

1. Definitions

In these conditions:

Business Hours means 7:00am to 5:00pm 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.

Carrier means the relevant Sadleirs Group Company to whom the Customer or the Consignor has delivered the Consignment Note for Transport or Storage Order for Storage of the Goods.

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 charges published by the Carrier or notified by the Carrier to the Customer or the Consignor prior to the Customer or the Consignor finalising their order with the Carrier for any Transport or Storage services.

Consequential Loss means:

- (a) any loss or damage suffered by a party which is indirect or consequential;
- (b) any loss or damage which results from any special circumstances 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.

Consignor means the Person named as Consignor in the Consignment Note.

Consignment Note means a consignment note in the form stipulated or approved by the Carrier from time to time and notified to the Customer.

Contract means the contract between the Carrier and the Customer, the Consignor (if a different Person to the Customer) and the Carrier that is created in the manner prescribed in clause 2.

Customer means the Person who has requested the Carrier to Transport the Goods.

Dangerous Goods means volatile or explosive Goods or Goods which may become dangerous, inflammable or offensive (including radioactive materials) or Goods which may otherwise cause a danger to Persons, animals, property or the environment, or Goods which by their nature may become Dangerous Goods.

Delivery Address means the address of the Recipient at which the Goods are to be delivered specified in the Consignment Note and if that address is changed pursuant to clauses 9.3 or 12.4 the new address is the "Delivery Address".

Goods mean the goods accepted by the Carrier from the Customer or the Consignor with any container, packaging or pallets supplied by or for the Customer or the Consignor.

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 (Goods and Services Tax) Act 1999* (C'th).

Person includes any person, firm or corporation and where relevant government, local authorities and government agencies.

PSA means the *Personal Property Securities Act 2009* (C'th).

Recipient means the Person to whom the Goods are to be delivered.

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

Sadleirs Group Company means each of the following companies:

- (a) Sadleirs Transport Co (NSW) Pty Ltd (ABN 19 000 936 194); and
- (b) Lionel Samson Group Pty Ltd (ABN 27 008 731 244).

Storage means storage or warehousing of Goods and "Store" shall have the same meaning.

Storage Order means an order by the Customer in writing or electronic form for Storage services in the form approved by the Carrier from time to time and notified to the Customer.

Sub-Contractor means any Person the Carrier engages to Transport or Store the Goods and includes any agent of the Carrier.

Transport means the operations and services undertaken by the Carrier for the Customer or the Consignor in respect of the Goods including carriage (by road, rail or any other mode) and loading and unloading.

2. Contract Between the Carrier and the Customer Consignor also Bound

2.1

(a) Subject to clause 2.2, a separate Contract is created between the Customer, the Consignor (if a different Person to the Customer) and the Carrier on each occasion that the Customer delivers a Consignment Note (in the case of Transport services) or a Storage Order (in the case of Storage services) to the Carrier and the Carrier accepts the Goods for Transport or Storage. The Contract incorporates the provisions of the Consignment Note (in the case of Transport services) or the Storage Order (in the case of Storage services) and these conditions.

(b) Where there is any inconsistency between the Consignment Note or the Storage Order and these conditions, these conditions always prevail to the extent of the inconsistency unless otherwise expressly agreed in writing. The Carrier does not accept any terms or conditions which the Customer or the Consignor proposes unless those terms have been agreed to in writing by the Carrier.

2.2 Where the Customer is not the same Person as the Consignor:

(a) the Consignor also is bound in the same way as the Customer under these conditions, including in respect of Charges. The liability of the Customer and Consignor is joint and several. The Carrier has the same rights against the Consignor as it has against the Customer as set out in these conditions.

(b) the Customer represents and warrants that:

- (i) it enters into this Contract on its own account and as agent for and on behalf of the Consignor; and
- (ii) it has made the Consignor aware of these conditions and the Consignor accepts these conditions and agrees to be a party to this Contract.

(c) if, for any reason, any provision in these conditions is not enforceable by the Carrier against either the Customer or the Consignor the other one of them shall nevertheless remain fully liable.

(d) certain obligations in the conditions may be required to be performed by the Consignor instead of or together with the Customer.

(e) the Carrier has entered into this Contract in reliance upon this clause 2.2 including the Customer's representations and warranties.

3. Not a Common Carrier

The Carrier is not a common carrier and does not accept any liability as a common carrier and may refuse to Transport Goods or any class of Goods for any Person.

4. Obligations of the Carrier

Subject to these conditions the Carrier shall:

- (a) procure the delivery of the Goods to the Delivery Address; and
- (b) provide Storage for any Goods where Storage services have been agreed between the parties.

5. Chain of Responsibility

- 5.1 The Carrier, the Customer and the Consignor acknowledge and agree that each of them have obligations under the Chain of Responsibility Law.
- 5.2 Each of the Carrier, the Customer and the Consignor must comply with its obligations under the Chain of Responsibility Law.
- 5.3 The Carrier, the Customer and the Consignor must comply with, and must procure that their respective officers, employees, agents, contractors and suppliers comply with, any directions, procedures or policies identified, advised or notified by the Carrier prior to delivery or collection of any Goods for Transport or Storage with respect to packing, securing, loading or unloading of the Goods or entry into, use of, or egress from any premises.

6. Carrier Relies on Information Supplied

The Carrier relies on the details supplied to it by the Customer and the Consignor (where applicable). The Carrier cannot verify those details and does not admit their accuracy or completeness and a signature or confirmation by the Carrier is only an acknowledgment of the number of items received. If the Goods are perishable Goods or Dangerous Goods, the Customer or the Consignor must advise the Carrier of this prior to the delivery or collection of the Goods for Transport or Storage (as applicable).

7. Delivery to Carrier's Depot

The Customer or the Consignor (where applicable) must deliver the Goods to the Carrier's depot specified in the Consignment Note during Business Hours, unless the Carrier has accepted in the Consignment Note that it will collect the Goods from the Customer or the Consignor.

8. Packaging

The Customer and the Consignor acknowledge and agree that unless otherwise agreed in writing with the Carrier:

- (a) the Customer and the Consignor (where applicable) will be responsible for packing the Goods and ensuring that they are fit for Transport or Storage (where Storage is to be provided);
- (b) the Customer and the Consignor (where applicable) will be responsible for discharging any obligations under the Chain of Responsibility Law in respect of packing Goods which the Customer or the Consignor (or any of their officers, employees, agents, contractors or suppliers) have packed;
- (c) the Customer and the Consignor (where applicable) must make sure that they have properly packed the Goods to avoid damage and leakage, taking into account that the Goods will be loaded and unloaded during Transport or Storage;
- (d) the Carrier is under no obligation to check that any Goods have been properly packaged but may refuse to accept any Goods for Transport or Storage if it considers that the manner in which the Goods have been packaged constitutes a risk to the Carrier, its officers, employees, agents, Sub-Contractors or any other Persons;
- (e) the Carrier may remove packaging to inspect the Goods and may replace removed packaging with such packaging as it considers appropriate; and
- (f) The Customer and the Consignor (where applicable) each respectively indemnify the Carrier and each of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate who are involved in the provision of any Transport services or Storage services for loss or damage as the result of a breach by the Customer or the Consignor (where applicable) of this clause 8.

9. Delivery Arrangements

- 9.1 The Carrier is not required to deliver the Goods to any address other than the Delivery Address.

- 9.2 The Carrier is not obliged to deliver to residential addresses.
- 9.3 The Carrier may at its discretion agree to a request to deliver the Goods to an address other than the Delivery Address, but will only be bound to do so if the parties agree in writing. The Carrier may charge additional Charges for delivery to a change of address. The Customer and the Consignor (where applicable) shall assume all risks arising from the delivery of the Goods to an address other than the Delivery Address.
- 9.4 The Customer and the Consignor (where applicable) must ensure that the Delivery Address has adequate and safe access arrangements in order to ensure that the Carrier may deliver the Goods and the Customer or the Consignor must advise the Carrier of any particular risks.
- 9.5 Subject to clause 13.2(g), the Customer and the Consignor (where applicable) must make arrangements at their cost for the Recipient to be available to receive the Goods during Business Hours, so that the Carrier may have access to the Delivery Address during Business Hours and so that equipment and facilities are available at the Delivery Address to unload the Goods.
- 9.6 Unless agreed by the parties in writing the Carrier will not exchange any pallets with any Person and the Customer and the Consignor (where applicable) must not transfer any pallets to any account the Carrier may have with a pallet hirer.
- 9.7 The Carrier is not liable for, nor bound by, any instructions to collect cash on delivery or any other payments for any Person.
- 9.8 The Carrier is not required to provide free Storage of Goods. The Carrier will only be required to provide Storage services if the Carrier has agreed in writing to provide Storage services pursuant to the Storage Order or by its acceptance of the Goods for Storage.

10. Dangerous Goods

- 10.1 The Carrier is not obliged to Transport or provide Storage of any Dangerous Goods without the Customer or the Consignor (where applicable) first presenting to the Carrier a full written description disclosing the nature of those Goods and the parties reaching agreement in writing regarding the Transport or Storage of the Dangerous Goods.
- 10.2 Dangerous Goods must be packaged in accordance with the provisions of the *Australian Code for the Transport of Dangerous Goods by Road & Rail* (edition 7.8, 2022 and as amended from time to time) (**Australian Dangerous Goods Code**), irrespective of whether dangerous goods have been specified on the Consignment Note.
- 10.3 The Customer and the Consignor agree that the Carrier may refuse to Transport or provide Storage in respect of any Dangerous Goods.
- 10.4 If in the Carrier's opinion the Goods are or are liable to become Dangerous Goods or are Dangerous Goods and the Carrier considers that the condition of the Goods has deteriorated, the Carrier may at any time and at the Customer's and the Consignor's cost destroy, dispose of, abandon or render them harmless without compensation to the Customer or the Consignor or any Person and without prejudice to the Carrier's right to any Charges. The Customer indemnifies the Carrier and each of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate who are involved in the provision of any Transport services or Storage services for loss or damage as the result of a breach of this clause 10.

11. Customer's Warranties and Representations

The Customer warrants and represents that:

- (a) the Goods are fit and suitable for Transport and Storage (where Storage services are being provided);
- (b) the Goods are fully and adequately described in the Consignment Note with respect to their nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Dangerous Goods Code and the International Maritime Dangerous Goods Code in force from time to time and the *Civil Aviation Regulations 1988* (C'th)) about the notification, classification, description, labelling, transport and packaging of the Goods and that, given their nature, the Goods are packed in a proper way to withstand the ordinary risks of Transport and Storage (if applicable);
- (c) the Person delivering the Goods to or making the Goods available

for collection by the Carrier for Transport or Storage is authorised to do so and is authorised to deliver the Consignment Note and/or the Storage Order;

- (d) the Customer is authorised to enter into this Contract with the Carrier for the Transport and/or Storage of the Goods;
- (e) it is either the owner of the Goods, the authorised agent of the owner of the Goods or the authorised agent of the Consignor and it accepts these conditions for themselves and the Recipient as well as for any other Person for whom the Customer or the Consignor is acting; and
- (f) it is not prohibited by any agreement or law from granting or permitting a lien over the goods pursuant to clause 14.

12. Delivery by the Carrier of the Transport Services

12.1 The Carrier may consolidate the Goods with others and may subcontract all or part of its Transport or Storage obligations on any terms whatsoever.

12.2 The Carrier is not required to carry or store the Goods in a chiller or freezer unless the Customer specifies this in the Consignment Note or Storage Order (in the case of Storage) and the Carrier agrees in writing to the cold storage.

12.3 If the Customer or the Consignor instructs the Carrier to use a particular method of Transport or route, the Carrier will give due consideration to that method or route if it is suitable but if the Carrier considers that it cannot conveniently adopt it or the Carrier considers it is not otherwise reasonable or appropriate, the Carrier may Transport the Goods by another method or route.

12.4 The Carrier is authorised to deliver the Goods to the Delivery Address or any other address directed by the Recipient and agreed to by the Carrier and the Carrier will be taken to have delivered the Goods if at either address the Carrier obtains from any Person an acknowledgement of delivery or pursuant to clause 12.5 where that clause applies.

12.5 If the Delivery Address is unattended during Business Hours (in breach of clause 9.5) or the Recipient fails to take delivery of the Goods, the Carrier may:

- (a) deposit the Goods at the Delivery Address;
- (b) store the Goods; or
- (c) return the Goods to the Customer or the Consignor (where applicable),

and its action under this clause 12.5 will constitute delivery. The Customer and the Consignor (where applicable) shall be responsible for additional Charges and expenses incurred by the Carrier in taking the action referred to in this clause.

12.6 If the Transport method is rail and the Delivery Address is a town or place where the Carrier does not have a receiving depot the Carrier will be taken to have delivered the Goods if they are delivered to the nearest railhead.

12.7 If any identifying document or mark is lost, damaged, destroyed or defaced the Carrier may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership or destination.

12.8 The Carrier may lease, hire or use any container, pallet or rail wagon in which or on which the Goods may be placed or packed and subject to the terms of any bill of lading, hire lease agreement, equipment hand-over agreement, interchange receipt or other contract for transport whether by sea, rail, road or air and may give any receipt for any container or pallet or rail wagon.

12.9 If the Carrier believes it is necessary or desirable, the Carrier may deviate from the usual route or method of Transport.

13. Charges and Other Costs

13.1 The Customer and the Consignor must, unless otherwise agreed in writing, pay the Charges and other monies payable to the Carrier before the Carrier receives any of the Goods or performs any of the Transport or Storage services. If the Carrier agrees to grant the Customer or the Consignor any credit on account of any Charges

then payment must be made within 21 days of the date of the Carrier's invoice.

13.2 The Customer and the Consignor agree and acknowledge that they shall:

(a) pay freight by weight or measurement as the Carrier selects. The Carrier may undertake weighing (and re-weighing) and measurement (and re-measurement);

(b) pay any additional charge levied by the Carrier if the Goods are at any time re-weighed or re-measured;

(c) pay any charge for demurrage or delay at the rate charged to the Carrier 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 Carrier as a consequence of any breach of this Contract or as a consequence of any wrongful acts or omissions on the part of the Carrier or any of its officers, agents, employees, Sub-Contractors or Related Bodies Corporate);

(d) pay the Carrier's expenses and charges to comply with any law or regulation or any order or requirement made under them or to comply with the requirement of any market, harbour, dock, railway, shipping, customs, quarantine, excise or warehouse authority or other Person in order to carry out any aspect of Transport or Storage services work relating to the Goods;

(e) pay all customs duties, excise duties and costs (including any fines or penalties) which the Carrier becomes liable to pay or pays if any of the Goods are under customs control (excluding any fines or incurred by the Carrier as a consequence of any breach of this Contract or as a consequence of any wrongful acts or omissions on the part of the Carrier or any of its officers, agents, employees, Sub-Contractors and Related Bodies Corporate);

(f) supply or pay for labour or machinery (or both) that is used to load and/or unload the Goods

(g) if the Carrier requires, pay an additional charge at rates quoted by the Carrier, or if the Carrier has not quoted relevant rates, at industry rates (determined by the Carrier acting reasonably) if for delivery cannot be effected during Business Hours or at the time specified, or if there is any delay outside the Carrier's control in loading or unloading;

(h) pay the cost, expense or loss to the Carrier of destruction or disposal, storage, return of the Goods and the cost of opening or inspecting any Goods as permitted by these conditions; and

(i) compensate the Carrier and any of its Related Bodies Corporate for any cost, expense or loss to the Carrier's or any of its Related Bodies Corporate's property to the extent caused by the Goods as a consequence of any breach of this Contract by the Customer or the Consignor or to the extent caused by any negligent or otherwise wrongful acts or omissions on the part of the Customer, the Consignor or any of their respective officers, agents employees or contractors.

13.3 The Carrier's Charges are earned as soon as the Goods are received by the Carrier (whether for Transport or Storage), whether they are delivered to the Recipient or not and whether damaged or not (other than as the direct result of the Carrier's Gross Default).

13.4 The Carrier will not refund any payment for Charges except where this is provided for in clause 25.

13.5 The Carrier's quoted Charges exclude GST. The Customer and the Consignor must pay all GST that is invoiced by the Carrier.

13.6 The Customer and the Consignor shall each indemnify the Carrier from and against all taxes, duties, excise and imposts imposed on or incurred by the Carrier in undertaking the Transport or the Storage. However, this indemnity does not extend to income tax or payroll tax payable by the Carrier.

13.7 The Customer, the Consignor and the Carrier shall indemnify each other from and against all reasonable charges and expenses incurred by the other party (including any reasonable costs incurred on account of any external lawyers, collection agents and reasonable internal costs) in recovering any moneys that are due and payable to them

under this Contract that have been overdue for payment for more than 30 days after the due date for payment.

14. Lien

14.1 The Carrier has a general lien on the Goods for all Charges due or which become due on any account whether for Transport of the Goods, Storage or any other Carrier provided service.

14.2 If the Charges are not paid by the due date for payment or if the Recipient fails to take delivery or return of the Goods, the Carrier may without notice and, in the case of perishable Goods, immediately, at its election:

- (a) Store the Goods as the Carrier thinks fit at the Customer's risk and expense (with additional Charges to run for any Storage); or
- (b) Open any package and sell all or any of the Goods as the Carrier thinks fit and apply the proceeds to discharge the lien and costs of sale.

15. Interest

- (a) The Carrier, the Customer and the Consignor respectively agree to pay to each other interest on demand on any moneys that are due and payable but unpaid by any party to another party for 7 days after the due date for payment on any account whatsoever under this Contract.
- (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.

16. Personal Property Securities Act 2009 (PPSA)

16.1 In this clause:

- (a) **financing statement** has the meaning given to it by the PPSA;
- (b) **financing change statement** has the meaning given to it by the PPSA;
- (c) **security agreement** means the security agreement under the PPSA created between the Customer and the Carrier by these conditions; and
- (d) **security interest** has the meaning given to it by the PPSA.

16.2 The Customer agree that these conditions:

- (a) constitute a security agreement for the purposes of the PPSA;
- (b) create a security interest in all Goods the subject of Transport or Storage provided by the Carrier for the purpose of securing all monies owed by the Customer to the Carrier; and
- (c) are in addition to any contractual lien or other lien arising under common law or any other relevant law.

16.3 The Customer and the Consignor undertake 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 established by the PPSA;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a document referred to in clause 16.3(a)(i) or 16.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Carrier for all reasonable expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (c) not register a financing change statement against the Carrier in

respect of a security interest without the prior written consent of the Carrier; and

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

16.4 The Carrier, the Customer and the Consignor 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.

16.5 The Customer and the Consignor hereby waive their respective rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

16.6 The Customer and the Consignor hereby waive their respective rights as a grantor or debtor under sections 142 and 143 of the PPSA.

16.7 Unless otherwise agreed to in writing by the Carrier, the Customer and the Consignor hereby waive their respective rights to receive a verification statement in accordance with section 157 of the PPSA.

17. Insurance

17.1 The Customer and the Consignor must make their own arrangements for insurance of the Goods.

17.2 The Carrier is not under any obligation to effect insurance in respect of the Transport or Storage of the Goods but may at its discretion declare it on any general policy.

18. Claims

18.1 Subject to clause 19, if there is any loss of or damage to any Goods that have been delivered or Stored or for any mis-delivery or non-delivery of any Goods, then no claim for the loss or damage may be made by the Customer or the Consignor against the Carrier unless:

- (a) 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 or the Consignor to the Carrier within 14 days of the date of delivery of the relevant Goods (time being of the essence);

- (b) 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 or the Consignor to the Carrier within 14 days of the date that is the earlier of the date on which the Goods were collected or delivered and the date on which relevant Storage period ended (time being of the essence); and

- (c) in the case of mis-delivery (including or non-delivery of any Goods, written notice of the claim together with details of the loss or damage claimed is given by the Customer or the Consignor to the Carrier within 7 days of that 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).

18.2 Subject to clause 19, if there is any loss of or damage to any of the Carrier's property as a consequence of any breach of this Contract by the Customer or the Consignor or as a consequence of any negligent or otherwise wrongful acts or omissions on the part of the Customer or the Consignor or any of their respective officers, employees, agents or contractors then, no claim for the loss or damage may be made by the Carrier against the Customer or the Consignor unless written notice of the claim together with details of the loss or damage claimed is given by the Carrier to the Customer or the Consignor within 14 days of the date that the Carrier becomes aware of the relevant damage (time being of the essence).

18.3 If any claim of the kind specified in clauses 18.1 or 18.2 is made by the Carrier, the Customer or the Consignor then, without limiting anything in clauses 18.1 or 18.2, 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 clauses 18.1 or 18.2.

18.4 The Carrier, the Customer and the Consignor agree that clauses 18.1, 18.2 and 18.3 are irrevocably intended to provide the Carrier, the Customer and the Consignor 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 Carrier, the Customer and the Consignor 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.

19. Exclusions and Limitations

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

19.2 The Carrier, the Customer and the Consignor 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 Carrier to the Customer and the Consignor for a breach of any Non-Excludable Right in the case of any unfair contract terms arising under the *Competition and Consumer Act 2010* (C'th) will be limited to either:

- (i) supplying the relevant services (or the relevant item of services work) again; or
- (ii) payment of the cost of having the relevant services (or the relevant item of services work) supplied again,

at the Carrier'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 or the Consignor, these conditions will be deemed to be amended in order to ensure satisfaction of or compliance with the Unfair Contract Terms Protections.

19.3 Neither the Carrier nor any of its officers, agents, employees, Sub-Contractors or Related Bodies Corporate shall be liable to the Customer or the Consignor for any change in the nature or condition of any Goods because of their inherent nature, deterioration in the Goods or evaporation or shrinkage.

19.4 Without limiting anything in clause 20 and subject to clause 19.4(c), the Carrier and the Customer and the Consignor agree that:

(a) all Goods are accepted, carried, handled and stored by the Carrier and its officers, employees, agents or Sub-Contractors entirely at the Customer's and Consignor's risk in respect of:

- (i) any loss of or damage to any Goods (including any deterioration, contamination or infestation) or any loss or damage arising out of any loss of or damage to any Goods (**Goods Loss or Damage**); and
- (ii) any mis-delivery or non-delivery of any Goods or any delay in the delivery of any Goods (**Delivery or Delay Loss or Damage**)

(b) neither the Carrier nor any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate have any liability whatsoever to the Customer or the Consignor (whether in contract, tort (including negligence), bailment or otherwise) for:

- (i) Goods Loss or Damage; or
- (ii) Delivery or Delay Loss or Damage; and
- (iii) it is their irrevocable intention that the Customer and the Consignor will manage any risks relating to or arising out of Goods Loss or Damage and Delivery or Delay Loss or Damage by taking out insurance as set out in clause 17 and relying on insurance as their sole recourse to compensation in addition to any compensation from the Carrier they may

be entitled to under clause 20. The Customer and the Consignor will indemnify the Carrier in full against any claims in subrogation made by the Customer's or the Consignor's insurer against the Carrier;

(c) despite anything to the contrary in clause 19.4(b) nothing relieves the Carrier or any of its officers, agents, employees, Sub-Contractors or Related Bodies Corporate from):

- (i) liability to the Customer or the Consignor 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 Carrier or the officer, agent employee, Sub-Contractor or Related Body Corporate; and
- (ii) personal liability to the extent that any Goods Loss or Damage or Delivery or Delay Loss or Damage is caused or contributed to by any Gross Default on the part of the Carrier or the relevant officer, agent, employee, Sub-Contractor or Related Body Corporate.

19.5 Neither party will be liable to any 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 Goods.

20. Limited Liability Waiver

20.1 Despite anything to the contrary in clause 19, the Carrier agrees to the following concessions.

20.2 For the purposes of this clause:

(a) **Additional Charge** means the "Additional Charge" which appears in the Consignment Note;

(b) **Fragile Goods** means damaged Goods that are (or were at the time of damage) fragile or damaged Goods that are deemed to be fragile by the Carrier (any decision by the Carrier deeming any Goods to be fragile being final); and

(c) **Relevant Amount** in relation to each consignment of Goods means the lesser of:

- (i) the cost of the replacement of the Goods in the consignment;
- (ii) the cost of repairing the Goods in the consignment;
- (iii) the aggregate of all Charges payable to the Carrier for the consignment;
- (iv) \$500 in the case of Fragile Goods in the consignment; and
- (v) \$1,000.00 for all damaged Goods in the consignment that are not Fragile Goods.

20.3 Subject to payment of the Additional Charge and clauses 20.5, 20.6 and 20.7, the Carrier will (at the Carrier's election) pay the Customer or the Consignor the Relevant Amount for Goods in a consignment that are damaged or lost during the course of the Carrier providing Transport services, which the Customer (acting reasonably) claims is due to the fault of the Carrier or any of its officers, employees, Sub-Contractors or Related Bodies Corporate.

20.4 The Customer agrees that a payment of a Relevant Amount by the Carrier will never constitute an admission of liability by the Carrier or any of its officers, employees, agents, Sub-Contractors or Related Bodies Corporate in relation to any claim by the Customer.

20.5 The Customer must supply any information requested by the Carrier to establish the Relevant Amount to the reasonable satisfaction of the Carrier before any payment is made.

20.6 The Customer must give written notice of the loss or damage to the Goods to the Carrier within 14 days of completion of the Carrier's obligations under this Contract. The Carrier shall not be liable to make payment under this clause where notice is not given in accordance with this provision (time being of the essence).

20.7 The Carrier will not be liable to make payment of any Relevant Amount under this clause where it has reasonable cause to suspect that the Goods were damaged:

- (a) prior to being delivered to or collected by the Carrier;

- (b) after being delivered to the Customer (excluding damage caused by the Carrier or any of its officers, agents, employees, Sub-Contractors or Related Bodies Corporate after delivery); or
- (c) in circumstances where the Customer has breached any provision or warranty in these conditions.

21. Benefits Conferred Directly on Third Parties

- (a) The Carrier and the Customer and the Consignor 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 Carrier's officers, agents, employees, Sub-Contractors 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 Carrier's officers, agents, employees, Sub-Contractors 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 Carrier's officers, agents, employees, Sub-Contractors and Related Bodies Corporate with respect to the conferral on and vesting of all of the Third Party Rights in each of the Carrier's officers, agents, employees, Sub-Contractors and Related Bodies Corporate.

22. No Assignment

The Carrier and the Customer and the Consignor must not assign any of their respective rights or interests under this Contract without giving written notice to the other party.

23. GST

The Customer must pay all GST in respect of the Charges and any other costs and expenses incurred by the Carrier including any revised assessment of GST.

24. Force Majeure

Neither the Customer nor the Carrier 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 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. Storage

If the Carrier has agreed to provide Storage either alone or together with the Transport of Goods the following provisions will apply:

- (a) the Customer and the Consignor must pay the Carrier's Charges in connection with the provision of Storage;
- (b) unless agreed otherwise the Customer or the Consignor (if applicable) must deliver the Goods to the Carrier, at the place specified by the Carrier and the Customer or the Consignor (if applicable) must collect the goods from the Carrier at the end of the agreed period of Storage;
- (c) all provisions in these conditions with the exception of clause 20 (Limited Liability Waiver) shall apply to Storage services provided by the Carrier except as modified by this clause 25;
- (d) where Storage services are provided, clause 19.2(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 Carrier'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 Carrier"

- (e) Transport services will not be provided unless specified in a Consignment Note or in a Storage Order and agreed to by the Carrier, in which case the Customer and the Consignor will be responsible for payment of Charges for Transport and Storage;
- (f) the Carrier may store the Goods at any location it considers appropriate; and
- (g) the Carrier is not required to store the Goods beyond any period specified in the Storage Order or agreed by it in writing with the Customer.

26. Law

The Contract is governed by 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.

27. Severability

If a condition or part is unenforceable the unenforceability does not affect any other part of the condition or any other condition.

28. Variations and Waiver

- 28.1 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 all parties. If any party waives a breach of a term of this Contract, then the waiver does not operate as a waiver of another breach of the same or any other term or as a continuing waiver.

29. Privacy Act 1988 (C'th) (Privacy Act)

The Customer and the Consignor acknowledge and agree that:

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

30. Business Integrity

30.1 In this clause 30, the following definitions also apply:

- (a) **Associates** means:
 - (i) in relation to the Carrier: The Carrier's Related Bodies Corporate, Sub-Contractors, employees, officers, and agents and all employees, officers and agents of the Carrier's Related Bodies Corporate and Sub-Contractors; and
 - (ii) in relation to the Customer or the Consignor: the Customer's or Consignor's respective Related Bodies Corporate, contractors, employees, officers and agents and all employees, officers and agents of their respective Related Bodies Corporate, contractors and the Consignor.
- (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.

30.2 The Carrier, the Customer and the Consignor 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.

30.3 The Carrier, the Customer and the Consignor 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.

30.4 The Carrier, the Customer and the Consignor 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.

30.5 The Carrier, the Customer and the Consignor (where applicable) acknowledge and agree that they recognise the relevance and importance of ESG matters and will consider them in the conduct of their activities.

31. 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 Carrier, the Customer and the Consignor confirm that it is their irrevocable intention that, even if the Carrier, the Customer or the Consignor 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 Carrier, the Customer, the Consignor or any of their respective officers, agents, employees, contractors or Related Bodies Corporate continue to have their full force and effect in all circumstances.

