);
- (iv) which of the Services are required in relation to the Products;
- (v) the Price and the Charges; and
- (vi) if the Products are to be Supplied only, whether they are to be collected from the Supplier at a specified location or delivered to the Delivery Address;

(d) The Supplier is not obliged to accept a Purchase Order. The Supplier may at its discretion not accept a Purchase Order. In this case, the Purchase Order is deemed not to be accepted and the Supplier will have no liability to the Customer in respect of that Purchase Order. The Supplier may in its sole discretion (but shall not be obliged to) provide reasons to the Customer for its non-acceptance.

- (e) If the Purchase Order specifies that the Products are supplied on an "exclusive" basis and the Supplier rejects a Purchase Order, then the Customer may purchase the Products and Services the subject of that Purchase Order from another Supplier, notwithstanding anything in clause 4.
- (f) The Customer agrees and acknowledges that the quantity of Products Supplied may vary due to manufacturing tolerances (generally +/-5%). The Supplier will, as far as reasonably practicable, keep the Customer advised regarding any issues in relation to the variation of quantities and will adjust the Price accordingly.
- (g) The Contract constitutes the whole agreement between the parties and supersedes any previous contracts, agreements, or undertakings between the parties in relation to the Products or the Services.
- (h) Where there is any inconsistency between these conditions and any of the other Contract Documents then the other Contract Documents shall prevail to the extent of the inconsistency unless otherwise expressly agreed in writing. Where there is any inconsistency between any of the other Contract Documents and the Order Confirmation then the Order Confirmation shall prevail to the extent of the inconsistency unless otherwise expressly agreed in writing. The Supplier does not accept and shall not be bound by any terms or conditions which the Customer proposes in the Purchase Order or otherwise unless they have been confirmed and agreed to in writing by the Supplier in an Order Confirmation.

### 3. Supply and Payment

In the case of Supply, the Supplier:

- (a) agrees to sell and Supply the Products and provide the Services to the Customer and the Customer agrees to purchase and take delivery of the Products and receive the Services from the Supplier and to pay to the Supplier the Price and the Charges as set out in the Order Confirmation in cleared funds no later than 30 days from the date of the Supplier's tax invoice, or as otherwise specified by the Supplier in writing; and
- (b) shall procure Transport, Storage (if applicable) and delivery of the Products to the Delivery Address and shall facilitate collection of the Products (if applicable), subject to these conditions.

### 4. Exclusivity

If the Purchase Order specifies that the Products are supplied on an "exclusive" basis, then to the maximum extent permitted by law the Customer acknowledges and agrees that the Supplier shall be the sole and exclusive supplier to the Customer of the Products under the Contract and the Customer shall not acquire the Products from any third Party unless the Supplier provides its prior written consent.

### 5. Storage

- (a) If the Customer requires Storage, then subject to the Supplier determining in its sole discretion that it has Storage space available or is able to procure Storage space from a third party, the Supplier may arrange Storage for a storage period agreed (**Agreed Storage Period**) to by the Supplier. At the expiration of the Agreed Storage Period, the Supplier will deliver the Products to the Customer at the Delivery Address or the Customer must collect the Products (if applicable) as soon as possible.
- (b) The Supplier may store the Products at any location it considers appropriate.
- (c) The Supplier is not required to store the Products beyond the expiry of any Agreed Storage Period.
- (d) If the Customer is unable to take delivery of the Products at the expiration of any Agreed Storage Period then, subject to the Supplier determining in its sole discretion that Storage space is available, the Supplier's may in its sole discretion, either:
  - (i) continue to hold the Products in Storage at the Supplier's standard commercial storage rate; or
  - (ii) deliver the Products to the Customer.

- (e) where Storage services are provided, clause 20.2(b) is deemed to have been amended in relation to liability for a breach of any Non-Excludable Rights (as that term is defined in that clause) with respect to Storage Services by adding a new sub-clause (b)(iii) that reads "*or at the Supplier's election, a credit for Charges due to be paid for Storage or a refund of all Charges paid, less any reasonable expenses incurred by the Supplier*"

### 6. Transport and Delivery

- (a) The Supplier is not required to deliver the Products to any address other than the Delivery Address. The Supplier may at its discretion agree to deliver the Products to another address but will only be bound to do so if it agrees in writing prior to delivery. The Supplier may charge additional Charges for delivery to a different address. The Customer shall assume all risks arising from the delivery of the Products to an address other than the Delivery Address.
- (b) The Supplier may in its sole discretion select the method or a combination of methods of Transport and delivery. If the Supplier believes it is necessary or desirable, the Supplier may deviate from the usual or customary route or method of Transport.
- (c) The Customer must ensure that the Delivery Address (or any alternative address) has adequate and safe access arrangements in order to ensure that the Supplier may deliver the Products and the Customer must advise the Supplier of any particular risks.
- (d) The Customer must make arrangements at its cost and expense for the Recipient to be available to receive and take delivery of the Products during Business Hours and for suitable equipment and facilities to be available for delivery to be effected at the Delivery Address.
- (e) If the Delivery Address is unattended or the Customer fails to take delivery of the Products, the Supplier may in its sole discretion:
  - (i) deposit the Products at the Delivery Address; or
  - (ii) place the Products into Storage (subject to the same conditions as set out in clause 5); andThe Supplier's chosen action in this regard will constitute delivery. The Customer shall be responsible for any additional Charges incurred by the Supplier in taking the action referred to in this clause.
- (f) Title in the Products passes to the Customer upon payment and risk passes upon delivery or, if collection by the Customer has been agreed upon collection or on the expiry of the due date for collection.
- (g) The Supplier is not a common carrier and does not accept any liability as a common carrier and may refuse to Transport the Products for any Person.

### 7. Timing

The Customer acknowledges and agrees that any timeframes for, in relation to or associated with any of the Services provided by the Supplier to the Customer are estimated only and do not bind the Supplier in any way. Except as provided for in clause 20, the Customer acknowledges and agrees that it will have no recourse to or claim against the Supplier for any delays or postponements in the provision of the Services.

### 8. Chain of Responsibility

- (a) The Supplier and the Customer acknowledge and agree that each of them have obligations under the Chain of Responsibility Law.
- (b) Each party must comply with its obligations under the Chain of Responsibility Law.
- (c) If applicable, the Customer must comply with, and must and procure that its officers, employees, agents, contractors and suppliers comply with any directions, procedures or policies identified, advised or notified by the Supplier to the Customer with respect to packing, securing, loading or unloading of the Products or entry into, use of, or egress from any premises.

## 9. Customer's Representations and Warranties

The Customer represents and warrants that:

- (a) it has fully and adequately described the Products in the Purchase Order or otherwise in writing to the Supplier, in particular with respect to their specifications, classifications, quantity, nature, weight and measurements;
- (b) it is authorised to enter into the Contract with the Supplier for the Services and understands and accepts the conditions as set out in the Contract Documents; and
- (c) it is not prohibited by any agreement or law from granting or permitting a lien over the Products pursuant to clause 13.

## 10. Intellectual Property

- (a) The Supplier represents and warrants that the provision of the Services, in particular the Supply under the Contract do not infringe the Intellectual Property rights of any Person.
- (b) The Customer acknowledges and agrees that the Supplier owns and will retain all rights to the Supplier IP at all times. The Customer must not attempt to seek any interest in the Supplier IP, procure or assist any other Person to obtain such interest, copy, replicate or reverse engineer the Products or procure or assist any other Person to do so.
- (c) Where the Customer has made any improvements or enhancements to the Products or Supplier IP:
  - (i) at the Supplier's request;
  - (ii) with the Supplier's consent; or
  - (iii) in accordance with or as contemplated in the Contract Documents.

the Customer may be entitled to a royalty free licence to use such improvements or enhancements, subject to the prior written consent of the Supplier and any written agreement reached between the Supplier and the Customer in advance of the development of such improvements or enhancements.

- (d) The Customer must provide prompt notice to the Supplier upon becoming aware or receiving notice of any potential or actual infringement of any Supplier IP rights or any Intellectual Property rights comprised in the Products by any Person. The Supplier will have the sole right but not the obligation to file and prosecute and to collect damages and other compensation in relation to any infringement in this regard and in determining whether to take action against and prosecute any possible infringement.
- (e) The Customer may with the Supplier's prior written consent either brand the Products with the Customer's logo or other form of Customer identification or branding or obscure or otherwise remove any Supplier logo or other form of Supplier identification or branding from the Products.
- (f) The Customer warrants that any Products or other materials, including any packaging or artwork manufactured, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Customer shall not infringe any Intellectual Property rights of a third party or breach any law. The Purchaser indemnifies the Supplier from and against any action that may be brought against or loss suffered by the Supplier as a result of a breach of this warranty.

## 11. Confidentiality

- (a) The Supplier and the Customer shall keep confidential all information and material acquired in connection with the Contract which relates to the business of the other party, the Services or the Products (**Confidential Information**) and must not disclose the same to any Person except with the prior written consent of the other party.
- (b) If a party is required to disclose Confidential information pursuant to a Court order or a requirement of law it must, to the maximum extent permitted by law, give reasonable notice to the other party prior to making such disclosure.

## 12. Charges and Other Costs

The Customer must:

- (a) if required by the Supplier, pay the Price, Charges and any other monies payable to the Supplier without delay, set-off or any deduction;
- (b) pay any charge for demurrage or delay at the rate charged to the Supplier directly or indirectly by any railway or shipping company or any other Person (excluding any charges for demurrage or delay in any circumstances to the extent that the charges were incurred by the Supplier as a consequence of any breach of the Contract or as a consequence of any wrongful acts or omissions on the part of the Supplier or any of its officers, agents, employees, Subcontractors or Related Bodies Corporate);
- (c) pay the Charges required to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, quarantine, excise, or warehouse authority or other Person;
- (d) if any of the Products or any components of the Products are under customs control, pay all Taxes including but not limited to GST, customs duty, excise duty and costs (including any fine or penalty) which the Supplier becomes liable to pay or pays;
- (e) if required by the Supplier, supply or pay for labour or machinery or both to load or unload the Products at or prior to delivery or on collection (if the Customer is collecting any of the Products);
- (f) if the Supplier requires, pay additional Charges at rates quoted by the Supplier, or if the Supplier has not quoted relevant rates, at industry rates (as determined by the Supplier acting reasonably) if delivery cannot be effected during Business Hours or at the time specified, or if there is any delay outside the Supplier's control in loading or unloading;
- (g) pay the cost, expense or loss to the Supplier of the destruction or disposal, Storage, return of the Products and the cost and expenses of opening or inspecting the Products;
- (h) If any Charges are not paid on the date for payment, pay interest on the unpaid Charges pursuant to clause 14; and
- (i) the Supplier's quoted Charges exclude GST. The Customer must pay all GST that is invoiced by the Supplier.

## 13. Lien

- (a) The Supplier has a general lien on the Products for the Price and all Charges due or which become due in relation to the Products and any Services.
- (b) If the Price and all Charges are not paid by the due date for payment or the Customer or Recipient fails to take delivery of the Products, the Supplier may without notice and, in the case of perishable Products, immediately:
  - (i) place the Products into Storage as the Supplier thinks fit at the Customer's risk and expense (with additional Charges to apply for the Storage); and/or
  - (ii) open any package and sell all or any of the Products as the Supplier thinks fit and apply the proceeds to discharge the lien and costs of Storage, unpacking and sale.

## 14. Interest

- (a) The Supplier and the Customer respectively agree to pay to each other interest on demand on any moneys that are due and payable under this Contract but unpaid by any party to the other party for 7 days after the due date until the date that payment is received..
- (b) Interest must be calculated on the relevant outstanding balance from the due date for the payment of the moneys until, but excluding, the date on which payment is made in full and interest may be recovered as a debt due and owing. For the purpose of this clause, **'interest'** means the rate that is 3 percentage points above the Reserve Bank of Australia's "Cash Rate Target" rates during the relevant period.

## 15. Personal Property Securities Act 2009 (PPSA)

- (a) In this clause:
- (i) "financing statement" has the meaning given to it by the PPSA;
  - (ii) "financing change statement" has the meaning given to it by the PPSA;
  - (iii) "security agreement" means the security agreement under the PPSA created between the Customer and the Supplier by these conditions; and
  - (iv) "security interest" has the meaning given to it by the PPSA.
- (b) The Customer agrees that these conditions:
- (i) constitute a security agreement for the purposes of the PPSA;
  - (ii) create a security interest in all Products the subject of Supply, Transport or Storage provided by the Supplier for the purpose of securing all monies owed by the Customer to the Supplier; and
  - (iii) are in addition to any contractual lien or lien arising under common law or other relevant law.
- (c) The Customer undertakes to:
- (i) 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 Supplier may reasonably require to:
    - a. register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - b. register any other document required to be registered by the PPSA;
    - c. correct a defect in a document referred to in clause 15(a); or
    - d. indemnify, and upon demand reimburse, the Supplier 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 Products charged thereby;
  - (ii) not register a financing change statement against the Supplier in respect of a security interest without the prior written consent of the Supplier; and
  - (iii) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Products in favour of a third party without the prior written consent of the Supplier.
- (d) The Supplier and the Customer agree that sections 96, 115 (contracting out provision) and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (e) 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.
- (f) The Customer waives its rights as a grantor or debtor under sections 142 and 143 of the PPSA.
- (g) Unless otherwise agreed to in writing by the Supplier, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.

#### 16. Insurance

- (a) The Customer must make its own arrangements for insurance of the Products prior to or following delivery (including during any periods of Storage). Any loss or damage to the Products must be claimed against the Customer's own insurance.
- (b) The Supplier is not under any obligation to effect insurance in respect of the Supply, Transport or Storage of the Products but may at its discretion declare it on any general policy.

#### 17. Description, Specifications and Suitability of Products

- (a) The Contract between the Customer and the Supplier is final and

binding and will not be deemed a sale by sample.

- (b) Any description of the Products and Services is given by way of identification only.
- (c) The Customer agrees that the Supplier and any Person acting on the Supplier's behalf has not made any representation, warranty or given any promise or undertaking which is not expressly set out in writing, whether as to the fitness of the Products for any particular purpose or any other matter.
- (d) Whilst every effort is made to ensure their accuracy the descriptions, illustrations and material contained in any catalogue, price list, brochure, leaflet, specification sheets, electronic communications or other descriptive matter in relation to the Products or the Services provided by or on behalf of the Supplier represent the general nature of the items described therein and shall not form a part of any order or agreement or amount to any representation or warranty.
- (e) The Supplier reserves the right to make any changes to designs, drawings or specifications supplied to the Supplier by the Customer which are required to comply or conform with any applicable safety or statutory requirements or which do not materially affect the quality or usage of the Products by the Purchaser.
- (f) The Supplier does not warrant, represent or guarantee that any Products manufactured, constructed or supplied by the Supplier which incorporate or are otherwise based in whole or in part upon any designs, drawings, specifications or other information or material supplied to the Supplier by or on behalf of the Customer will achieve any standard or performance or any capacity whatsoever.
- (g) The Supplier will not be liable for any defect in the Products arising from any designs, drawings, specifications or other information or material supplied to the Supplier by the Customer. Where the Customer approves any artwork or proofs submitted by the Supplier, the Supplier will not be liable for any errors or inaccuracies subsequently discovered.
- (h) Any advice, recommendation, information or assistance provided by the Supplier in relation to the Products or their use or application is given in good faith and is believed by the Supplier to be appropriate and reliable. Any such advice, recommendation, information or assistance is provided without liability or responsibility on the part of the Supplier.
- (i) In addition to any right of lien which the Supplier may be entitled to under this Contract or otherwise by law, the Supplier will have a general lien over any designs, drawings, specifications or tooling supplied to the Supplier by or on behalf of the Customer which is in the Supplier's possession until all monies owing by the Customer to the Supplier on any account have been paid in full.

#### 18. Customised Products

- (a) The Supplier will not be responsible or liable for any Products to the extent that the Products are:
  - (i) made or performed to designs, drawings, specifications, or procedures or with any materials which are provided or approved by or on behalf of the Customer in writing; or
  - (ii) used, stored, handled or maintained incorrectly or inappropriately after delivery to the Customer or the Recipient.
- (b) The Customer must ensure that all Products comply with all applicable legal requirements and regulatory standards before use or on-sale.
- (c) The Supplier may update, modify, alter or make substitution for any Products or any component in or used in forming any part of the Products.
- (d) It is the Customer's sole responsibility to ensure that materials, designs, drawings, specifications, procedures provided by or on behalf of the Customer, to be used by the Supplier in manufacturing and supplying Products are correct, appropriate and comply with all applicable Laws.

## 19. Inspection and Returns

- (a) The Customer must inspect the Products as soon as reasonably practicable after the Products are delivered or collected. The Customer must notify the Supplier in writing of any shortages (subject to clause 2(f)), defects, loss or damage to the Products in accordance with clause 21.1.
- (b) If the Products are not made to order, bespoke or custom-made, at the Supplier's sole discretion and subject to payment in advance by the Customer to the Supplier of any restocking fee (as determined by the Supplier in its sole discretion), the Customer may be permitted to return a proportion of the Products following delivery as the result of the Customer's ordering error.

## 20. Exclusions and Limitations

20.1 To the extent permitted by law, the Supplier and the Customer agree to exclude from these conditions, all conditions, warranties and terms implied by statute, general law or custom.

20.2 The Supplier and the Customer agree that:

- (a) under applicable state, territory and Commonwealth law (including the *Competition and Consumer Act 2010* (C'th)), certain terms, conditions and warranties may be implied in various agreements and rights and remedies may be conferred on consumers which cannot be excluded, restricted or modified by agreement (**Non-Excludable Rights**);
- (b) despite anything in these conditions, the Non-Excludable Rights are not excluded, restricted or modified by these conditions except to the extent permitted by law and the liability of the Supplier to the Customer for a breach of any Non-Excludable Right will be limited to either:
  - (i) supplying the relevant Products or Services (or the relevant item of Services work) again; or
  - (ii) payment of the cost of having the relevant Products or Services (or the relevant item of Services work) supplied again,at the Supplier's election; and
- (c) in the case that the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* (C'th) (**Unfair Contract Terms Protections**) apply to the Customer, these conditions will be deemed to be amended in order to ensure satisfaction of or compliance with the Unfair Contract Terms Protections.

20.3 Neither the Supplier nor any of its officers, agents, employees, Subcontractors or Related Bodies Corporate shall be liable to the Customer for any change in the nature or condition of any Products because of their inherent nature, deterioration in the Products or evaporation or shrinkage.

20.4 Subject to clause 20.4(c), the Supplier and the Customer agree that:

- (a) all Products are accepted, carried, handled and stored by the Supplier and any of its employees or Subcontractors entirely at the Customer's risk in respect of:
  - (i) any loss of or damage to any Products (including any deterioration, contamination or infestation) or any loss or damage arising out of any loss of or damage to any Products (**Products Loss or Damage**); and
  - (ii) any mis-delivery or non-delivery of any Products or any delay in the delivery of any Products (**Delivery or Delay Loss or Damage**);
- (b) neither the Supplier nor any of its officers, employees, agents, Subcontractors or Related Bodies Corporate have any liability whatsoever to the Customer (whether in contract, tort (including negligence), bailment or otherwise) for:
  - (i) Products Loss or Damage; or
  - (ii) Delivery or Delay Loss or Damage; and

it is their irrevocable intention that the Customer will manage any risks relating to or arising out of Products Loss or Damage and Delivery or Delay Loss or Damage by taking out insurance

as set out in clause 16 and relying on insurance as their sole recourse to compensation in addition to any compensation from the Supplier they may be entitled to under clause 20.4(c). The Customer will indemnify the Supplier in full against any claims in subrogation made by the Customer's insurer against the Supplier;

- (c) despite anything to the contrary in clause 20.4(b):
  - (i) nothing relieves the Supplier or any of its officers, employees, agents, Subcontractors or Related Bodies Corporate from liability to the Customer for any injury to any Person or liability for the death of any Person to the extent that the injury or death was caused or contributed to by any negligent act or omission on the part of the Supplier or the officer, agent employee, Subcontractor or Related Body Corporate; and
  - (ii) nothing relieves the Supplier or any of its officers, agents, employees, Subcontractors or Related Bodies Corporate from personal liability to the extent that any Products Loss or Damage or Delivery or Delay Loss or Damage is caused or contributed to by any Gross Default on the part of the Supplier or the relevant officer, agent, employee, Subcontractor or Related Body Corporate.

20.5 Neither party will be liable to the other party under any circumstances whatsoever for any Consequential Loss howsoever arising (whether in contract, tort (including negligence), bailment or otherwise) in respect of anything arising out this Contract or anything concerning Transport, Storage or any Products.

## 21. Claims

21.1 If the Supplier is liable to the Customer for shortages or defects in the Products, loss or damage in relation to any Products that have been delivered or Stored or for any mis-delivery or non-delivery of any Products, then no claim for the loss or damage may be made by the Customer against the Supplier unless:

- (a) in the case of shortages or defects in the Products, written and/or physical evidence of a standard reasonably acceptable to the Supplier of the matters giving rise to the Customer's claim are provided by the Customer to the Supplier within 14 days of the date on which the Products were collected by or delivered (time being of the essence).
- (b) in the case of damage or loss arising during Transport, written notice of the claim together with details of the damage or loss is given by the Customer to the Supplier within 14 days of the date of delivery or collection of the relevant Products (time being of the essence);
- (c) in the case of damage or loss arising during Storage, written notice of the claim together with details of the damage or loss is given by the Customer to the Supplier within 14 days of the date that is the earlier of the date on which the Products were collected or delivered and the date on which relevant Storage period ended (time being of the essence);
- (d) in the case of mis-delivery or non-delivery of any Products, written notice of the claim together with details of the loss or damage claimed is given by the Customer to the Supplier within 7 days of the date that the relevant delivery was scheduled to occur or, in the absence of a scheduled delivery date, the date on which delivery was reasonably expected to occur (time being of the essence); and
- (e) subject to clauses 2(f) and 19, the Supplier will investigate any claim of shortages, defects loss or damage to the Products, inform the Customer of its findings and if satisfied in its sole discretion that the shortage, defect, loss or damage existed as claimed, then either:
  - (i) deliver to the Customer a replacement for the defective, missing, lost or damaged Product; or
  - (ii) refund the amount paid by the Customer for the defective, missing, lost or damaged Product.

21.2 If the Customer is liable to the Supplier for any loss of or damage to any of the Supplier's property as a consequence of any breach of this Contract by the Customer or as a consequence of any negligent or otherwise wrongful acts or omissions on the part of the Customer or

any of their respective officers, employees, agents contractors or Related Bodies Corporate then, no claim for the loss or damage may be made by the Supplier against the Customer unless written notice of the claim together with details of the loss or damage claimed is given by the Supplier to the Customer within 14 days of the date that the Supplier becomes aware of the relevant damage (time being of the essence).

21.3 The failure by the Supplier or the Customer to notify a claim to the other party within the timeframes set out in clauses 21.1 or 21.2 is evidence of the satisfactory performance of the other party of its obligations. If any claim of the kind specified in clauses 21.1 or 21.2 is made by the Supplier or the Customer then, without limiting anything in clauses 21.1 or 21.2, the party who is the target of the relevant claim will be absolutely and forever released and discharged from all liability for loss or damage in relation to the relevant claim unless formal legal proceedings are initiated and served on the party who is the target of the relevant claim within 6 months of the relevant deadline that relates to the relevant claim under clause 21.1 or 21.2.

21.4 The Supplier and the Customer agree that clauses 21.1, 21.2 and 21.3 are irrevocably intended to provide the Supplier and the Customer with absolute and complete defences and limitations to any claims that they may have against each other at law or in equity in relation to the matters covered in those clauses (**Time Barred Claims**) and the defences and limitations are respectively available to the Supplier and the Customer as complete defences and absolute bars to any claims that they make or may wish to make and any claims that another party makes or wishes to make against them with respect to any of the Time Barred Claims including claims for breach of this agreement, claims in negligence or any other tort and claims based on any other cause of action available at law or in equity.

## 22. Benefits Conferred Directly on Third Parties

- (a) The Supplier and the Customer acknowledge and agree that every clause in this Contract that seeks to create, convey or confer any right, defence, bar, exclusion or limitation of liability or the benefit of any indemnity in favour of the Supplier's officers, agents, employees, Subcontractors or Related Bodies Corporate (**Third Party Rights**) is irrevocably intended to confer on and vest the full legal and equitable benefits of the Third Party Rights in each of the Supplier's officers, agents, employees, Subcontractors and Related Bodies Corporate as if they were each party to and signatories to this Contract in their own names and could enforce the Third Party Rights in their own names directly against the Customer.
- (b) It is agreed that section 11(2) of the *Property Law Act 1969* (WA) applies for the benefit of each of the Supplier's officers, agents, employees, Subcontractors and Related Bodies Corporate with respect to the conferral on and vesting of all of the Third Party Rights in each of the Supplier's officers, agents, employees, Subcontractors and Related Bodies Corporate.

## 23. No Assignment

The Supplier and the Customer must not assign any of their respective rights or interests under this Contract without the written consent of the other party. Any purported assignment on contravention of this clause is invalid, unenforceable and otherwise void.

## 24. Force Majeure

Neither the Supplier nor the Customer will be liable under any circumstances for any failure by either of them to perform any of their respective obligations under this Contract in circumstances where they (or in the case of the Supplier any of its suppliers) are or were unable to perform an obligation or are or were delayed in performing an obligation due to anything that is or was beyond their reasonable control including but not limited to: any accident, weather conditions or events, or floods, earthquakes or other natural events, fire, explosion, pandemics, industrial action, riots, acts of war, destruction or loss of products or materials, shortage or unavailability of fuel or other resources, cyberbreaches or attacks, ransomware attacks, congestion in roads, railways, ports or other venues, derailments, sinkings, infrastructure failures or outages, government restrictions, change in any law or any direction of a government authority. However, nothing in this clause includes the inability of a party, for whatever reason, to pay money it is obliged to pay or any lack of funds which, for whatever reason, causes a party to be unable to

comply with any of its obligations under this Contract.

## 25. Governing law

The Contract is governed and must be construed under the laws of the State of Western Australia and the parties submit to the non-exclusive jurisdiction of the courts of that State.

## 26. Severability

If a condition or any part(s) of these conditions is unenforceable the unenforceability does not affect any other part of the conditions or any other condition.

## 27. Variations and Waiver

- (a) Neither party is bound by any waiver, discharge or release of a condition or any agreement which varies these conditions unless it is in writing and signed by both parties.
- (b) If any party waives a breach of this Contract, the waiver does not operate as a waiver of another breach of the same or any other condition or as a continuing waiver.

## 28. Privacy Act 1988 (C'th) (Privacy Act)

The Customer acknowledges and agrees that:

- (a) the Supplier may need to obtain personal information about the Customer in the course of its dealings with the Customer. This may include the name, gender, address, previous addresses, date of birth, name of employer and driver's licence number of the Customer or any of the Customer's officers, agents, employees;
- (b) if the Customer does not provide the Supplier with this personal information, the Customer acknowledges that the Supplier may be unable to provide Services to the Customer;
- (c) the Customer consents to:
  - (i) the Supplier using the Customer's personal information; and
  - (ii) the disclosure of personal information about the Customer by the Supplier to its officers, agents, employees Subcontractors or Related Bodies Corporate, for the purpose of delivering Services to the Customer.
- (d) The Supplier will not disclose personal information about the Customer except in accordance with the Supplier's privacy policy and the Privacy Act.
- (e) A copy of the Supplier's privacy policy is available on the Supplier's website or on request by the Customer.

## 29. Business Integrity

29.1 In this clause 29, the following definitions also apply:

- (a) **Associates** means:
  - (i) in relation to the Supplier: the Supplier's officers, agents, employees, Subcontractors and Related Bodies Corporate and all officers, agents and employees, of the Supplier's Subcontractors and Related Bodies Corporate; and
  - (ii) in relation to the Customer: the Customer's, officers agents and employees, sub-contractors and Related Bodies Corporate and all officers, agents and employees of their respective Related Bodies Corporate and sub-contractors;
- (b) "ESG" means environmental, social and governance;
- (c) **Modern Slavery** has the meaning given in the *Modern Slavery Act 2018* (C'th).
- (d) **Restricted Party** means any government, Person or entity which is:
  - (i) listed on, or owned or controlled by a Person (including 50% or more in the aggregate by two or more Restricted Parties) listed on, the U.S. Specially Designated Nationals List maintained by the U.S. Treasury Department's Office of Foreign Assets Control or any similar restricted party or Sanctions list maintained by the United States, the United Kingdom, the United Nations, the European Union, Australia, Canada or any other relevant government;

(ii) located or organised in any country or territory that is the target of comprehensive or country-wide Sanctions (including Cuba, Iran, North Korea, South Sudan, Crimea and Syria); or

(iii) otherwise the target of Sanctions; and

(e) **Sanctions** means the export control laws, economic sanctions, regulations or restrictive measures administered or enforced by Australia, Canada, European Union members, United States of America, United Kingdom, United Nations Security Council or any other relevant government.

29.2 The Supplier and the Customer must not, and must use their respective reasonable endeavours to procure that their respective Associates do not:

(a) give anything of value (which is not properly due) to the other party or its employees or contractors that is contrary to fair dealing; or

(b) provide or offer a benefit (which is not properly due) to a public official (within or outside Australia) in order to retain or obtain an improper advantage.

29.3 The Supplier and the Customer each represent and warrant to each other that neither they nor any of their Associates:

(a) is or will become a Restricted Party; or

(b) has violated or will violate any Sanctions.

29.4 The Supplier and the Customer must each:

(a) comply with all applicable laws in relation to Modern Slavery;

(b) take reasonable steps to ensure there is no Modern Slavery in its supply chains; and

(c) notify the other party as soon as it becomes aware of any actual or suspected Modern Slavery in any supply chain that has a connection with this Contract.

29.5 The Supplier and the Customer acknowledge and agree that they recognise the relevance and importance of ESG matters and will consider them in the conduct of their activities.

### 30. These conditions apply in all circumstances

These conditions apply in all circumstances including anything that arises out of any fundamental breach of this Contract or breach of any fundamental term of this Contract by any party. Without limiting this clause in any way, for the avoidance of any doubt, the Supplier and the Customer confirm that it is their irrevocable intention that, even if the Supplier or the Customer breach any of these conditions or repudiate this Contract, all of the rights, immunities and exclusion and limitations of liability in these conditions in favour of the Supplier the Customer or any of their respective officers, agents, employees, contractors or Related Bodies Corporate continue to have their full force and effect in all circumstances.