

## Terms and Conditions of Trade – National Transport Solutions Pty Ltd

### THE PARTIES AGREE:

#### 1. DEFINITIONS

- 1.1 In this Agreement unless inconsistent with the context or subject matter:
- (a) **"ACL"** means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth));
  - (b) **"Agreement"** means this agreement consisting of these Terms and Conditions of Trade, any Credit Application and any Proposal;
  - (c) **"Applicable Laws"** any laws governing or affecting the arrangements contemplated by this Agreement;
  - (d) **"Carrier"** means a third party carrier service that provides freight services;
  - (e) **"Claim"** means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity) in respect of any Loss or alleged Loss;
  - (a) **"Consignor"** means:
    - i) for those Consignors on approved credit terms, the person(s) named as consignor or client in the Credit Application;
    - ii) for those Consignors not on approved credit terms, the person(s) named as consignor or client in the Proposal;
  - (b) **"Consignor's Address for Service"** means the email address or address of the Consignor set out in the Proposal (or Credit Application as applicable);
  - (c) **"Corporations Act"** means the Corporations Act 2001 (Cth);
  - (d) **"Credit Application"** means the Application for Credit submitted by the Consignor and approved by the Service Provider;
  - (e) **"Credit Limit"** means the credit limit stated in the Credit Application, or such other credit limit approved by the Service Provider in writing;
  - (f) **"Dangerous Goods"** means goods which are or may become dangerous, inflammable, radio-active or are damaging in nature and goods likely to harbour or encourage vermin or other pests;
  - (g) **"Force Majeure"** means an act, omission or circumstance over which the Service Provider could not reasonably have exercised control;
  - (h) **"Goods"** means any goods to be freighted, as set out in a Proposal, or other goods in which the Consignor has requested the Supplier to supply Services for;
  - (i) **"GST"** has the meaning given to it in the GST Act;
  - (j) **"GST Act"** means the A New Tax System (Goods and Services Tax) Act 1999 (Cth);
  - (k) **"Guarantor"** means:
    - i) for those Consignors on approved credit terms, the person(s) named as Guarantor in the Credit Application (including any Guarantor form associated with a Credit Application);
    - ii) for those Consignors not on approved credit terms, the person(s) named as Guarantor in the Proposal;
  - (l) **"Insolvency Event"** means:
    - i) a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
    - ii) a liquidator or provisional liquidator is appointed in respect of a person;
    - iii) any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph i) or ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
    - iv) any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;
    - v) any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs i) to iv) of this definition (inclusive); or
    - vi) a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts
  - (m) **"Loss"** any loss, liability, cost, charge, expense, tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence);
  - (n) **"Personnel"** means the directors, officers, employees, contractors, suppliers, advisers or agents of a party;
  - (o) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time;

- (p) **"PPS Register"** means the Personal Property Securities Register established under the PPSA;
- (q) **"Proposal"** has the meaning given to it under clause 4;
- (r) **"Service Provider"** means National Transport Solutions Pty Ltd ABN 31 623 284 828;
- (s) **"Service Provider's Address for Service"** means grant@ntsolutions.com.au;
- (t) **"Services"** means the freight brokerage services supplied by the Service Provider to the Consignor from time to time, as contemplated under this Agreement;
- (u) **"Services Fee"** has the meaning provided for that term in clause 6.1;
- (v) **"State"** means Queensland;
- (w) **"Tax Invoice"** has the same meaning as in the GST Act; and
- (x) **"Term"** means the term of this Agreement.
- 1.2 In this Agreement unless inconsistent with the context or subject matter:
- (a) Headings and subheadings are for convenience only and do not affect the interpretation of this Agreement.
- (b) References to clauses, schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the schedules, annexures, appendices, attachments and exhibits to, this Agreement.
- (c) References to parties are references to the parties to this Agreement.
- (d) References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.
- (e) Words denoting the singular include the plural and words denoting the plural include the singular.
- (f) Words denoting any gender include all genders.
- (g) The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.
- (h) A reference to a body (other than a party to this Agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.
- (i) A reference to any agreement or document (including this Agreement) includes any amendments to or replacements of that document.
- (j) A reference to a law includes:
- i) legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
  - ii) any constitutional provision, treaty or decree;
  - iii) any judgment;
  - iv) any rule or principle of common law or equity,
- and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts.
- (k) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
- (l) Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
- (m) No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.
- (n) If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.
- (o) A reference to time is a reference to time in the capital city of the State.
- (p) A reference to a day is a reference to a day in the capital city of the State.
- (q) A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
- (r) If any act is required to be performed under this Agreement by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day.
- (s) If any act is required to be performed under this Agreement on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
- (t) A reference to an amount of dollars, Australian dollars, \$ or A\$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.
- (u) Specifying anything in this Agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.
- (v) Where this Agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
- (w) This Agreement includes all schedules, annexures, appendices, attachments and exhibits to it.
- (x) A reference to writing or written includes email.
- (y) Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.
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- 2. ENGAGEMENT**
- 2.1 The Consignor engages the Service Provider and the Service Provider accepts that engagement, to provide the Services during the Term in accordance with the terms of this Agreement.
- 2.2 The Consignor acknowledges that it has engaged the Service Provider to source freight services provided by Carriers for the freight of the Consignor's Goods from time to time. The Service

Provider acts as an agent of the Consignor for the purpose of performing duties in connection with the freight of their Goods, in the account of or in the name of the Consignor.

- 2.3 The Consignor acknowledges that the Services are provided to facilitate freight service arrangements between the Consignor and the Carrier. The Service Provider is not the provider of such freight services, nor does it control the conduct of Carriers.

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### 3. INCORPORATION OF CARRIER TERMS

- 3.1 Any freight services booked with a Carrier are subject to the then current terms and conditions of the relevant Carrier.
- 3.2 The Consignor acknowledges that they are solely responsible for ensuring that they have read and understood any applicable Carrier terms and conditions, and they agree to comply with all obligations thereunder as the supplier of the Goods. The Service Provider will not be liable for any Loss or damage suffered by the Consignor in connection with such Carrier terms (regardless of whether the Service Provider brought these to the attention of the Consignor or not).

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### 4. PROVISION OF SERVICES

- 4.1 The Consignor may request the Service Provider provide Services by submitting a service request to the Service Provider in a method accepted by the Service Provider (each referred to as a **Service Request**). The Service Provider may accept or reject any Service Request in its discretion.
- 4.2 The Service Provider will review Service Requests provided by the Consignor, and at its discretion provide the Consignor with a number of quotes of freight services provided by Carriers for the freight of their Goods (each a **Proposal**). The Consignor may accept a Proposal by notifying the Service Provider that it accepts the Proposal. A Proposal may lapse at any time.
- 4.3 Once the Consignor has accepted a Proposal the Service Provider will use reasonable endeavours to book the freight services set out in the Proposal with the Carrier. The Consignor acknowledges and agrees that the supply of Services remains subject to availability and if, for any reason, the Service Provider is unable to proceed with the supply (for example if the relevant Carrier is unable to provide the nominated freight services), the Service Provider reserves the right to cancel the Services (and issue a refund in respect of the fees paid by the Consignor for that part of the Services which is cancelled if applicable).
- 4.4 In the event of any inconsistency between this Agreement and any Proposal, the terms contained in the Proposal will prevail to the extent of such inconsistency.
- 4.5 Unless otherwise agreed, all Proposals provided to the Consignor are subject to change.
- 4.6 Once a Consignor has accepted a Proposal it cannot be cancelled by the Consignor for any reason (except to the extent permitted under this Agreement or by law).

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### 5. FREIGHT SERVICES

- 5.1 Any freight services specified in a Proposal are subject to availability which may change at any time until the freight services have been booked and confirmed by the Service Provider with the relevant Carrier. The Service Provider reserves the right to cancel any Services at any time.

- 5.2 Unless otherwise instructed, the method of carriage of the freight services will be at the discretion of the Service Provider and Carrier.

- 5.3 The relevant Carrier, and not the Service Provider, is solely responsible for honouring any confirmed bookings and making available any freight services booked through the Services.

- 5.4 The legal rights of the Consignor in connection with the provision of freight services are against the relevant Carrier and not the Service Provider (except to the extent caused by the Service Provider). Specifically, if for any reason the Carrier is unable to provide a freight service, the Consignor's rights are against that Carrier and not the Service Provider notwithstanding that the Service Provider may have booked the Carrier's services. Any bookings by the Service Provider are deemed to have been made on behalf of the Consignor.

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### 6. PRICING & FEES

- 6.1 Subject to the other terms of this clause, the price payable for the freight services and Services will be as set out in the Proposal. All charges from the Carrier for the freight services (regardless of the time these are received, including post-delivery and invoicing) will be passed on to the Consignor, and the Consignor agrees to pay such charges, as well as an additional fee for the Services which will be added to such costs and charges by the Service Provider (**Services Fee**). Whilst the Service Provider will not separate the Services Fee from the charges payable to the Carrier in any invoice issued to the Consignor, the parties acknowledge that a portion of such fees on any invoice represent the Services Fee, as determined by the Service Provider and Services Fees are not separately disclosed.

- 6.2 Availability and price of any freight services can change at any time including after a booking has been placed and confirmed by the Service Provider. Price changes may occur by reasons outside the Service Provider's control including: an increase in weight of Goods to be freighted, currency fluctuations, surcharges and any other tasks the Carrier carries out (such as a re-weigh of Goods).

- 6.3 Freight charges are quoted on a rate per kilogram basis. Light and/or bulky freight will be subject to their kilogram equivalents by multiplying the volume of the freight in cubic meters by a factor of 250m<sup>3</sup> (**Volumetric Weight**) unless otherwise agreed in writing or by calculating their kilogram equivalents using such other formula utilised by the nominated carrier. The freight charges shall be determined as the greater of the actual dead weight or the Volumetric Weight, unless otherwise stated in the Proposal. Item rates will be subject to maximum weights and volumes stated in the Proposal. Exceeding the weight or size limits on item rates will incur a multiple charge.

- 6.4 The Consignor agrees to pay the Service Provider such costs, plus the Services Fee determined by the Service Provider.

- 6.5 In the event that the Service Provider or the Carrier determines that additional costs are applicable to the Consignor's Proposal, or the Consignor subsequently requests amendments to such freight services (such as added weight) then the Service Provider reserves the right to amend the Proposal as such, and any additional charges and Services Fee will be payable.



- 6.6 Where the charge to party is not clearly marked on the consignment note, then any resultant transfer of charges may incur a transfer fee of \$10.00 per consignment note recharged. Where a proof of delivery is requested and agreed to be provided and is subsequently shown as delivered in full or a period of 3 months has elapsed since original dispatch, a proof of delivery charge of \$10.00 per consignment may be applicable. The Service Provider is otherwise under no obligation to provide proof of delivery.
- 6.7 Subject to any Applicable Laws, all payments made are non-refundable. Please refer to clause 10 for further information.
- 6.8 The Consignor is solely responsible for ensuring payment of all taxes, including import duties and taxes, in respect of the freight of the Goods.
- 6.9 The Service Provider is not responsible for incorrect charging of freight, customs duties or levies which are not directly caused by the Service Provider. In no circumstances will the Service Provider be liable for a refund of such charges.

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## 7. PAYMENT

- 7.1 The Service Provider will issue a Tax Invoice to the Consignor for the travel freight fees, the Services Fee and all other fees payable upon the Goods being loaded and dispatched. As above, the fees will not necessarily be separately specified in the Tax Invoice.
- 7.2 The Consignor must pay each Tax Invoice within 7 days of the date of the Tax Invoice, unless otherwise agreed in writing.
- 7.3 All payments must be made by electronic funds transfer to the Service Provider's nominated bank account.
- 7.4 The Consignor will also pay to the Service Provider, on demand, on a full indemnity basis, all amounts that the Service Provider may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis and any debt collection agency costs/commissions) as a result of the Consignor defaulting on any of the terms of this Agreement.
- 7.5 If payment is not made by the Consignor in accordance with clauses 7.2 to 7.4, then without limitation to any other rights of the Service Provider:
- the Consignor must pay the Service Provider interest on all outstanding monies from the due date until the date of payment at the rate of 10% per annum accruing daily and compounding monthly;
  - the Service Provider may refuse to supply any further part of the Services to the Consignor until all outstanding monies, including any accrued interest, are paid in full;
  - the Service Provider may withhold the Goods and refuse to deliver them or permit the Consignor to collect them, and to this end the Service Provider has a lien over such Goods; and/or
  - the Service Provider may terminate this Agreement and/or cancel any Proposal whereupon the full price for the Services then supplied, whether or not the time for payment under this Agreement has arrived, will be immediately due and payable (this includes any cancellation fees charged by the Carrier following from cancellation of a Proposal).

- 7.6 The Consignor may not withhold payment from the Service Provider or make any deduction from any amount owing without the Service Provider's prior written consent, irrespective of any claim the Consignor may have against the Service Provider for any thing or matter whether related to the provision of the Services or not.
- 7.7 The Service Provider reserves the right to change the price of the Services it provides to the Consignor from time to time. Such changes shall not apply retrospectively.

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## 8. TERMS OF CREDIT

### 8.1 Credit Limit

- The Service Provider is not obliged to provide any further Services to the Consignor once the Credit Limit has been reached.
- The Service Provider may, at its option, provide further Services to the Consignor, where to do so will result in the Credit Limit being exceeded and the Consignor agrees that the Service Provider is expressly authorised to provide those Services and this Agreement will continue to apply in full to all monies owing.
- The Service Provider is under no obligation to advise the Consignor when the Credit Limit has been reached or exceeded.

### 8.2 Right to refuse further credit or vary the Credit Limit

- The Service Provider may at any time, for any reason whatsoever:
  - vary the Credit Limit of the Consignor to increase or decrease the Credit Limit; or
  - refuse further credit to the Consignor; or
  - cancel the Consignor's credit account with all Tax Invoices to be paid on prepaid basis only,
 without any liability to the Consignor whatsoever.

### 8.3 Personal Information

The Service Provider is bound by the Australian Privacy Principles in the Privacy Act 1988 (Cth) in dealing with Personal Information provided by the Consignor.

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## 9. AMENDMENTS

- 9.1 Amendments such as a change of dates, or names are subject to the terms of the Carrier and may occur additional costs.

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## 10. CANCELLATIONS AND REFUNDS

- 10.1 Subject to Applicable Laws, any cancellation and/or refund is subject to the cancellation and payment terms of the relevant Carrier of the freight services requested to be cancelled.
- 10.2 In the event that the Service Provider is required to pay a fee for cancellation of any freight services, then the Consignor indemnifies the Service Provider in respect of such fees plus the Services Fee, and the Consignor will pay such fees on demand (and as directed by the Service Provider).
- 10.3 All payments made to the Service Provider for freight services are deemed to be made to the Carrier and the Service Provider is not responsible for any refunds a Carrier may be required to give. Despite this, the Service Provider may refund the Consignor where the Consignor seeks a refund from a Carrier and the Carrier has refunded that amount to the Service Provider. The Services Fee is payable to the Service Provider in respect of the Services,

and not in respect of freight services. In the event that the fees paid to the Carrier are refunded to the Consignor, the Consignor is not entitled to a refund of the Services Fee.

10.4 The Carrier is solely responsible for the supply and provision of returns and refunds of any freight services booked. Each Carrier will have their own refund policy and it is strongly encouraged that the Consignor check with the relevant Carrier before confirming the booking. Whilst Carriers may be obliged by law to provide a refund, return or permit a cancellation, the Service Provider makes no representations that any Carrier will comply with such obligations and accepts no responsibility if they fail to do so. All refunds and cancellation fees are subject to the Consignor's rights under the ACL.

**11. CONSIGNOR DUTIES AND RESPONSIBILITIES**

**11.1 Supply of information, approvals, documents and assistance**

The Consignor acknowledges and agrees that it will promptly provide all information, documentation, approvals and assistance reasonably required by the Service Provider in order for the Service Provider to provide the Services as soon as possible on being requested to do so. Any delays may delay the Services and may incur additional charges.

**11.2 Freight terms**

The Consignor must:

- (a) provide accurate measurements and weights of the Goods on the consignment note. If the Consignor fails to do so, then the Carrier may determine so, and the Carrier's determination will be final and binding;
- (b) ensure that all wood packing material, crates, pallets, & dunnage must comply with Quarantine International ISPM 15 regulations and must be free of any bark or the Goods may not be loaded;
- (c) include three copies of the Dock Receipt and ensure appropriate customs paperwork accompanies all Goods;
- (d) ensure that all Goods are clearly marked/labelled with name of consignee, ID number and relevant shipping labels (as required by the Carrier); and
- (e) ensure that the bill of lading instructions are provided when Goods are tendered to the Carrier and/or 72 hrs prior to vessel arrival. Failure to provide may result in the Goods being placed on hold. The Consignor must include this Agreement for instructions for release.

If customs validation is required, the Consignor must ensure that the Goods and paperwork is at the terminal no later than four working days prior to vessel arrival. Dangerous Goods may not be shipped unless with the prior written approval of the Service Provider.

**12. DELIVERY AND RELEASE OF GOODS**

12.1 The Service Provider is not responsible for any delays of freight services provided by the Carrier.

12.2 The parties acknowledge and agree that:

- (a) any times provided by the Service Provider to the Consignor in respect of the delivery of the Goods and freight services are variable and estimates only and are non-binding on the Service Provider. The Service Provider

cannot and is unable to guarantee any timelines for delivery of the Goods or performance of freight services. Although the Service Provider will attempt to procure that the freight services take place on time, sometimes delays are inevitable, and the Service Provider will not be responsible for any Losses suffered by the Consignor in the event of delay; and

(b) late delivery of any Goods or freight services will not constitute a breach of this Agreement by the Service Provider or entitle the Consignor to refuse to take delivery of the Goods, claim damages or terminate this Agreement.

12.3 The Consignor must ensure that a duly authorised representative of the Consignor is present at the estimated time of arrival of the Goods at the port of destination as advised by the Service Provider. If the Consignor fails to take delivery of the Goods at the port of destination, it shall be placed in storage for the account of and at the risk of the Consignor.

12.4 Subject to the other terms of this clause, delivery of the Goods under this Agreement is completed when the Consignor (or its employees or agents) takes possession of the Goods at the port of destination.

12.5 Notwithstanding anything to the contrary express or implied in this Agreement, the parties agree that the Service Provider will not release the Goods to the Consignor until all fees for the Services and all other amounts owing in respect of the Services are paid to the Service Provider notwithstanding:

- (a) the ownership of the Goods remaining with the Consignor; and/or
- (b) the risk of the Goods remaining with the Consignor.

12.6 The risk of refusal of the Goods by a governmental authority is solely that of the Consignor. If Goods are refused entry at the transshipment point, if any, or the port of discharge, the Consignor agrees to pay for the carriage of the Goods either to the next port of discharge where the Goods can be accepted or to the port of loading.

**13. CONDITION OF GOODS**

13.1 The Consignor warrants that the Goods presented for shipment are sufficiently clean to the satisfaction of the requirements of the countries of loading, transshipment if any, and discharging. The Consignor acknowledges the responsibility for this and agrees to indemnify and hold the Service Provider harmless in respect of any expenses and liability arising in respect of any breach of these warranties.

13.2 If, in the reasonable opinion of the Service Provider (or Carrier), a given Good is not likely to be permitted to be discharged in the port of discharge (or transhipped in the port of transshipment, if applicable) in the condition in which the Good is presented for shipment, the Service Provider (or Carrier) shall have the right, but no obligation, a) to refuse to load the Goods until the Consignor has the Goods cleaned, or b) to clean that Goods at the cost and risk of the Consignor. Any such action, or lack of action, by the Service Provider (or Consignor) shall not affect any right of the Service Provider or Consignor or increase any obligation or liability or constitute any new obligation on the part of the Service Provider or Consignor.

- 13.3 The Goods will be received in external apparent good order and condition, except as otherwise described in the Carrier's receipt.
- 13.4 Any apparent damage to the Goods must be noted immediately on receipt by the Consignor on the transportation document at the time of taking delivery of the Goods.
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- 14. PERSONAL PROPERTY SECURITIES**
- 14.1 The Consignor acknowledges and agrees that notwithstanding any other provision of this Agreement:
- (a) the PPSA applies to any performance of Services of any kind by the Service Provider to the Consignor;
  - (b) by agreeing to and/or accepting or adopting this Agreement the Consignor grants to the Service Provider a purchase money security interest in the Goods, to secure payment of all moneys owing or payable by the Consignor under this Agreement and any other moneys payable by the Consignor to the Service Provider from time to time on any account whatsoever;
  - (c) if a purchase money security interest is not able to be claimed by the Service Provider in respect of the Goods for any reason, the Service Provider will have a security interest in the Goods;
  - (d) the Consignor agrees that the Service Provider's security interest in Goods covered by this Agreement may be registered on the PPS Register and the Consignor agrees to do all things necessary and required by the Service Provider to effect registration of the Service Provider's security interest on the PPS Register in order to give the Service Provider's security interest the best priority possible and anything else the Service Provider requests the Consignor to do in connection with the PPSA without delay;
  - (e) the Consignor warrants that all information provided by the Consignor to the Service Provider, including but not limited to the Consignor's details, including the entity, name, ACN or ABN and address set out in the Schedule is correct in all respects and must not change its name, address or other details set out in the Schedule without providing the Service Provider with at least 20 business days prior written notice;
  - (f) the Consignor unconditionally and irrevocably appoints the Service Provider as its attorney to do any of acts and matters set out in this clause 14 in the event that the Consignor fails, delays or declines to execute such documents or do such acts;
  - (g) the Consignor agrees that it will not grant a security interest or other encumbrance in the Goods whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the Service Provider, which the Service Provider may refuse to provide or grant in its absolute and unfettered discretion. The Service Provider may request, and the Consignor must provide any information that the Service Provider requires, acting reasonably, in order to fully consider whether to grant its consent;
- (h) the Service Provider's security interest in the Goods extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the selling or hiring of the Goods by the Consignor;
  - (i) it has received value as at the date of provision of the Services and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to the Service Provider under this Agreement;
  - (j) neither the Service Provider or the Consignor will disclose any information to any interested person unless required to do so under the PPSA;
  - (k) the Consignor waives its right under the PPSA:
    - i) to receive a copy of any verification statement, financing change statement, or any notice that the Service Provider intends to sell the Goods or to retain the Goods on enforcement of the security interest granted to the Service Provider under this Agreement or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
    - ii) to object to a proposal by the Service Provider to dispose of or purchase or retain the Goods in satisfaction of any obligation owed by the Consignor to the Service Provider;
    - iii) to receive a statement of account following the sale of the Goods; or
    - iv) to redeem the Goods;
  - (l) will not give (or allow any person to give) to the Service Provider a written demand requiring the Service Provider to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPS Register a financing change statement under the PPSA; and
  - (m) a default under any other security agreement under which it has granted a security interest to any other party in respect of the Goods is deemed to be a breach of this Agreement.
- 14.2 The parties agree that the Service Provider is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.
- 14.3 Further Supplies/Services  
The parties acknowledge and agree that any performance of Services of any kind by the Service Provider to the Consignor which is not specifically set out in a Proposal but for which the Service Provider has or later issues a Tax Invoice or any other documentation to the Consignor is deemed to form part of the Agreement and is subject to the terms of the Agreement.
- 14.4 Enforcement
- (a) The enforcement provisions contained in this Agreement are in addition to any rights available to the Service Provider under the PPSA and apply to the maximum extent permitted by law.



- (b) Without limitation to clause 14.4(a) and any other provision of this Agreement section 125, 129(2), 142 and 143 of the PPSA are contracted out of.
- 14.5 **Power of Attorney**  
The Consignor irrevocably nominates constitutes and appoints the Service Provider and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Consignor on behalf of and in the name of the Consignor to do all things necessary and sign all such documents as may be necessary to deal with the Goods in accordance with the enforcement provisions of this Agreement, the PPSA or otherwise, if the Consignor is in default of this Agreement.
- 14.6 **Interpretation**  
A term used in this clause 14 is taken to have the meaning defined under the PPSA.

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**15. INSURANCE**

- 15.1 The Consignor must take out and maintain at its own cost the following insurance policies:
- (a) product liability insurance in an amount not less than \$2,000,000 on a per occurrence basis;
  - (b) commercial general liability insurance including premises or operations, broad form property damage, independent contractors, and contractual liability covering its obligations hereunder for bodily injury and property damage, with a combined single limit of not less than \$1,000,000 each occurrence.
- The Consignor acknowledges that the Service Provider is not required to affect any insurance in respect to the Consignor's Goods. Adequate insurance of the Goods is solely the responsibility of the Consignor.
- 15.2 All insurance policies that the Consignor must have current throughout the term of this Agreement must:
- (a) be established with one or more insurance companies which are respectable, reputable and financially sound, approved by the Service Provider (such approval not to be unreasonably withheld);
  - (b) name the Consignor as the insured;
  - (c) name the Service Provider as an interested party;
  - (d) cover the Service Provider's and Consignor's interests;
  - (e) not be varied or cancelled without the prior approval of the Service Provider; and
  - (f) be on terms that are acceptable to the Service Provider (acting reasonably).
- 15.3 If requested by the Service Provider, the Consignor must produce to the Service Provider evidence of any insurance policies (including renewals) effected by the Consignor under this clause.
- 15.4 A copy of the insurance policies required under this clause must be supplied to the Service Provider prior to the commencement of this Agreement.
- 15.5 The Consignor must promptly give to the Service Provider notice of:
- (a) the Consignor's intention to cancel, replace or alter any insurance effected by the Consignor in accordance with this clause;
  - (b) any notice or correspondence received by the Consignor from an insurer indicating its

- intention to cancel or materially alter any of those insurances; and
- (c) the occurrence of any fact or event which may not be known to the Service Provider and:
  - i) may give rise to a claim against the Service Provider or the Consignor, which may be covered by any one of those insurances;
  - ii) may prejudice the entitlement to claim under any of those insurances; or
  - iii) should be disclosed to the insurer and may affect its decision to continue to insure the Consignor or the risk.

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**16. CONFIDENTIAL INFORMATION**

- 16.1 The Consignor acknowledges that the Consignor may become acquainted with or have access to information relating directly or indirectly to the Service Provider, its assets and the operation and affairs, including without limitation, pricing and relationships with Carriers (**Confidential Information**), and agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.

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**17. PERSONNEL & SUBCONTRACTING**

The Consignor approves the Service Provider to subcontract, delegate or perform the Services through any person without the prior written consent of the Consignor.

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**18. NO ASSIGNMENT**

- 18.1 The Consignor must not transfer or assign its rights under this Agreement to anyone else, without the prior written consent of the Service Provider, which may be granted or withheld by the Service Provider in its sole, absolute and unfettered discretion. The Consignor must provide any information the Service Provider requires to consider whether to grant its consent.
- 18.2 Any change in 50% or more of the shareholding of the Consignor will constitute a deemed assignment which requires the Service Provider's prior written consent in accordance with clause 18.1.
- 18.3 The Consignor acknowledges and agrees that the Service Provider may transfer, assign or otherwise dispose of its interest in this Agreement upon giving written notice to the Consignor.

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**19. WARRANTIES**

- 19.1 The warranties contained in clause 19.2 are additional to warranties implied by law. Each of the warranties will be read and construed as a separate and independent warranty and will not be limited by reference to each other. All warranties will be valid at all times during the term of the Agreement and will be continuing warranties which will survive the termination or expiration of this Agreement.
- 19.2 The Consignor warrants to the Service Provider that as at the date of this Agreement and for the duration of this Agreement:
- (a) the information contained in this Agreement is true and correct and it has disclosed all relevant information to the Service Provider to assess the credit-worthiness of the Consignor;
  - (b) it has the legal right and power to enter into this Agreement;

- (c) it is the owner of the Goods or the authorised agent for the Goods or otherwise is entitled to possess and part with possession of the Goods as contemplated by this Agreement;
- (d) unless otherwise notified, the Goods provided for freight are not Dangerous Goods and are not liable to cause damage to any person or property during the course of their carriage;
- (e) the execution, delivery and performance of this Agreement by the Consignor has been duly and validly authorised by all necessary corporate action on its part;
- (f) this Agreement is a valid and binding Agreement on the Consignor, enforceable in accordance with its terms;
- (g) the Consignor is not suffering an Insolvency Event and no Insolvency Event is imminent; and
- (h) it has the capacity to make the payment in accordance with this Agreement.

## 20. TERMINATION

- 20.1 The Service Provider may in its absolute discretion, by written notice to the Consignor, immediately terminate this Agreement or one or more Proposals (and shall have no liability for any Loss suffered by the Consignor due to the termination):
- (a) if the Consignor fails to make payment in accordance with clause 5;
  - (b) if the Consignor suffers an Insolvency Event;
  - (c) in the event of Force Majeure (such as if there are issues with the weather and the Service Provider is unable to supply the agreed Services); or
  - (d) if the Consignor breaches any warranty or obligation contained in this Agreement or a Proposal and fails to rectify the breach within 7 days of being given a notice to do so.
- 20.2 The Consignor may terminate this Agreement if the Service Provider breaches the terms of this Agreement and fails to rectify the breach within 14 days of being given a notice to do so.
- 20.3 The Consignor may terminate an individual Proposal if the Service Provider breaches the terms of that Proposal and fails to rectify the breach within 14 days of being given a notice to do so.
- 20.4 Either party may terminate this Agreement, without cause, on giving 30 days' written notice. In the event the Consignor gives notice under this clause, such termination will not be of effect until all Proposals are completed (unless otherwise agreed by the Service Provider).
- 20.5 The rights and remedies of the parties contained in this clause are in addition to any other rights and remedies by law, in equity or under this Agreement.

## 21. CONSEQUENCES OF TERMINATION

- 21.1 Upon termination of this Agreement, all existing Proposals shall automatically terminate. The Consignor shall be liable to pay to the Service Provider for all Services supplied by the Service Provider under such Proposals up until the date of termination, and such amounts shall be a debt immediately due and owing.
- 21.2 The termination of a Proposals does not affect any other Proposals/s which shall continue. Upon termination of a Proposal the Consignor shall be liable to pay to the Service Provider for all Services supplied by the Service Provider under that

Proposal up until the date of termination, and such amounts shall be a debt immediately due and owing.

## 22. BUSINESS PROTECTION

### 22.1 Restraint on Nominated Carriers

In order to reasonably protect the Service Provider, the Consignor agrees with the Service Provider that it will not (and will procure its Personnel do not), whether directly or indirectly (including through a related entity), for each of the Restraint Periods:

- (a) canvass, solicit, approach or accept any approach from, or deal in any way with any Nominated Carrier with a view to obtaining the custom or dealing with that Nominated Carrier;
- (b) act in any way which may assist or induce a Nominated Carrier to breach any agreement with the Service Provider, or to terminate or to not renew any contract of any sort that they may have with the Service Provider, or to circumvent the involvement of the Service Provider in any arrangement;
- (c) interfere in any way with the relationship between the Service Provider and its Nominated Carriers.

### 22.2 Definitions

For purposes of this clause:

- (a) "Nominated Carrier" means any Carriers who the Service Provider has engaged to carry or transport the Consignor's Goods in the preceding 18 month period;
- (b) "Restraint Period" means during the term of this Agreement and for a period of:
  - i) 6 months;
  - ii) 3 months,
 after the expiry or termination of this Agreement.

### 22.3 Interpretation

This clause has effect as if it consisted of several separate covenants and restraints consisting of each separate covenant and restraint set out in clause 22.1 combined with each separate Restraint Period (as appropriate) ("Restraint Covenants") and if any of the Restraint Covenants are or become invalid or unenforceable for any reason then the invalidity or unenforceability does not affect the validity or enforceability of any of the other Restraint Covenants. This clause shall be interpreted as a goodwill covenant and without reference to, and independent of, any other covenant in restraint of trade contained any other agreement or deed given by the Consignor.

### 22.4 Acknowledgements

The Consignor acknowledges and agrees that:

- (a) any combination of the acts referred to in clause 22.1 combined with each separate Restraint Period referred to would be unfair and calculated to damage the Service Provider;
- (b) the Consignor has received substantial and valuable consideration for the Restraint Covenants including that it:
  - i) has acquired significant information about the business of the Service Provider including the names of contractors, officers, agents, suppliers and customers with whom the Service Provider does business;



- ii) has had the opportunity to forge personal links with employees, contractors, officers, agents, suppliers and customers; and
  - iii) has had the opportunity to learn and acquire trade secrets, business connections and other Confidential Information about the Service Provider's business;
- (c) disclosing Confidential Information, or using Confidential Information to the Consignor's benefit or the benefit of a competitor of the Service Provider, could materially harm the Service Provider's business;
- (d) the Restraint Covenants contained in this Agreement are reasonable in scope, duration and time, and reasonably necessary to protect the Service Provider's goodwill and legitimate interests and that the Consignor has been responsible for and approves its drafting;
- (e) it has received legal advice or has had the opportunity of obtaining legal advice in relation to this advice;
- (f) the Service Provider may apply for injunctive relief if the Consignor breaches or threatens to breach this clause; and
- (g) the words "directly or indirectly interested or engaged in or concerned with" are all to be given the widest possible interpretation and include (without derogation from their generality) such activities through any association or arrangement with any person, relative, nominee or trust in or over which any interest or influence (absolute or partial) is held.

**22.5 Permitted activities**

This clause will not apply in circumstances where the activity has been expressly agreed to in writing from time to time by the Service Provider.

**23. INDEMNITY AND RELEASE**

- 23.1 Except as provided under this Agreement and to the extent permitted by law the Consignor releases the Service Provider and its officers, employees and agents from any and all Claims by the Consignor or any of its officers, employees, agents or invitees, except to the extent (if any that) the Loss the subject of the Claim is caused by the act or omission of the Service Provider.
- 23.2 Except to the extent caused or contributed to by breach of this Agreement by the Service Provider, the Consignor indemnifies the Service Provider against any direct losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Service Provider arising out of or in connection with:
- (a) the Consignor's breach or negligent performance or non-performance of this Agreement;
  - (b) the Service Provider's performance of its obligations under this Agreement being prevented or delayed by any act or omission of the Consignor or its Personnel;
  - (c) any claim made against the Service Provider or the Consignor by a third party arising out of or in connection with:

- i) the provision of the Services and/or this Agreement;
  - ii) the reliance by the Consignor or a third party on the Services; or
  - iii) defective Services,
- to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by, or is attributable to the acts or omissions of the Consignor or the Consignor's Personnel;
- (d) any illegal practices that the Consignor or the Consignor's Personnel performs or engages;
  - (e) the enforcement of this Agreement; and
  - (f) any act, omission or wilful misconduct of the Consignor or the Consignor's Personnel (including any negligent act or omission).
- 23.3 The Consignor must make payments under this clause:
- (a) in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and
  - (b) in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.
- 23.4 It is not necessary for the Service Provider to incur expense or make payment before enforcing a right of indemnity under this clause.
- 23.5 The indemnities in this clause:
- (a) are continuing obligations of the Consignor, independent from its other obligations under this Agreement and survive termination or expiry of this Agreement; and
  - (b) are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of the Consignor.

**24. EXCLUSION AND LIMITATION OF LIABILITY**

- 24.1 The Service Provider provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. The Service Provider excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in this Agreement to the maximum extent permitted by law.
- 24.2 The Consignor's Goods are freighted and stored at the Consignor's own risk and the Service Provider shall not be liable on any account for any loss or damage occasioned to the Consignor's Goods at any time from their initial collection to the time of their delivery to the consignee. The Consignor acknowledges and agrees that the Service Provider carries on business as a facilitator of the freighting and warehousing of goods whereby the collection, carrying and storage of those goods is undertaken by the Carrier.
- 24.3 Without limiting the generality of clause 24.1, the Service Provider expressly excludes any liability in contract, tort or otherwise for any injury, damage, Loss, delay or inconvenience caused directly or indirectly by:
- (a) any act or omission of the Consignor, including any delay caused by the Consignor;
  - (b) the delivery or non-delivery of any freight services provided by a Carrier;

- (c) any act, omission or default of third parties (including any Carrier); and
  - (d) the booking of any freight services.
- 24.4 For the avoidance of doubt the Service Provider is not liable to the Consignor for a breach of obligations by the Carrier in providing the Consignor any freight services. The Carrier is solely liable for a breach of obligations in providing the Consignor a freight service.
- 24.5 Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 24.6 Subject to the other terms of this clause, the Service Provider's maximum aggregate liability to the Consignor for any loss or damage or injury arising out of or in connection with the supply of services under this Agreement, including any breach by the Service Provider of this Agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual Services Fee paid by the Consignor to the Service Provider under this Agreement (excluding any third party costs, freight costs, disbursements, taxes, duties and other charges) in the 1-month period preceding the matter or event giving rise to the claim, or if that is not enforceable, then in respect of the Services to which the liability relates.
- 24.7 Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
- 24.8 If the Service Provider is liable to the Consignor in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, or is otherwise liable for any matter that cannot be excluded, the Service Provider's total liability to the Consignor for that failure is limited to, at the option of the Service Provider the costs of the resupply of the relevant Services to which the liability relates or the payment of the costs of resupply of the relevant Services.
- 24.9 Without limitation to the other terms of this Agreement, the Service Provider excludes any liability to the Consignor, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement.
- 24.10 Notwithstanding anything else in this clause, the Service Provider's liability will be reduced to the extent the loss or damage is caused by or contributed to by the Consignor or the Consignor's Personnel.
- 24.11 If the Consignor recovers any amount under an insurance policy in respect of a claim under or in relation to or arising out of this Agreement and that amount is less than the loss or damage incurred by the Consignor, the amount of the shortfall will be the amount of the Consignor's loss for the purposes of this Agreement.

## 25. FORCE MAJEURE

- 25.1 The Service Provider will not be in breach of this Agreement or liable to the Consignor for any Loss incurred by the Consignor as a direct result of the Service Provider failing or being prevented, hindered or delayed in the performance of its obligations under this Agreement where such prevention, hindrance or delay results from a Force Majeure Event.
- 25.2 If a Force Majeure Event occurs, the Service Provider must notify the Consignor in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
- 25.3 On providing the notice above, the Service Provider will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, the Service Provider must continue to use all reasonable endeavours to perform those obligations.
- 25.4 Subject to the other terms of this clause, the performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

## 26. NOTICES

- 26.1 All notices authorised or required under this Agreement to be given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.
- 26.2 The following shall constitute proof of receipt:
- (a) proof by posting by registered post; or
  - (b) proof of dispatch by email.
- 26.3 Receipt of a notice given under this Agreement will be deemed to occur:
- (a) in the case of a communication sent by pre-paid registered post, on the third business day after posting;
  - (b) in the case of an email, on the business day immediately following the day of dispatch.
- 26.4 If a notice is sent via post, it must also be sent via email.

## 27. GUARANTEE AND INDEMNITY

- 27.1 In consideration of the Service Provider agreeing to be bound by this Agreement, the Guarantor, and where there is more than one Guarantor the Guarantors jointly and severally, as a principal obligor and not merely as surety, irrevocably and unconditionally guarantee to the Service Provider and its successors, transferees and assigns the due and punctual performance, observance and discharge by the Consignor of all the Guaranteed Obligations if and when they become performable or due under this Agreement (or any agreement entered into pursuant to or in connection with it).
- 27.2 The liability of the Guarantor under the guarantee in this clause 27 will not be reduced, discharged or otherwise adversely affected by:
- (a) any act, omission, matter or thing which would have discharged or affected the liability of the Guarantor had it been a principal obligor instead of a guarantor or indemnifier; or

- (b) anything done or omitted by any person which, but for this provision, might operate or exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under the guarantee in this clause 27.
- 27.3 This guarantee and indemnity shall be a continuing guarantee and indemnity which shall not be discharged except by complete performance of all the Guaranteed Obligations.
- 27.4 The Guarantor waives any right it may have to require the Service Provider (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this clause 27.
- 27.5 The Guarantor must, on a full indemnity basis, pay to the Service Provider on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any GST on them) incurred by the Service Provider in connection with:
- (a) the preservation, or exercise and enforcement, of any rights under or in connection with the guarantee in this clause 27 or any attempt so to do; and
- (b) any discharge or release of this guarantee.
- 27.6 Until all amounts that may be or become payable by the Consignor under or in connection with this Agreement have been irrevocably paid in full, and unless the Service Provider otherwise directs in writing, the Guarantor must not exercise any security or other rights it may have by reason of performing its obligations under this clause 27, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.
- 27.7 The guarantee in this clause 27 is in addition to and independent of all other security that the Service Provider may hold from time to time in respect of the discharge and performance of the Guaranteed Obligations.
- 27.8 The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clauses 27.1 and 27.2, unconditionally and irrevocably agrees to indemnify and keep indemnified the Service Provider in full and on demand from and against all and any losses, costs, charges, claims, liabilities, damages, demands and expenses suffered or incurred by the Service Provider arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason, or the Consignor's failure to perform or discharge any of the Guaranteed Obligations.
- 27.9 In this clause "Guaranteed Obligations" means all present and future obligations and liabilities of the Consignor under this Agreement or arising from any termination of this Agreement and all agreements and obligations entered into pursuant to or in connection with it, including all money and liabilities of any nature from time to time due, owing or incurred by the Consignor under this Agreement or arising from any termination of this Agreement (or any agreement entered into pursuant to or in connection with it).
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- 28. GST**
- 28.1 Words and phrases used in this clause 28 that have defined meanings in the GST Law have the same meaning as in the GST Law, unless the context indicates otherwise.
- 28.2 Unless expressly stated otherwise, the consideration for any supply under or in connection with these Terms is exclusive of GST.
- 28.3 To the extent that any supply made under or in connection with these Terms is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under these Terms for that supply (unless it expressly includes GST) plus an amount (**Additional Amount**) equal to the amount of that consideration (or its GST-exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
- 28.4 The recipient must pay the Additional Amount at the same time as the consideration to which it is referable, and on the issue of an invoice relating to the supply.
- 28.5 Whenever an adjustment event occurs in relation to any taxable supply to which clause 28.3 applies:
- (a) the Supplier must determine the amount of the GST component of the consideration payable; and
- (b) if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.
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- 29. GENERAL**
- 29.1 Variation**  
An amendment or variation of any term of this Agreement must be in writing and signed by each party.
- 29.2 No Waiver**
- (a) No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this Agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
- (b) Words or conduct referred to in clause 29.2(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.
- 29.3 Counterparts**  
This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this Agreement by signing any counterpart. The date on which the last counterpart is executed is the date of this Agreement. Communication of the fact of execution to the other parties may be made by sending evidence of execution by email.
- 29.4 Costs**  
The parties must bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.
- 29.5 Severability**
- (a) If the whole or any part of a provision of this Agreement is or becomes invalid or unenforceable under the law of any



jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.

- (b) Clause 29.5(a) does not apply if the severance of a provision of this Agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Agreement.

**29.6 No Merger**

On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

**29.7 Survival**

Any clause which by its nature is intended to survive termination or expiry of this Agreement will survive such termination or expiry.

**29.8 Further Action**

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

**29.9 Time of the Essence**

Time is of the essence in this Agreement in respect of any date or time period and any obligation to pay money.

**29.10 Relationship of the Parties**

Nothing in this Agreement gives a party authority to bind any other party in any way. Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

**29.11 Remedies Cumulative**

Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this Agreement.

**29.12 Entire Agreement**

This Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

**29.13 No Reliance**

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

**29.14 Governing Law and Jurisdiction**

This Agreement is governed by the law in force in the State. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.