

1 Definitions

- 1.1 "Agreement" means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Agreement.
- 1.2 "Company" shall mean Coynes Freight Management Group Pty Ltd (which includes the trading entities of: Coynes Transport Industries, Finline Transport, Coynes Storage Solutions and Coynes MetroAir), and its successors and assigns or any person acting on behalf of and with the authority of Coynes Freight Management Group Pty Ltd.
- 1.3 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom the Company may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.4 "Client" means any person/s requesting the Company to provide the Services, or person/s acting on behalf of and with the authority of the Client (including any sender, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents) entering into this contract (and is not limited to the person/s identified in the schedule) both in its own personal capacity and for and on behalf of any principal(s) or trust(s), whether or not disclosed to the Company. Where the Client comprises two or more persons, the obligations imposed and rights conferred upon the Client by this contract shall be imposed and conferred upon each person forming the Client, severally and all of them jointly, including all charges for Services provided by the Company.
- 1.5 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Company's Services.
- 1.6 "Services" shall mean all services supplied by the Company to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto), including the offering of any advice or recommendations.
- 1.7 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Company's Services, or for storage by the Company.
- 1.8 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Agreement, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 "Cookies" means small files which are stored on a user's computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client's computer. **If the Client does not wish to allow Cookies to operate in the background when ordering from the website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to ordering Goods via the website.**
- 1.10 "Charges" shall mean the cost of the Services (plus any GST where applicable) as agreed between the Company and the Client subject to clause 4 of this contract.
- 1.11 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2 Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by, the Company.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and the Company.
- 2.3 These terms and conditions are to be read in conjunction with the Company's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Company to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail. In the absence of manifest error, a written notice by the Company of the charges due and payable shall be conclusive evidence of the same.
- 2.4 Except as expressly provided for in this Agreement, the Company has not made, and the Client has not relied on, any representations or assurances concerning this Agreement, and confirm that this Agreement contains the entire and complete terms and understanding of the parties' contractual relationship.
- 2.5 Any and all representations made or to be made by the Client are continuing representations on which the Company has placed ongoing reliance in entering into this Agreement and providing the Services.
- 2.6 Any time specified by the Company for provision of the Services is an estimate only and the Company will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Company is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Company shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.

3 Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales & South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 10 the Electronic Transactions Act 20011 (Western Australia), Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (Tasmania), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

4 Errors and Omissions

- 4.1 The Client acknowledges and accepts that the Company shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

- (a) resulting from an inadvertent mistake made by the Company in the formation and/or administration of this contract; and/or
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Company in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of the Company; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5 Change in Control

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

6 Charges and Payment

- 6.1 At the Company's sole discretion, the Charges shall be either:
(a) as indicated on invoices provided by the Company to the Client in respect of Services provided;
(b) the Company's quoted Charges (subject to clause 4.2 and 4.3) which shall be binding upon the Company provided that the Client shall accept in writing the Company's quotation within thirty (30) days.
- 6.2 The Company reserves the right to change the Charges:
(a) if a variation to the Company's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of the Company, delivery times or date or otherwise, etc.);
(b) to reflect any increases to the Company in the cost of providing the Services which are beyond the reasonable control of the Company (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs);
(c) for any delay over fifteen (15) minutes in either loading and/or unloading (from when the Company arrives onsite), occurring other than from the Company's default.
- 6.3 Time for payment for the Services being of the essence, the Charges will be payable by the Client on the date/s determined by the Company, which may be:
(a) on delivery of the Goods;
(b) the date specified on any invoice or other form as being the date for payment; or
(c) failing any notice to the contrary, the date which is thirty (30) days following the end of the month of the date of any invoice/s and/or statement furnished to the Client by the Company.
- 6.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, or by any other method as agreed to between the Client and the Company.
- 6.5 The Client shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Client by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.6 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Client must pay to the Company an amount equal to any GST the Company must pay for any provision of Services by the Company under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Charges. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Charges except where they are expressly included in the Charges.
- 6.7 Receipt by the Company of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then the Company's ownership or rights in respect of the Services, and this Agreement, shall continue.
- 6.8 Where the Client requesting or organising the Company to provide the Services is acting on behalf of any third party, and that third party is intended to be responsible for the payment of the Charges, then in the event that the third party does not pay for the Services when due, the Client acknowledges that they shall be liable for the payment of the Charges as if they had contracted for the provision of the Services on their own behalf.

7 Provision of the Services

- 7.1 The Company is not a "Common Company" and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by the Company subject only to these conditions and the Company reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 7.2 The Client authorises the Company (in its discretion at any time without notice to the Client) to:
(a) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arranges with any third party to perform or carry out the Services (or any part thereof). In so engaging such third parties, the Company has or will represent to such third parties that the terms of this Agreement, including the benefit of any terms conferred upon the Company, shall extend to such third parties in providing their goods and/or services;
(b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever.
- 7.3 The Company's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.
- 7.4 In addition to clause 6.2, the Company reserves the right to change the Charges where the Charges is calculated by weight, measurement or value, the Company may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.

8 Client-Packed Containers

- 8.1 Subject to any written special instructions to the contrary:

- (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure;
- (b) the Company is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.

9 Client's Responsibility

9.1 The Client expressly warrants, represents, confirms and/or acknowledges that:

- (a) the Company has relied upon the Client in its description of the Goods (including weight, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, the Company accepts no liability for any discrepancy that may arise with the description;
- (b) the Company has relied upon the Client's skill in properly packing, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those relating to the packing, carriage, storage, customs clearance, delivery of other services in respect of the Goods, etc.) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations.;
- (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Agreement, and by entering into this Agreement the Client accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Client is acting;
- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
- (e) the person handing over the Goods to the Company is authorised to sign and accept these terms and conditions;
- (f) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

10 Insurance

10.1 The Company will not, without the Client's written instruction, *and the Company's written approval*, insure the Goods, and:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Company;
- (b) subject to sub-clause (c):
 - (i) the Company is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all;
 - (ii) under no circumstances will the Company be under any liability with respect to the arranging of any such insurance and no claim will be made against the Company for failure to arrange or ensure that the Goods are insured adequately or at all.
- (c) any such insurance is at the Client's own expense. Where the Client's instruction does not specify the class of insurance to be effected, the Company may in its discretion effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
 - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
 - (ii) loss, damage or expensed proximately caused by delay;
 - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
 - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
 - (v) any exclusion common to that class of insurance;
 - (vi) any other exclusion advised by the Client to the Company, detailed in the special instructions.

11 Delivery of the Goods

- 11.1 The Company shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Client in writing, or at any other location directed by the Client orally.
- 11.2 The Company shall have no liability, implied or otherwise, in respect of COD payments which may be collected by any of its servants or agents on behalf of the Client or any of its clients when making deliveries, and if, notwithstanding this clause, any such liability does attach to the Company, then the Client will indemnify the Company in respect of any such liability.

12 Carriage of Goods by Sea

12.1 Where the Goods are carried on any sea going vessel, the carriage is subject to the terms and conditions of the shipowners' Bill of Lading in use at the time of shipment, and, in no circumstances, shall the Company be held liable for any loss or damage howsoever occasioned whilst the Goods are in the care, custody or control of such shipowner.

13 Loss or Damage

- 13.1 Subject to clause 17, and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Company shall not be under any liability for:
 - (a) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure;
 - (b) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), wrongful delivery, misdelivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of the Company or not)
 - (c) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (d) any act or omission whether wilful, reckless, negligent or otherwise of the Company, or its servants or agents or subcontractors;
 - (e) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
 - (f) any act, omission or neglect of the Client, including any breach of its obligations under this Agreement, insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.
- 13.2 Where the legislation referred to in clause 17 allows for the limitation of the Company's liability, then the liability is limited to the payment of the cost of replacement of the Goods or acquiring equivalent goods.

14 Conditions of Storage

- 14.1 The Company is authorised to remove the Goods from one warehouse to another without cost to the Client. The Company will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 14.2 The Client is entitled, upon giving the Company reasonable notice, to inspect the Goods in store but a reasonable charge may be made by the Company for this service.
- 14.3 Subject to payment for the balance of any fixed or minimum period of storage agreed, the Client may require the Goods to be removed from the store at any time on giving the Company not less than five (5) working days' notice. If the Client gives the Company less than the required notice, the Company will still use its best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 14.4 The Client agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from the Company to do so. In default, the Company may, after fourteen (14) days' notice to the Client, SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty, and apply the net proceeds in satisfaction of any amount owing by the Client to the Company.

15 Lien

- 15.1 In addition to its rights under the Warehouseman's Liens Act 1958, the Company shall have and retain a general lien on any Goods submitted by the Client to the Company for the provision of Services by the Company (including where done so in the capacity of any sender, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents), and in the possession or control of the Company (and any documents relating to those Goods), for pecuniary obligations owing from time to time by the Client on any account whatsoever to the Company (including, but not limited, to payment of the Charges), and the Company shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. The Company shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Company's right to recover from the Client any charges due or payable in respect of the carriage or such detention and sale.

16 Claims

- 16.1 Notwithstanding clauses 10 and 13, in the event that the Client believes that they have any claim against the Company then they must lodge any notice of claim for consideration and determination by the Company within seven (7) of delivery, or for non-delivery within seven (7) days of anticipated delivery or the removal or destruction of the Goods.
- 16.2 The failure to notify a claim within the time limits under clause 16.1 is evidence of satisfactory performance by the Company of its obligations hereunder.

17 The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts

- 17.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions ("**Non-Excluded Guarantees**").
- 17.2 The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.4 If the Client is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.5 If the Company is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then the Company may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 17.6 If the Client is not a consumer within the meaning of the CCA, the Company's liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Company at the Company's sole discretion;
 - (b) otherwise negated absolutely.

18 Cancellation

- 18.1 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause.
- 18.2 The Company may cancel any contract to which these terms and conditions apply or cancel the provision of the Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice the Company shall repay to the Client any sums paid in respect of the Charges. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.3 In the event that the Client cancels the provision of the Services, then the Client shall be liable for any loss incurred by the Company (including, but not limited to, any loss of profits) up to the time of cancellation.

19 Dispute Resolutions

- 19.1 Where a dispute arises between the two parties, it will be referred to the Company and Client directors for resolution. The Company and Client agree to solve any disputes amicably and in good faith and on a without prejudice basis and not begin court proceedings or mediation or arbitration proceedings until the dispute resolution channel provided in this clause has been exhausted.
- 19.2 The dispute resolution process will be as follows:
- (a) a party may give notice to the other party about the nature of the dispute (a "Dispute Notice") and the parties will seek to reach settlement amongst themselves within ten (10) Business Days of receipt of the Dispute Notice ("Negotiation Period"). Should the Parties fail to determine the dispute within the Negotiation Period, the Parties may seek within a further period of ten (10) Business Days (or such longer period as agreed in writing between the Parties) to reach Agreement on:

- (i) a mediation procedure out of courts and arbitration proceedings, (such as mediation, reconciliation or expert determination process);
 - (ii) the steps to be taken by each Party and the timing of those steps;
 - (iii) who will be the independent person/body conducting the mediation process and who will pay for such independent person's/ body's professional fees and expenses.
- (b) If the parties fail to solve the entire dispute or fail to reach agreement on any of the matters described above within twenty (20) days (or any other period agreed in writing) from the date of the Dispute Notice, either the Company or the Client may commence court proceedings or arbitration proceedings to resolve the dispute.

20 Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes the Company any money the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Company's contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies the Company may have under this contract, if a Client has made payment to the Company, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Company under this clause 19 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Agreement.
- 20.4 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions, and may (by written notice to the Client) demand that the Client collect the Goods. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company exercised its rights under this clause and where the Client fails to collect the Goods when demanded by the Company to do so, the Company may (at the Client's expense) remove and relocate the Goods.
- 20.5 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client has exceeded any applicable credit limit provided by the Company;
 - (c) the Client becomes insolvent/bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

21 Personal Property Securities Act 2009 ("PPSA")

- 21.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) Goods that have previously been carried and/or stored and any Goods that will be carried and/or stored in the future by the Company to the Client; and/or
 - (b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to the Company for Services – that have previously been provided and that will be provided in the future by the Company to the Client.
- 21.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Company may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 21.3(a)(i) or 21.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Company for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Company;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of the Company.
- 21.4 The Company and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 21.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 21.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 21.7 Unless otherwise agreed to in writing by the Company, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 21.8 The Client must unconditionally ratify any actions taken by the Company under clauses 21.3 to 21.5.
- 21.9 Subject to any express provisions to the contrary (including those contained in this clause 18) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

22 Security and Charge

- 22.1 In consideration of the Company agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 22.2 The Client indemnifies the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Company's rights under this clause.
- 22.3 The Client irrevocably appoints the Company and each director of the Company as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 22 including, but not limited to, signing any document on the Client's behalf.

23 Privacy Policy

- 23.1 All emails, documents, images or other recorded information held or used by the Company is Personal Information, as defined and referred to in clause 23.3, and therefore considered Confidential Information. The Company acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Company acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Company that may result in serious harm to the Client, the Company will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 23.2 Notwithstanding clause 23.1, privacy limitations will extend to the Company in respect of Cookies where transactions for purchases/orders transpire directly from the Company's website. The Company agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
 - (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Company when the Company sends an email to the Client, so the Company may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via the Company's website.
- 23.3 The Client agrees for the Company to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by the Company.
- 23.4 The Client agrees that the Company may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
 - (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 23.5 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit.
- 23.6 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other agreed purposes or required by):
 - (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 23.7 The Company may give information about the Client to a CRB for the following purposes:
 - (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 23.8 The information given to the CRB may include:
 - (a) Personal Information as outlined in 23.3 above;
 - (b) name of the credit provider and that the Company is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and the Company has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of the Company, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 23.9 The Client shall have the right to request (by e-mail) from the Company:
 - (a) a copy of the Personal Information about the Client retained by the Company and the right to request that the Company correct any incorrect Personal Information; and

- (b) that the Company does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 23.10 The Company will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 23.11 The Client can make a privacy complaint by contacting the Company via e-mail. The Company will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

24 Limitation of Liability

- 24.1 The Client shall indemnify the Company against any loss (including any fine, levy, charge or other monetary imposition to which the Company may become liable incidental to the Carriage of the Goods), damage, death or injury (including loss or damage to the Company's containers and/or equipment) arising out of the Client's contravention of clause 10, or the Client's unreasonable detention of any vehicle, container or other equipment of the Company.
- 24.2 Nothing whatsoever done or omitted to be done or other conduct by the Company in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under no circumstances constitute either a breach going to the root of this contract, or a deviation or departure therefrom or a repudiation thereof such as to have the effect of disentitling the Company from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other like protections herein which shall continue to have full force and effect in any event whatsoever. Subject to clause 17, the Company shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Charges).

25 Sub-Contractors

- 25.1 The Client 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 Client undertakes to indemnify the Company against all consequences thereof.
- 25.2 Without prejudice to Clause 25.1, 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.
- 25.3 The Client 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.
- 25.4 Without prejudice to the generality of this Clause 25, the indemnity referred to in Clause 25.3, shall cover all claims, costs and demands arising from or in connection with the negligence of the Company, its servants, sub-contractors and agents.
- 25.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

26 General

- 26.1 Notice may be sent under this Agreement by hand delivery, pre-paid post, email and facsimile transmission to the address or location corresponding to the party name on the Agreement or of which either party becomes aware from time to time. The receipt of any such notice shall be deemed to have occurred, by hand upon receipt, by pre-paid post upon expiration of two (2) business days from the day of posting, by email upon the sender's email account generating a record that the email has been sent, by facsimile transmission upon the sender's facsimile machine generating an activity report confirming details of transmission during a business day.
- 26.2 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 26.3 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria, the state in which the Company has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 26.4 The Client agrees that the Company may amend these terms and conditions at any time. If the Company makes a change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Client of such change. The Client will be taken to have accepted such changes if the Client makes a further request for the Company to provide Services to the Client.
- 26.5 Where the Company is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Company, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this Agreement and the Company gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Company.
- 26.6 Both parties warrant that they have the power to enter into this Agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Agreement creates binding and valid legal obligations on them.
- 26.7 The defences and exclusions of liability in these conditions, including clause 13, apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against the Company even if it is resulted from an act or omission of the Company done wilfully or recklessly with knowledge that damage would or would probably result.