

**1. Definitions**

- 1.1 “Company” shall mean First Logistics Pty Ltd (as Trustee for The Hamilton Family Trust) T/A First Logistics Pty Ltd, and its successors and assigns or any person acting on behalf of and with the authority of First Logistics Pty Ltd (as Trustee for The Hamilton Family Trust) T/A First Logistics Pty Ltd.
- 1.2 “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) and 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).
- 1.3 “Customer” shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 1.4 “Consignee” shall mean the person to whom the Goods are to be delivered by way of the Company’s Services.
- 1.5 “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.
- 1.6 “Services” shall mean all services provided by the Company to the Customer (including, but not limited to, anything done or to be done in relation to the Goods, or 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 “Dangerous Goods” means cargo which are volatile or explosive, or which is or may become dangerous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property whatsoever.
- 1.8 “Price” shall mean the cost of the Services as agreed between the Company and the Customer subject to clause 5 of this contract.

**2. Acceptance**

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods.
- 2.2 These terms and conditions are to be read in conjunction with the Company’s quotation, consignment note, agreement, airway bills, bill of lading, manifests, or any other forms as provided by the Company to the Customer. Subject to clause 2.4, if there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.3 These terms and conditions may only be amended with the Company’s consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Company.
- 2.4 Where the Services provided with the Company is international carriage for which a bill of lading, consignment note, or other document (having contractual effect) has been issued, and notwithstanding any other provision of these terms and conditions, the Company shall be entitled to the benefit of any restrictions on its liability contained in such document.
- 2.5 The Company is not a Common Carrier 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.
- 2.6 The Customer hereby authorises the Company (if it should think fit to do so) to arrange with a Sub-Contractor for provision of Services in relation to the Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Sub-Contractor, who shall (in addition to any person(s) falling under clause 14.3) thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Company. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled, the Company shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 2.7 Where it is intended (by special instruction to the Company) that a third party is to be responsible for the payment of the Price, such instruction shall be deemed to include a stipulation that if that nominated party does not pay the Price within seven (7) days of delivery (or attempted delivery) of the Goods, then the Customer shall pay the Price to the Company upon demand thereby.

**3. Change in Control**

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

**4. Freight Forwarding**

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

**5. Price and Payment**

- 5.1 At the Company’s sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Company to the Customer in respect of Services supplied; or
  - (b) the Company’s quoted Price (subject to clause 5.2) which shall be binding upon the Company provided that the Customer shall accept in writing the Company’s quotation within thirty (30) days.
- 5.2 The Company may:
- (a) by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Company beyond the reasonable control of the Company (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs, etc.);
  - (b) charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional charges accordingly.

- 5.3 At the Company's sole discretion, a non-refundable deposit may be required prior to provision of the Services
- 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Customer on the date/s determined by the Company, which may be:
- (a) before provision of the Services;
  - (b) on provision of the Services;
  - (c) by way of instalments/progress payments in accordance with the Company's payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is posted to the Customer's address or address for notices;
  - (e) the date specified on any invoice or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by the Company.
- 5.5 Payment may be made by bank cheque, electronic/on-line banking, credit card (plus a surcharge of up to three percent (3%) of the Price), or by any other method as agreed to between the Customer and the Company.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer 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 Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other customs and/or excise duties, costs, fines or penalties, and/or other taxes and duties that may be applicable, in addition to the Price except where they are expressly included in the Price.
- 6. Obligations of the Customer**
- 6.1 The Customer:
- (a) warrants that it is either the owner, or the authorized agent of the owner, of the Goods and that it is authorised to accept and accepts these terms and conditions, not only for itself, but also as agent for and on behalf of the owner;
  - (b) undertakes to indemnify the Company in respect of any liability whatsoever and howsoever arising (including without limiting the forgoing from negligence, breach of contract, wilful act or default of the Company or others, or the conversion or misappropriation of the Goods by the Company's servants, agents, or sub-contractors) in connection with the provision of the Services and/or the Goods to any person (other than the Customer) who claims to have, who has, or may hereafter have, any interest in the Goods, or any part of the Goods;
  - (c) warrants that they have complied with all laws and regulations relating to the nature, condition, packaging, handling, storage and carriage of the Goods, and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature and indemnifies the Company for all liability and all costs incurred as a result of, or arising out of, a breach of this warranty. Further, the Customer shall provide to the Company all such assistance, information and documentation that may be necessary to enable the Company with such laws and regulations;
  - (d) shall not tender for the provision of Services by the Company, any Dangerous Goods without presenting to the Company a full description thereof, disclosing their nature. In any event, the Customer shall be liable for all death, bodily injury, loss and/or damage thereby caused and shall indemnify the Company for such liability;
  - (e) shall give sufficient and executable instructions (including address adequately each consignment, and provide written delivery instructions, to enable effective delivery);
  - (f) warrants that the description and particulars of the Goods are complete and correct;
  - (g) warrants that the Goods are properly packed and labelled, except where the Company has accepted instructions in respect of packaging and/or labelling.
- 7. Consignment Note**
- 7.1 It is agreed that the person delivering any Goods to the Company for carriage or forwarding is authorised to sign the consignment note for the Customer.
- 8. Customer-Packed Containers**
- 8.1 If a Container has not been stowed by or on behalf of the Company, the Company shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the Container has been stowed; or
  - (b) the unsuitability of the Goods for carriage or storage in Containers; or
  - (c) the unsuitability or defective condition of the Container.
- 9. Provision of the Services**
- 9.1 The Customer shall be deemed to authorise any deviation from the usual manner in which the Services are provided that may in the absolute discretion of the Company be deemed reasonable or necessary in the circumstances.
- 9.2 If the Customer instructs the Company to use a particular method of providing the Services the Company will give priority to the method designated; but if that method cannot conveniently be adopted by the Company, the Customer shall be deemed to authorise the Company to provide the Services by another method.
- 9.3 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 Customer as a result of 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 Customer, then the Company shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 10. Delivery**
- 10.1 The Company is authorised to deliver the Goods at the address given to the Company by the Customer for that purpose and it is expressly agreed that the Company shall be taken to have delivered the Goods in accordance with this contract if at that address the Company obtains from any person a receipt or a signed delivery docket for the Goods.
- 11. Charges Earned**
- 11.1 The Company's charges shall be considered earned as soon as the Goods are delivered to the Company; and under no circumstances shall any of those charges be refunded.
- 11.2 The Customer will be, and shall remain, responsible to the Company for all its proper charges incurred for any reason (including whether or not the Goods are delivered, and/or the Services are provided as instructed, and whether or not they are damaged).

**12. Loss or Damage**

- 12.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- (a) the Company shall not be responsible (in tort or contract or bailment or otherwise) for any (and the consequences of any) damage to, loss, deterioration, misdelivery, delay in delivery or failure to deliver the Goods (whether the Goods are or have been in the possession of the Company or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
  - (b) where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes; and
  - (c) the Customer will indemnify the Company against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Company in connection with the Goods.

**13. Insurance**

- 13.1 The Customer acknowledges that the Goods are carried and stored at the Customer's sole risk and not at the risk of the Company; insurance will not be arranged by the Company except with the express written instructions of the Customer, and:
- (a) at the Customer's expense; and
  - (b) upon lodgement of a declaration as to value prior to acceptance of the Goods by the Company;
  - (c) the Company may charge the Customer for arranging such insurance.

**14. Claims**

- 14.1 The Company shall be under no liability whatsoever unless:
- (a) written notice of any claim, giving full particulars of any alleged loss or damages, is received by the Company within seven (7) after delivery of the Goods, or for non-delivery, within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods; and
  - (b) an action shall have been commenced by the Customer in a Court of competent jurisdiction within nine (9) months the provision of the Services or delivery of the Goods (or the date when the Services should have been provided, or the anticipated date of delivery of the Goods).
- 14.2 The failure to notify a claim within the time limits under clause 14.1 is evidence of satisfactory performance by the Company of its obligations.
- 14.3 The Customer undertakes that no claim or allegation shall be made against any sub-contractor, servant or agent of the Company, or any other person (other than the Company) by whom the Services (or any part of the Services) are (or is) provided, and all person who are (or may be) vicariously liable for the act or omissions of any person falling within this clause, which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify the Company and any such sub-contractor, servant or agent, or any other person aforementioned, against all consequences thereof.

**15. Limitation of Liability**

- 15.1 The Company shall not be responsible in negligence or contract or otherwise for any loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars given by the Customer who warrants that those particulars accurately and completely describe all aspects of the Goods or cargo, and the transaction(s) relating thereto.
- 15.2 The Customer undertakes to indemnify the Company against any claim or allegation made against it by any person in connection with any liability, arising out of or relating to the provision of the Services and/or the Goods.

**16. Lien on Goods**

- 16.1 The Company shall have a right to take a particular and general lien on any Goods, the property of the Customer or a third party owner, which are in the possession or control of the Company (and any documents relating to those Goods) for all sums owed at any time by the Customer or a third party owner to the Company (whether those sums are due from the Customer on those Goods or documents, or on any other Goods or documents), and the Company shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Customer. 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 or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 16.2 Notwithstanding clause 16.1 nothing shall prejudice the Company's rights to use any of the Company's other rights and remedies contained in this agreement to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 16.1, and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

**17. Dangerous (or Prohibited) Goods**

- 17.1 Unless by prior notification and agreement, the Company will not accept or deal with:
- (a) items which it is unlawful to carry, or otherwise handle, or which can only be carried or handled with a permit;
  - (b) any Dangerous Goods;
  - (c) any perishable items, or items which require special handling or packaging;
  - (d) bullion, cash, coins, negotiable instruments, securities of any kind, precious stones, jewellery, antiques, works of art or other valuables;
  - (e) thoroughbred horses.
- 17.2 Where the Company agrees to accept, or deal with, any Goods referred to in clause 17.1, the Customer must provide all documentation and information relating to the Goods (including any relevant permits necessary to enable the Company to comply with the law, and handle those Goods safely and in a manner which is likely to minimise loss.
- 17.3 If the Customer is in breach of clauses 17.1 or 17.2, the Customer, and any person delivering the Goods to the Company, or causing the Company to handle or deal with the Goods, shall be liable for any loss or damage caused to, or by the Goods, or by their nature, and shall indemnify and keep indemnified the Company against all loss, damages, penalties claims, costs and expenses (howsoever arising) incurred by the Company in connection therewith; and

- 17.4 If, in the opinion of the Company, the Goods are or are liable to become Dangerous Goods, they may be destroyed, or otherwise dealt with as determined, by the Company (in their absolute discretion) at the expense of the Customer (or by any other person in whose custody they may be at the relevant time also at the expense of the Customer), and neither the Company, nor any such other person, shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the Goods.
- 17.5 Where the Company agrees to accept Dangerous Goods, if during the period of cartage, the Company, its Sub-Contractors (or any other suitably qualified person or authority) reasonably forms the view that those Goods pose any risk to other goods, property, life or health, then the provisions of clauses 17.3 and 17.4 shall apply.
- 18. Declaration of Value**
- 18.1 The Customer agrees that, except on the express instructions given in writing by the Customer, no option or declaration of value for the purpose of extending or increasing the liability assumed by carriers (or warehousemen, or others) under Article 22(2) of the First Schedule to the Civil Aviation (Company's Liability) Act 1959, the Carriage of Goods by Sea Act 1991 and Regulations 1998, or (in all other cases) where there is a choice of tariff rates, will be made (including where inserted into a bill of lading or a sea carriage document) for the purpose of extending a ship or carrier's liability.
- 19. The Commonwealth Competition and Consumer Act 2010 (CCA) and Fair Trading Acts**
- 19.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 19.2 Where the Customer purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 19.3 In all cases where liability of the Company has not been excluded, whether by these terms and conditions, by statute, or by international convention or otherwise, the liability of the Company whatsoever and howsoever arising is limited to:
- (a) one hundred dollars (\$100) of the value of the Goods the subject of the agreement at the time the Goods were received by the Company, whichever is the lesser; or
  - (b) for breach of warranty implied into these terms and conditions by the CCA, or howsoever arising, is limited to any of the following (as determined by the Company):
    - (i) rectifying the Services; or
    - (ii) providing the Services again; or
    - (iii) paying for the Services to be provided again.
- 19.4 If the Company is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 19.3(b) or the CCA, but is unable to do so, then the Company may refund any money the Customer has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Customer which were not defective.
- 20. Cancellation**
- 20.1 The Company may cancel any contract to which these terms and conditions apply or cancel provision of the Services at any time before the Services have been provided by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatever arising from such cancellation.
- 20.2 In the event that the Customer cancels the provision of the Services, then the Customer 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.
- 21. Default and Consequences of Default**
- 21.1 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 a 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.
- 21.2 If the Customer owes the Company any money the Customer 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).
- 21.3 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions the Company may suspend or terminate the provision of Services to the Customer. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 21.4 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 Customer which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to make a payment when it falls due;
  - (b) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 22. Personal Property Securities Act 2009 ("PPSA")**
- 22.1 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 Company by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 22.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
  - (b) create a security interest in all:
    - (i) Goods being transported by the Company over which the Company invokes a lien; and

- (ii) collateral (account), being a monetary obligation of the Customer to the Company for Services that have been provided, and that will be provided in the future.
- 22.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the 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 22.3(a)(i) or 22.3(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 Goods and/or collateral (account) in favour of a third party without the prior written consent of the Company.
- 22.4 The Company and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 22.5 The Customer hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 22.6 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 22.7 Unless otherwise agreed to in writing by the Company, the Customer waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 22.8 The Customer shall unconditionally ratify any actions taken by the Company under clauses 22.3 to 22.5.

### 23. Security and Charge

- 23.1 In consideration of the Company agreeing to provide Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 23.2 The Customer 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.
- 23.3 The Customer irrevocably appoints the Company and each director of the Company as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 23 including, but not limited to, signing any document on the Customer's behalf.

### 24. Privacy Act 1988

- 24.1 The Customer agrees for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 24.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Customer; and/or
  - (b) to notify other credit providers of a default by the Customer; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 24.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 24.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and the Company or required by law from time to time):
- (a) the provision of Services; and/or
  - (b) the marketing of Services by the Company, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
  - (e) enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.
- 24.5 The Company may give information about the Customer to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Customer;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 24.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
  - (b) details concerning the Customer's application for credit or commercial credit and the amount requested;
  - (c) advice that the Company is a current credit provider to the Customer;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
  - (g) advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Customer by the Company has been paid or otherwise discharged.

### 25. General

- 25.1 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void,

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- illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 All rights, immunities and limitations of liability in these terms and conditions shall continue to have their full force and effect in all circumstances and notwithstanding any breach of these terms and conditions by the Company or any other person entitled to benefit of such provisions.
- 25.3 The Company shall not be bound by any agreement purporting to waive or vary these terms and conditions unless such agreement to so waive or vary shall be in writing and signed by an executive officer of the Company.
- 25.4 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 Melbourne Courts in that state.
- 25.5 Subject to clause 19, the Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions (alternatively the Company's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 25.6 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 25.7 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 25.8 The Customer 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 Customer of such change. The Customer will be taken to have accepted such changes if the Customer makes a further request for the Company to provide Services to the Customer.
- 25.9 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.10 The Customer warrants that it has the power to enter into this agreement and has obtained all necessary authorisations to allow it to do so, it is not insolvent and that this agreement creates binding and valid legal obligations on it.