

# IFC Warehousing and Distribution Pty Ltd

(ABN: 70 119 121 461)

## Storage and Distribution – Standard Terms and Conditions of Trading

### 1. Application

- (a) The Company is not a common carrier and accepts no liability as such and reserves the right to accept or refuse the carriage of any Goods or any other service at its discretion.
- (b) All services provided by the Company, whether gratuitous or not, are subject to the provisions of these Conditions.
- (c) Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by a director of the Company. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
- (d) Any instructions received by the Company from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions. Such instructions received by the Company from the Customer for the supply of Services and/or any supply of goods shall also constitute authorisation for the Company to act on behalf of the Customer in accordance with these Conditions.

### 2. Definitions

In these conditions

- (a) **Authority** means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;
- (b) **Company** is IFC Warehousing & Distribution Pty Ltd (ABN 70 119 121 461);
- (c) **Confidential Information** means any confidential information relating to the business finances, strategy, methods and products of either party other than what is accepted to be in the public domain;
- (d) **Container** includes any sack, container, flexi tank, trailer, transportable tank, flat, pallet or any article of transport or other item or object used to carry or consolidate goods and any equipment of or connected thereto and in respect of which the Company performs or is requested to perform any service or which enters the Company's or its sub contractor's depot in connection with such service;
- (e) **Customer** means any person or entity at whose request or on whose behalf the Company provides a service;
- (f) **Dangerous Goods** includes goods which are or may become of a dangerous, inflammable, radioactive or damaging nature and/or goods likely to harbour or encourage vermin or other pests;
- (g) **End Customer** means a person or entity that purchases and/or obtains goods from the Customer;
- (h) **Force Majeure** means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers' works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or

to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or enroute, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics;

- (i) **Goods** means the products and its packaging and any Container not supplied by or on behalf of the Company in respect of which the Company provides or is requested to provide a Service;
- (j) **In writing** and **written** means by letter or electronic mail;
- (k) **Incidental Matters** means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transshipping, inspecting or otherwise handling the Goods or anything done in relation thereto;
- (l) **Insolvency Event** means if any (or more than one) of the following occur with respect to a Customer:
  - (i) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;
  - (ii) the Customer (or any third party) institutes any insolvency, receivership or bankruptcy proceedings with respect to the Customer, for the settlement of the Customer's debts;
  - (iii) the Customer makes a general assignment for the benefit of creditors; or
  - (iv) the Customer ceases to conduct business;
- (m) **Instructions** means a statement of the Customer's specific requirements;
- (n) **Intellectual Property** means all present and future intellectual and industrial property rights conferred by statute at common law or existing in equity;
- (o) **KPI** means any Key Performance Indicators being the agreed measure of timeliness and accuracy of the tasks and procedures set out in the Standard Operating Procedure (SOP);
- (p) **Owner** includes the owner, shipper and consignee of the goods, and any other person who is or may become interested in the goods and anyone acting on their behalf ;
- (q) **Person** includes individuals, partnerships, firms, trusts, associates or any body or bodies corporate;
- (r) **PPSA** means the *Personal Property Securities Act 2009* (Cth);
- (s) **Services** means the services detailed in the Standard Operating Procedure and amended from time to time and the whole of the services provided by the Company to the Customer and all matters necessarily related to or ancillary to the provision of the Services;
- (t) **SOP** means Standard Operating Procedures as agreed by the parties to this Agreement;
- (u) **Stock take** means a count of the physical holding of the products reconciled against the Company's stock records;
- (v) **Stock take Outcome** means the net value outcome after taking into account the 'unders' and 'overs' of the comparison of Company records to physical counts across all products;
- (w) **Suppliers** means suppliers of those **Goods** purchased by the **Customer** and or handled by the **Company**;
- (x) **Terminating Capital Costs** means specific capital expenditure and set up costs incurred by the Company for the exclusive use of the Customer that remains unamortized at the effective date of Termination;
- (y) **Vehicle** is any motor vehicle (including but not limited to any truck, van, trailer or car) in

respect of which the Company performs or is requested to perform any service or which enters the Company's or subcontractor's depot in connection with the Services;

- (z) **Value Shrinkage** means the dollar value of the net Stock Outcome after assigning cost of Customer's goods excluding profit and taxes to each product with a stock variance.

### **3. Obligations of Customer**

- 3.1 The Customer warrants that it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner.
- 3.2 The Customer warrants that it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto.
- 3.3 Customer shall give sufficient and executable instructions.
- 3.4 The Customer warrants that all information about the Goods and Container (including, but not limited to, weight, content, measure, quantity, condition, marks, numbers, barcodes and value) is complete and correct and that the Goods and Container are labelled in compliance with all laws, regulations and requirements to facilitate accurate handling by the Company.
- 3.5 The Customer warrants that the Goods, Vehicles and Container are properly packed in a manner adequate to withstand normal handling, storage or distribution and is in compliance with all laws and regulations in every respect.
- 3.6 The Customer must use its best endeavours to provide accurate quarterly forecasts to the Company of expected volumes and seasonality and to immediately advise the Company, in writing, as soon as it becomes aware of significant (greater than 20%) changes to forecasted volumes.

### **4. Special Instructions, Goods and Services**

- 4.1 Unless agreed in writing, the Customer undertakes that no dangerous or temperature sensitive Goods shall be delivered to the Company or its Sub Contractors and the Company shall not be required to deal with or in any way handle such goods.
- 4.2 If the Customer is in breach of Clause 4.1:
- (a) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;
  - (b) the Customer shall defend, indemnify and hold harmless the Company against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
  - (c) the Company (or any other person in whose custody the Goods may be in at the relevant time) may, at the Company's sole discretion, have the Goods destroyed or otherwise dealt with (without compensation to the Customer or liability on the Company). For the purposes of this sub-clause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Goods.
- 4.3 If the Company agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, the Company may without notice or compensation to the Customer and without liability from the Company have the Goods destroyed or otherwise dealt with, to the extent reasonably possible, in consultation with the Customer, or otherwise without notice to, and at the sole risk and expense of, the Customer.
- 4.4 No goods requiring temperature control are to be handled by the Company unless previously agreed in writing with agreed specific temperatures and SOP's and approved handling and storage facilities

being in place and approved prior to delivery and the Customer warrants that:

- (a) the Container used in relation to the movement of any such goods will be properly precooled or preheated as is appropriate;
  - (b) the Goods have been properly packed or stuffed in the Container; and
  - (c) the thermostatic controls have been properly set.
  - (d) If these requirements are not met, the Company shall not be liable for any loss or damage to the Goods to the extent that is caused by such non-compliance.
- 4.5 No Goods of high value or requiring special use are to be handled by the Company unless previously agreed in writing with agreed specific handling and storage SOP's and with approved handling and storage facilities being in place and approved prior to delivery of the Goods.
- 4.6 If the Customer is in breach of clause 4.4 (b) or (c) or (d) above, the Company shall not be caused nor requested nor obliged to deal with the goods. If any such goods are delivered without agreement, the Company may store them elsewhere without notice to and at the sole risk and expense of the Customer.

## **5. General Indemnities and Liabilities of the Customer and Owner**

- 5.1 The Customer and Owner shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses howsoever arising:
- (a) from the nature of the Goods, other than to the extent caused by the Company's negligence,
  - (b) out of the Company acting in accordance with the Customer's or Owner's instructions,
  - (c) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner; or
  - (d) from the defective or overweight condition of any Goods or Container provided by the Customer.
- 5.2 Except to the extent caused by the Company's negligence, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless the Company in respect of all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by the Company in connection therewith.
- 5.3 Advice and information, in whatever form it may be given, is provided by the Company for the Customer only and the Customer shall defend, indemnify and hold harmless the Company for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- 5.4 The Customer shall be liable for the loss, damage, contamination, soiling, delay, detention or demurrage whether arising before, during and after the carriage of property of:
- (a) the Company (including, but not limited to, Containers);
  - (b) the Company's servants, sub-contractors or agents;
  - (c) independent contractors engaged by the Company for performance of part or all of the Services;
  - (d) any person; or
  - (e) any vessel,
- caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible and will defend, indemnify and hold harmless the Company in

respect of the same.

- 5.5 Instructions to collect payment on delivery in cash or otherwise are accepted by the Company upon and on the condition that the Company in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written instructions are received that the Goods are not to be delivered without payment, the Company accepts no liability if, upon delivery of the goods, payment is not made.
- 5.6 The Company is committed to taking all reasonable steps to ensure that any carriage of goods by road performed as part of the Services is performed safely and in accordance with the Heavy Vehicle National Law and Chain of Responsibility provisions it contains. The Company will not comply with any directive or instruction by the Customer that might have the effect of contributing to a breach of the Heavy Vehicle National Law or preventing the Company from taking all steps which it considers to be reasonably necessary to prevent any breach of the Heavy Vehicle National Law.

## **6. Sub-contractors**

- 6.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of the Company which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify the Company against all consequences thereof.
- 6.2 Without prejudice to Clause 6.1, every servant, sub-contractor or agent of the Company shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, the Company, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.
- 6.3 The Customer shall defend, indemnify and hold harmless the Company from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of the Company under these Conditions.
- 6.4 Without prejudice to the generality of this Clause 8, the indemnity referred to in Clause 8.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.
- 6.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

## **7. Receipt**

- 7.1 Goods, Container or Vehicle are not received by the Company until the person delivering them has reported to the Company's Receiving office and the Company has agreed to receive the Goods, Container or Vehicle.
- 7.2 The Company may refuse to receive or unload any Goods, Container or Vehicle if the Company is not satisfied that arrangements have or will be made for the removal of such Goods Container or Vehicle.

## **8. Delivery and Disposal**

- 8.1 If any Goods are damaged, destroyed or otherwise rendered unfit for sale, then provided that the Company gives the Customer 14 days written notice, then the Company may remove or dispose of such Goods in its sole discretion and without further liability to the Customer.
- 8.2 If any Goods, Container or Vehicle is not removed from the Company's premises within 14 days of the company giving written notice, the Company shall be entitled to remove or dispose of such Goods, Container or Vehicle at the sole discretion of the Company and at the sole risk and expense of the Customer.
- 8.3 If at any time in the opinion of the Company or any Authority any Goods constitute a risk to any other

goods, property, life or health, those Goods may (provided that, to the extent possible, the Company gives the Customer prior notice) be destroyed or otherwise dealt with at the sole discretion of the Company and at the risk and expense of the Customer.

- 8.4 The Company shall be presumed conclusively to have delivered goods to the End Customer in accordance with these Conditions if it obtains from any person at the delivery address nominated by the Customer a receipt or signed delivery docket in relation to the delivery of those goods.
- 8.5 If the place nominated by the Customer is unattended or if delivery cannot be effected for any reason the Company will use its best endeavours to obtain instructions from the Customer and if this is not possible then to store the goods at another place selected by the Company and the Customer shall be liable for all additional transport and storage expenses incurred.
- 8.6 The Company shall have the right to enforce against the Owner and the Customer's jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

## **9. Inspection**

The Company will inform the Customer of any discrepancies between Goods received and its accompanying packing list on receipt which are apparent upon reasonable inspection without opening any packaging of the Goods.

## **10. Loss & Damage**

- 10.1 In respect to loss or damage of Customer's goods within a facility or premises of the Company or its Sub Contractor, the Company must within two (2) working days of its becoming aware of a possible loss advise the Customer and provide details and photographs (where possible) from which the Customer can assess loss and if required and at its own expense arrange for the Goods to be assessed or surveyed.
- 10.2 Subject to the provisions of Clause 12 Limits of Liability, any claim for recompense by the Customer must be made in writing within 14 days of advice from the Company and include details of investigations, the cost basis of the claim and accompanied by all relevant documentation that the Customer possesses. Each party will use its best endeavours to mitigate any loss, damage, liability or expense in connection with or related to these Conditions.

## **11. General Liability**

- 11.1 Except where otherwise provided in these Conditions, the Company shall not be liable for any loss or damage whatsoever arising from:
  - (a) the act or omission of the Customer or Owner or any person acting on their behalf,
  - (b) compliance with the Instructions given to the Company by the Customer, Owner or any other person entitled to give them,
  - (c) insufficiency of the packing or labelling of the Goods, except where such service has been provided as a Service by the Company,
  - (d) handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf,
  - (e) inherent vice of the Goods,
  - (f) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause,
  - (g) fire, flood, storm, explosion or theft,

- (h) any Force Majeure Event, or
  - (i) any other cause which the Company could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 11.2 The Company shall not be liable for loss or damage howsoever caused (whether or not direct, indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit (or similar claim), delay or deviation howsoever arising.
- 12. Limits of Liability**
- 12.1 Except in so far as otherwise provided by these Conditions, the liability of the Company, howsoever arising, shall not exceed the following:
- (a) in respect of all claims other than those subject to the provisions of Clause 12.4 whichever is the lesser of:
    - (i) the value of, or
    - (ii) the equivalent of AUD1.00 per gross kilogram in the currency of the loss or damage, (the exchange rate to apply being the rate as at the date of the delivery of the Goods) of, the Goods lost, damaged, misdirected, misdelivered or in respect of which a claim arises.
  - (b) in respect of claims for delay where not excluded by the provisions of these Conditions, the amount of the Company's charges in respect of the Goods delayed.
- 12.2 The limitation of liability referred to in Clause 12.1 shall apply notwithstanding that the cause of the loss or damage is unexplained.
- 12.3 If agreed in writing prior to receipt of the Goods, the Company may accept liability in excess of the limits set out in these Conditions upon the Customer agreeing to pay the Company's additional charges for accepting such increased liability. Details of the Company's additional charges will be provided upon request.
- 12.4 The value of the Goods shall be calculated by reference to the invoice value of the Goods plus freight and insurance if paid.
- 12.5 If there be no invoice value for the Goods, the value of the goods shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Customer or Owner or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.
- 12.6 Unless agreed in writing prior to receipt, the Company will not accept or deal with bullion, coin, precious stone, jewellery, antiques, works of art or other valuable Goods. Should any Customer nevertheless deliver any such Goods to the Company or cause the Company to handle or deal with any such Goods other than in accordance with prior written agreement, the Company shall be under no liability whatsoever for or in connection with such Goods howsoever arising.
- 12.7 The liability of the Company arising out of any one incident for breach of any right or guarantee the Customer may have under the *Competition and Consumer Act 2010* and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, or howsoever arising is limited to any of the following as determined by the Company:
- (a) the supplying of the services again; or
  - (b) the payment of the cost of having the services supplied again; or
  - (c) the value of the Goods the subject of the services at the time the Goods were received by the Company,
- whichever is lower.

### **13. Security Interest**

- 13.1 Special and General Lien: From the time the Company, or its servants or agents, receive the Goods into its custody, the Company, its servants or agents shall have in addition to any statutory rights a special and general lien on the Goods and a right to sell the Goods whether by public or private sale or auction without notice, for any unpaid amounts for storage, warehousing, and distribution charges, freight, demurrage, container detention charges, duty, fines, penalties, salvage, of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. The lien and rights granted by this Clause 13.1 shall survive delivery of the Goods and an Insolvency Event and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this clause. The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to the Company in discharge of the Company's lien does not amount to a preference, priority or advantage in any manner or turn. The Company sells or otherwise disposes of such Goods pursuant to this Clause 13.1 as principal and not as agent and is not the trustee of the power of sale.
- 13.2 Continuing Security Interest: From the time the Company, or its servants or agents, receive the Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Company for the payment of all amounts for storage, warehousing and distribution changes, freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs.
- 13.3 Custody and Possession: For the purposes of these Conditions, and in particular Clauses 13.1 and 13.2 the Company shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of the Company or of any subcontractors, servants or agents, and whether or not the Company is in possession of any documents of title relating to the Goods. The Customer and the Company agree that the Company has possession of the Goods within the meaning of section 24 of the PPSA, even if the Goods are in the possession of the Company's subcontractors, servants or agents.
- 13.4 Registration of Security Interest: The Customer acknowledges that Company may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.
- 13.5 Provide Information: The Customer will immediately inform the Company if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying Company in writing at least 14 days before such change takes effect.
- 13.6 Contracting Out and Waiver:
- (a) The Company need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
  - (b) The Customer and the Company agree pursuant to section 115 of the PPSA that Sections 125, 142 and 143 of the PPSA do not apply to this Agreement.
  - (c) The Customer, pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from the Company under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.

13.7 Customer's Obligations: The Customer will not:

- (a) permit to subsist any other security interest in relation to the Goods which would rank ahead of the Company's interest; or
- (b) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.

13.8 Company's Rights: In addition to any rights the Company has under the PPSA, the Company shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to the Company under any Contract remains outstanding, to enter into the premises where Goods are stored and remove them without being responsible for any damage caused in doing so. The Customer shall indemnify the Company for all such moneys and all costs, charges and expenses in repossessing the Goods.

13.9 Confidentiality: The Customer and the Company agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA, except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless the Company approves. Nothing in this Clause 11.9 will prevent any disclosure by the Company that it believes is necessary to comply with its other obligations under the PPSA or any other law.

#### **14. Containers**

14.1 If a Container has not been packed or stuffed by the Company, the Company shall not be liable for loss of or damage to the contents if caused by: the manner in which the Container has been packed or stuffed;

- (b) the unsuitability of the contents for carriage in Containers, unless the Company has approved the suitability;
- (c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of the Company this paragraph (c) shall only apply if the unsuitability or defective condition of the Container:
  - (i) arose without any negligence on the part of the Company; or
  - (ii) would have been apparent upon reasonable inspection by the Customer or Owner or person acting on behalf of either of them.

14.2 The Customer shall defend, indemnify and hold harmless the Company against all liability, loss, damage, costs and expenses arising from one or more of the matters referred to in Clause 14.1.

14.3 The Customer agrees to indemnify and keep indemnified the Company for all hire and other charges charged for the Customer's use of Containers provided by the Company, and for any costs incurred by the Company for the cleaning of Containers.

#### **15. Shrinkage**

15.1 The parties acknowledge that inherent in the nature of storing, handling and transporting Goods is the possibility of differences between the actual physical quantity of the Goods in the Company's possession and the quantity recorded in the Company's stock records. Such loss could have occurred by undetected short supply, pick error, non-recorded minor damages and other causes. It is understood that any such difference can lead to the Customer suffering loss or "Value Shrinkage"

- (a) Customer's loss is the percentage of the actual value of Stock On Hand at the time of annual Stock take compared to the value in the Company stock records
- (b) A net loss of greater than 1.5% will entitle the Customer to make a claim against the Company.

## **16. Insurance**

16.1 The Customer shall maintain with a reputable insurer the following insurance:

- (a) Insurance on the Goods while they are in storage and transit for their full insurable invoice value;
- (b) Public liability insurance of no less than ten million dollars (AU\$10,000,000)

16.2 The Company shall maintain with a reputable insurer the following insurance:

- (a) Public liability insurance of no less than ten million dollars (AU\$10,000,000)
- (b) Workers Compensation Insurance

16.3 If requested to do so each party shall produce to the other appropriate evidence of the existence of the insurance referred to in clause 16.1 and 16.2.

**17. Time Limits** The Company shall be discharged of all liability:

- (a) in respect of damage to any Goods, Containers or Vehicles unless the Company has been given the opportunity to survey such damage except where it was not reasonably possible for the Company to be given such opportunity or the Company has waived a requirement for a survey, then unless notice of the claim is received by the Company in writing within 14 days of the date of delivery of the Goods.
- (b) in respect of loss or damage at the Company's depot of any Goods, Container or Vehicle, unless written notice of such loss or damage is received within 14 days of the date when such Goods, Container or Vehicle left, or, if lost, should have left the Company's depot.
- (c) In respect of all claims, unless suit is brought against the Company in the proper forum and written notice thereof is received by the Company within nine (9) months of the date specified in clause 17.2.

17.2 For the purposes of clause 17.1, the applicable dates are:

- (a) in the case of loss or damage to Goods, the date of delivery of the Goods;
- (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
- (c) in any other case, the event giving rise to the claim.

## **18. Payment**

- 18.1
- (a) The Company will issue invoices for services weekly and all payments by the Customer are to be made within fourteen (14) days of invoice date.
  - (b) The Customer must make payment without deduction or deferment on account of any claim, counter claim or set off.
  - (c) On all amounts overdue to the company, the Company shall be entitled to interest calculated on 4 per cent above the base rate of the Company's bank applicable during the period that such amounts are overdue.
  - (d) All monies due to the Company at the date of termination of this agreement must be paid in full at least seven (7) working days before final despatch of the Customers Goods from the Company's warehouse.
  - (e) The Company shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised

and whether or not any notice was given that further debits were to follow. Where any amount charged by the Company is described as a disbursement (or similar expression), such amount will include the forwarder's handling and administration fee in respect of the same and the fee is not required to be separately disclosed. Credit for disbursements will be withdrawn by the Company in the event disbursements are not paid within seven (7) days of the disbursement invoice.

- (f) Unless otherwise stated, all charges quoted are exclusive of Goods and Services Tax (GST).

## 19. Payment Disputes

If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by the Company, the Customer must:

- (a) Pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment and
- (b) Notify the Company in writing (within five Business Days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.
- (c) The parties must immediately and in good faith attempt to resolve the dispute prior to the due date of payment of the relevant disputed invoice, however, the Company retains the right to act in accordance with these Conditions.
- (d) Nothing contained earlier in this agreement will prevent the Company from withdrawing services at any stage to recover any amounts owing to or claimed by the Company from the Customer.

## 20. Transferability

The company reserves the right to relocate Customer's stock to another warehouse facility at the Company's expense provided that the services at the other warehouse facility will be of at least of the same standard as those provided at the original warehouse facility.

## 21. Miscellaneous

### 21.1 Notice

Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to the Company to be the address of the recipient of the notice.

### 21.2 Defences and Limits of Liability

The defences and limits of liability provided in these Conditions shall apply in any action against the Company whether founded in contract or in tort or howsoever otherwise founded.

### 21.3 Legislation

- (a) If these Conditions are held to be subject to the laws of the Commonwealth of Australia or of any particular State or Territory in Australia then these Conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further. Nothing in these Conditions is intended to have the affect of contracting out of any applicable provisions of the *Competition and Consumer Act 2010* and the Australian Consumer Law, or comparable legislation in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
- (b) If any other legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these

Conditions shall be construed as a surrender by the Company of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be over-riden to that extent and no further.

- (c) These Conditions are subject to the *Competition and Consumer Act 2010* (as amended from time to time) to the extent that that Act implies a warranty and prevents the exclusion restriction or modification of any such warranty.

#### 21.4 Headings

Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.

#### 21.5 Variations

No servant or agent of the Company shall have power to waive or vary any of these Conditions unless such waiver or variation is in writing and is specifically authorised or ratified in writing by a director or officer of the Company who has the actual authority of the Company so to waive or vary.

### 22. Governing Law and Jurisdiction

These Conditions and any claim or dispute arising out of or in connection with the services of the Company shall be subject to the laws of the State of Victoria and the exclusive jurisdiction of the courts of that State.

### 23. Services Outside these Conditions

- (a) If the Company undertakes to arrange any services in relation to any of the Customer's Goods, Containers or Vehicles beyond the scope of these Conditions, it does so solely as an agent for the Customer and shall not be liable for the acts or omissions of any third party engaged to perform those services.
- (b) When engaging a person to perform any services referred to in clause 17(c) above, the Company may as agent for the Customer enter into contracts with third parties on any terms whatsoever including terms less favourable to the Customer than these Terms and Conditions.
- (c) Subject to any express instructions to the contrary from the Customer, the Company shall not effect or arrange for any insurance in relation to any of the Customer's Goods, Containers or Vehicles.

### 24. Confidentiality

The parties agree that neither will, without prior written approval of the other, disclose the other party's Confidential Information or Intellectual Property whether from records or performing their contracted obligations of this contract to a third party provided always meeting the lawful demands of emergency services, statutory or legal requirements.