



Terms and Conditions of Business

Pickering Transport Group

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The Glossary

1. DEFINITIONS AND INTERPRETATION

Additional Expenses means any fees, expenses, duties, taxes (including GST) and disbursements that We incur to supply the Services, including delivery and freight charges, fuel levy surcharge, after-hours / public holiday / weekends charges, futile delivery fees, redirection charges, tail lift or fork & sideload services, fees for hand unloading or use of specialised equipment, demurrage, waiting time charges, flood levy and other environmental charges, compliance fees, permit and licence fees, wharf fees and charges, toll or other road charges, import and export bonds, quarantine fees, insurance costs, FreightSafe Warranty fees, packing and storage fees, re-packing and re-delivery fees, hire pallet charges & issue fees, third-party services, administration, IT system and account keeping fees, merchant fees and payment surcharges at rates advised by Us from time-to-time.

Anti-Bribery and Anti-Corruption Laws mean all applicable anti-bribery and anti-corruption laws and regulations, including but not limited to the *Criminal Code 1995* (Cth) and other applicable laws, codes and regulations that prohibit commercial bribery, bribing government officials, making facilitation or expediting payments, and failing to maintain accurate books and records.

Booking means Your purchase order for the supply of Services, including without a Quote, whether made verbally, in writing, electronically, or otherwise.

Credit Account means the approved commercial account You have with Us to purchase Our Services on credit pursuant to these Terms.

Customer means any person, company, firm or other entity placing a Booking with Us to purchase Our Services pursuant to these Terms (also referred to as "You" and "Your").

Due Date means the date listed on Our invoice/statement for Your payment of the Services.

Equipment means the vehicles, machinery, appliances, tools, pallets and containers, accessories and other equipment that We own, lease, hire, or otherwise control and use to supply the Services.

Force Majeure means something outside a party's reasonable control, including war, strikes, lockouts and lockdowns, epidemics and pandemics, industrial disputes or civil unrest, government restrictions or intervention, transport delays, fire, act of God, storm, flood, theft and vandalism.

Goods means any cargo, products, stock, merchandise, materials, parts and other goods that We transport, carry, store, warehouse or otherwise handle on Your behalf pursuant to any Quote, Booking and/or these Terms. Goods include any containers, pallets, crates, cases and equipment for the handling, carriage or storage of the Goods, whether owned by You, a third party, or supplied by Us for use in connection with the Services.

Insolvency Event means any circumstances where We reasonably believe that You are unable to pay Your debts as and when they fall due or You have suffered a material adverse change in Your financial circumstances. You must immediately notify Us in writing if any such event occurs or is

reasonably likely to occur.

Loss means any claim, demand, cause of action, loss and damage, liability, costs (including legal costs on an indemnity basis), expenses (including any GST payable) and is not limited by the Losses which were contemplated by the parties at the time of entering into these Terms.

Modern Slavery Laws means laws, statutes, regulations or international standards related to human rights, slavery, forced or involuntary labour, servitude, debt bondage or bonded labour, child labour and human trafficking. Modern Slavery Laws include but are not limited to the *Modern Slavery Act 2018* (Cth), Divisions 270 and 271 of the *Criminal Code 1995* (Cth) and the ILO's International Labour Standards.

PPSA means:

- the *Personal Property Securities Act 2009* (Cth) (**PPS Act**) and any regulation made at any time under the PPS Act (each as amended from time to time); and
- any amendment made at any time to any other legislation as a consequence of the PPS Act.

Quote means Our written description and price estimate of the Services to be supplied to You, which is valid for 30 days.

Rates Schedule means the general schedule of prices and charges that apply to Our Services and are made available to all Customers from time to time. We may also agree to a customised Rates Schedule with You for specific Goods, routes, or shipping lanes. Any customised Rates Schedule only applies to the specified Services agreed between the parties in writing; **all other Services will be charged in accordance with Our general Rates Schedule in effect at the time the Booking is accepted and actioned.**

Services means the transport or carriage of Goods, storage of Goods, warehousing, labour, works and other logistical services that We supply to You pursuant to any Quote, Booking and/or these Terms.

Site means any place where You request Services to be supplied, including any address for the pick-up, delivery or storage of Goods.

Supplier means the entity or entities specified in these Terms as supplying Services to You, including:

Murray Downs Management Pty. Ltd. ACN 004 689 767 ABN 95 004 689 767, Pickering Transport Pty Ltd ACN 004 651 692 ABN 24 004 651 692, Lake Boga Transport Proprietary Limited ACN 004 326 587 ABN 45 004 326 587, Kelly's & Young Trucking Co. Pty Ltd ACN 004 719 402 ABN 49 004 326 587, Pickering Transport (Kerang) Pty Ltd ACN 056 496 523 ABN 98 056 496 523, Murray Downs Freight Lines Pty. Ltd. ACN 004 537 017, Kellys Mildura Transport Pty. Ltd. ACN 007 267 914 ABN 92 007 267 914, Pickering Transport (Melbourne) Pty Ltd ACN 007 448 115 ABN 95 007 448 115 carrying on the partnership trading as 'Pickering Transport Group' (also referred to as "**Pickering Transport Group**", "**Us**", "**We**" and "**Our**").

Website means www.ptg.com.au as redirected from time to time.

In these Terms:

- a reference to 'Terms' means these Terms and Conditions of Business;

Duly signed and accepted in full on behalf of _____

Signature _____ Name _____ Position _____ Date _____

- (b) a Business Day is any day except Saturday, Sunday or a public holiday in the location where the Goods and Services are supplied;
- (c) if these Terms require something to be done on a day that is not a Business Day (for example, payment or notice), then it must be done on the next Business Day;
- (d) a reference to writing includes communication via email and Our website;
- (e) a reference to a clause or paragraph is a reference to these Terms;
- (f) a reference to a party to these Terms includes that party's associated, related, subsidiary and parent companies, executors, administrators, successors and permitted assigns;
- (g) where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;
- (h) headings, explanatory notes and paragraphs are for readability only and do not affect the meaning or interpretation of these Terms;
- (i) a reference to 'including' does not convey any limitation and should be interpreted as if the words 'without limitation' also appear.

About these Terms

2. COMMON CARRIER DISCLAIMER

- (a) **We are not a common carrier and accept no liability as a common carrier. As a private carrier and service provider, We reserve the right in Our absolute discretion to refuse provision of Services (including the carriage of Goods) to any person, corporation or entity or for any class of Goods.**

3. OUR AGREEMENT AND RELATIONSHIP

- (a) The entire agreement between the parties for all Services supplied is comprised of these Terms, any Credit Account application, and any special conditions listed on any Quote or Booking. Unless the parties otherwise agree in writing, these Terms apply to the extent of any inconsistency between documents.
- (b) You warrant that You are authorised to enter into and perform the agreement created by these Terms. You warrant that any person signing these Terms or instructing Us as to the Services has Your authority and power to do so.
- (c) You accept these Terms by signing and returning a copy of them to Us or by other conduct, by verbal acceptance, submitting a Booking, or by instructing Us to supply the Services.
- (d) We are engaged to provide Services strictly as an independent contractor. We are not engaged as Your employee, partner, agent, joint venture or franchisee, nor is any other person working at Our direction.
- (e) Our Services are provided in the geographic areas and transport routes that We regularly service using Our own fleet or trusted subcontractors and on-forwarders, based on the size, type and volume of freight and proximity to Our depot network. You acknowledge and agree that the geographic areas that We service may vary from time-to-time in accordance with operational viability, demand, and available resources.
- (f) You acknowledge and agree that We reserve the right to subcontract or on-forward the Services to a third-party provider where required and/or reasonably necessary to perform the Services, which will be determined in Our sole discretion (for example, locations outside Our geographic areas of service).
- (g) These Terms are interpreted according to the laws of the State or Territory as We may reasonably determine. Legal proceedings by either party may be conducted in the State or Territory that We determine in Our sole discretion. If We do not make a determination, You consent to any proceedings being conducted in a New South Wales Court applying the laws of New South Wales.

4. CHANGES AND UPDATES TO THESE TERMS

- (a) We may update or vary our standard terms and conditions of business from time-to-time.
- (b) We will provide You with 14 days' written notice of any updates or

variations to these Terms. Updated or varied Terms will apply to all Bookings that You place after the date of the notice, unless You object in writing within the notice period. If You object to Our updated Terms, You may exercise Your termination rights outlined in these Terms and We may choose not to accept any new Bookings from You until You accept Our Terms as updated or varied.

- (c) Any other changes that You request to these Terms or to the Services to be supplied are subject to Our consent (which will not be unreasonably withheld). Any such changes will only apply if agreed to in writing and signed by the parties.
- (d) You must notify Us in writing of any material change to Your organisation, including a change of director, legal entity, bank account details or change of address.
- (e) The parties may only assign or transfer all or any of their title, estate, interest, benefit, rights, duties and obligations in these Terms to any person with the other parties' written consent and provided that the assignee agrees to assume any of Our duties and obligations owed to You in these Terms.
- (f) You must not charge, encumber or otherwise deal with any of Your rights and obligations under these Terms without Our prior written consent.

How to Purchase Our Services

5. PRICES, QUOTATIONS AND ORDERS

- (a) We may vary or cancel any Quote before accepting a Booking from You.
- (b) All Quotes are subject to Our verification of the information You provide, and all Bookings are made on the basis of the information You provide. You acknowledge and agree that Additional Expenses may apply to Services if any information You provide renders a Quote or Booking incomplete, inaccurate, or misleading.
- (c) You may purchase Services by placing a Booking with Us verbally or in writing. You warrant that the person who places the Booking is authorised by You to do so.
- (d) You acknowledge and agree that We are not responsible for any errors in specifications for Bookings placed verbally. We encourage You to place all Bookings in writing, email or online booking/quote forms.
- (e) We may accept or decline any Booking by notifying You verbally or in writing, or by supplying the Services to You.
- (f) We may ask You to pay a deposit for a Booking in any amount that We advise from time-to-time. We are not required to accept Your Booking until payment of the deposit has been made. The balance of the Booking must be paid as We direct.
- (g) We may ask You to pay a bond for any Booking to secure payment of Additional Expenses such as import and export bonds. We are not required to accept Your Booking until the bond has been paid.
- (h) You acknowledge and agree that You must prepay for all Services if You do not hold a valid Credit Account with Us, or if Your Credit Account is outside of credit terms.
- (i) You acknowledge and agree that all Services for freight movements will incur a fuel levy as an Additional Expense. The fuel levy is adjusted weekly based on prevailing fuel costs. Any Quote accepted or Booking made will be subject to the fuel levy applicable at the time of Our acceptance or provision of the Services, not the date of the original Quote. This is published on Our website.
- (j) Provided that We have not accepted Your Booking, You may cancel any Booking without charge by contacting Us in writing.
- (k) You cannot cancel Bookings that We have accepted unless You pay Us for the Loss that We incur as a result of Your cancellation.
- (l) The cancellation fee will be the greater of \$55 or 1% of the Quote value ex. GST.
- (m) You acknowledge and agree that We cannot accept cancellations received within 48 hours of a Booking's scheduled freight date. Such Bookings are non-refundable and payable in full.
- (n) In all other situations, You cannot cancel a Booking without Our

- written consent (which We will not unreasonably withhold).
- (o) Unless the parties otherwise agree in writing, the price You must pay for the Services is specified in Our invoice for the Services.
 - (p) We may charge You Additional Expenses that We incur in supplying the Services.
 - (q) We have the right to change our rates and prices for Services to be supplied under these Terms from time-to-time.
 - (r) You acknowledge and agree that prices of Our Services are subject to change due to variables outside of Our control (such as third parties, standard price schedules, weight variances, and other market conditions). Unless We indicate otherwise, any Quotes of the price for Our Services are an estimate only.
 - (s) We will use Our reasonable endeavours to provide notice of any prices changes that occur during the Services. However, due to the nature, timing and inherent variability of the Services, You acknowledge and agree that We cannot guarantee prior notification of any price changes.
 - (t) We may vary the price of a current Booking without notice in the following situations:
 - i) Our scope of Services changes, including where conditions of a Site differ from what We have quoted You;
 - ii) A third-party service provider, subcontractor and on-forwarder changes their pricing, timing, and/or availability in a way that affects the price of Your Booking;
 - iii) You change Your Booking;
 - iv) Increases in Additional Expenses that We incur from third parties to perform the Services. You acknowledge that We may pass on the cost increases of third-party Additional Expenses. We will provide reasonable evidence of the third-party Additional Expenses upon Your written request, subject to confidentiality obligations; and
 - v) Any other situation where We cannot reasonably or practically notify You of the price change.

Providing the Services to You

6. OUR SERVICES

- (a) Our Services are provided to You with all due skill and care in accordance with Our professional standards.
- (b) You are solely responsible for ensuring that:
 - i) the Goods are packed, prepared, labelled and described in a manner suitable for transport, storage and handling, having regard to their nature and condition;
 - ii) We have no sight or knowledge of the Goods beyond what You disclose to Us and We are not responsible for verifying the quantity or contents of any Goods that are pre-packed, wrapped or otherwise prepared by You or on Your behalf; and
 - iii) You are liable for any Loss (whether incurred by You, Us or a third-party) as a result of Your failure to adequately or appropriately package, label, describe or otherwise prepare the Goods.
- (c) To facilitate the supply of Our Services, You must provide all resources that We reasonably require by the date and time that We stipulate. This includes accurate and complete instructions, information, Site addresses for pick-up and delivery, specifications and measurements, any specific handling requirements for the Goods (such as refrigeration or dangerous goods), files and records, third parties where applicable and people with the relevant authority that We reasonably require (such as management or staff).
- (d) You acknowledge and agree that:
 - i) You acknowledge that, as a party in the transport supply chain, You are bound by the Chain of Responsibility provisions under the Heavy Vehicle National Law (HVNL) and related regulations. You must ensure that all instructions, information, and schedules You provide to Us (including delivery timelines, Goods descriptions, weights, and site requirements) comply with HVNL requirements and do not cause or contribute to breaches, such

- as driver fatigue, speeding, or overloading. You are liable for any Loss or penalties arising from Your non-compliance with Your HVNL obligations;
 - ii) You are responsible for packing and labelling the Goods the subject of the Services in a way that prevents misdelivery or Loss to the Goods during handling, storage and carriage (unless We have agreed in writing to be responsible for packing as part of the Services);
 - iii) The Services are subject to strict time limits imposed by third parties. We cannot supply the Services, or the Services will be delayed, if You provide Us with late instructions;
 - iv) The Services are limited to the particular job, project, solution, tasks, activities or other scope of work that We have agreed to carry out; and
 - v) The Services provided are based on information that You provide to Us or available to Us at the time. We are entitled to rely on the accuracy and completeness of the information for the Services, whether that information is obtained by Us or provided by You, Your staff or Your third-party service providers.
- (e) You must promptly notify Us if any of the information that You have provided to Us changes or if You become aware of something which renders such information obsolete or inaccurate.
 - (f) You warrant that You are the lawful owner of the Goods or have sufficient right, interest and authority to instruct Us in relation to the Goods.
 - (g) We will only provide Services for dangerous Goods (as that term is classified by the IATA Dangerous Goods Regulations or the Australian Dangerous Goods Code) or refrigerated Goods with Our prior written consent.
 - (h) You must disclose the following Goods in writing:
 - i) Dangerous goods, including hazardous, flammable, radioactive, explosive, toxic or other unsafe items or materials likely to cause injury or damage to people, property or environment; or
 - ii) Chilled or frozen Goods with specific refrigeration requirements.
 - (i) You warrant that the Goods are not or do not contain:
 - i) Insect, vermin, disease or other contamination of any kind;
 - ii) Illegal Goods of any kind;
 - iii) Dangerous Goods not previously disclosed or consented to by Us in writing; or
 - iv) Chilled or frozen Goods with specific refrigeration requirements not previously disclosed or consented to by Us in writing.
 - (j) We reserve the right to refuse Services for any Goods, including where We reasonably know or suspect that dangerous, contaminated, illegal or refrigerated Goods are involved.
 - (k) We are not responsible to You or any third party for any Goods cleared by customs, quarantine, law enforcement and other government security processes which are later found to contain dangerous, contaminated or illegal Goods.

7. CARRIAGE OF GOODS

- (a) The method of transporting, carrying or delivering Goods is at Our sole discretion.
- (b) You authorise Us to:
 - i) Collect Goods from the Site nominated by You;
 - ii) Deliver Goods to the Site nominated by You; and
 - iii) Leave Goods at the Site whether or not any person is there to accept delivery.
- (c) You must provide a suitable and safe Site with clear, close and easy access for Us (or Our agents) to deliver Goods, including a Site that is compliant with occupational health and safety legislation.
- (d) We are not obliged to obtain a signed receipt, delivery docket or other acknowledgement of Goods being delivered. But if a signed receipt, delivery docket or other acknowledgement is obtained then that document will be conclusive evidence of Your acceptance of the Goods delivered (whether in paper or digital form).
- (e) You acknowledge and agree that any supply and delivery times indicated by Us are estimates only. Estimates of time may change subject to receiving all necessary information and cooperation from

You, third-party delivery windows, government security processes, Our reasonable ability to supply Goods and Services on the estimated date, Force Majeure Events, and third-party service providers.

- (f) We will endeavour to deliver Goods and Services at the time you need, but if We fail to deliver within a specified time due to factors beyond Our control or Your acts or omissions, You are not permitted to cancel Your Booking, refuse to accept supply or refuse to pay for the Goods and Services.
- (g) You acknowledge and agree that We may incur Additional Expenses (such as third-party fees and re-delivery costs) if You or a third-party service provider causes any delay in delivery. You must pay all Additional Expenses that We incur to deliver Goods, including all fees and charges associated with delayed delivery that is caused by You.
- (h) Delivery is deemed to occur when Goods are handed to You or Your representative or when Goods are delivered to the Site (whichever occurs first).
- (i) You must:
 - i) Inspect and examine the Goods immediately on delivery or ensure; or
 - ii) Ensure that Your agent or receiver of the Goods inspects and examine the Goods immediately on delivery.
- (j) If You believe there are any Booking errors, defects or damage in the Goods at the time of delivery, You must notify Us in writing within 24 hours of delivery of the Goods. You will be deemed to have accepted the Goods on delivery (including any alleged errors, defects or damage) if You do not notify Us in writing within 24 hours.
- (k) Any claims that are applicable to the FreightSafe Warranty must be submitted in accordance with the FreightSafe Warranty terms and conditions (available on Our Website or on request).

8. STORAGE OF GOODS

- (a) Any storage of Goods on Our Site is subject to Our available capacity and will incur charges as Additional Expenses or per Our Rates Schedule. Storage of Goods on Our Site must be agreed by Us in writing prior to any storage commencing.
- (b) If We agree to store Goods, You may store Goods in an allocated space on Our Site for a period of time agreed in writing between the parties.
- (c) Unless agreed between the parties in writing and an Additional Expense is paid, insurance on Goods in storage is not included in the Services. Storage of Goods is subject to the insurance requirements of section 11 in these Terms and Conditions.
- (d) You are responsible for determining whether Our Site is appropriate and suitable for storing the Goods, having regard to the size, nature and condition of the Goods and Our Site.
- (e) The method of storing Goods is at Our sole discretion.
- (f) We reserve the right to pack and store Goods in a manner that We consider will safeguard the Goods against Loss and damage during storage. You agree to pay any Additional Expenses that We incur to pack, store and otherwise safeguard Goods to be stored.
- (g) Subject to full payment of the Services, You may remove the Goods from storage as any time (by collection from Our Site or by instructing Us to deliver them to Your nominated Site).
- (h) You are responsible for all Service charges up to the time that Goods leave Our possession.
- (i) Release or removal of Goods in storage is subject to Our general lien contained in these Terms and a statutory lien pursuant to the *Storage Liens Act 1935* (NSW) as applicable in other States and Territories.

How to Pay for Our Services

9. CREDIT ACCOUNTS

- (a) You may apply for a Credit Account with Us to purchase Services.
- (b) We have no obligation to provide credit facilities to You.
- (c) You are not entitled to credit facilities until You receive an approved Credit Account with Us.
- (d) A Credit Account must only be used by You. Your Credit Account

cannot be assigned, transferred or made available for use by any other entity or person (including any purchaser of Your business) without Our prior written consent.

- (e) You authorise Us to debit Your Credit Account with the price of Services supplied to You and all other amounts that You owe Us (including Additional Expenses and interest payable under the Contract).
- (f) We may apply any payments You make to Us towards any debt You owe Us. We may also set-off any credit amount that We owe to You against any debt that You owe Us.
- (g) Any credit limit placed on Your Credit Account is for Our administrative purposes only and does not constitute a term of this or any other contract You have with Us.
- (h) If You exceed the credit limit placed on Your Credit Account, We may require You to make immediate payment to return Your Credit Account to its credit limit before accepting further Bookings from You.
- (i) You agree to regularly update Your financial and trading information that We may reasonably require from time to time for the purpose of Your Credit Account.
- (j) You irrevocably grant Us permission before, during or after the provision of credit to give and receive information about You to and from any credit reporting agency, credit provider, bank or financial institution or any other corporation, association or person in accordance with the *Privacy Act 1988* (Cth) or otherwise. This information may concern Your consumer and commercial credit and/or trading arrangements. It may consist of credit reports and other credit and trading information concerning You and Your business. It may be used at any time to assess or review Your Credit Account application, collect any overdue payments and provide credit references in accordance with the provisions of the *Privacy Act 1988* (Cth).
- (k) In addition to Our Termination Rights outlined in section 21 of these Terms, We may immediately suspend or terminate Your Credit Account if You do not pay for the Services by the Due Date, or where You no longer meet Our credit criteria (as determined in Our sole discretion). We will notify You of the suspension or termination in writing.
- (l) We may suspend or stop credit without notice to You where Your Credit Account has been inactive for at least 6 months, or where You are no longer actively using Our Services (as determined in Our sole discretion).

10. PAYMENT

- (a) Unless the parties otherwise agree in writing, You must pay for Services by the Due Date.
- (b) All amounts payable by You for Services are exclusive of GST (unless expressly stated otherwise).
- (c) You must pay Us GST imposed on any supply of Services made under these Terms. Payment of any GST must be made at the same time as payment for the Services.
- (d) Payment must be made by an approved payment method. There may be Additional Expenses associated with Your method of payment, such as a surcharge.
- (e) We may charge You a reasonable fee if any payment is dishonoured or returned by Your financial provider (or where we are otherwise unable to process any payment from Your financial provider);
- (f) We may request payment of the Services by instalments or progress claims.
- (g) If You believe that You have a set-off claim against Us (including any query, dispute or claim), You cannot withhold any payment of Services on that basis without Our prior written consent.
- (h) If You do not pay for the Services by the Due Date, We may:
 - i) Charge You interest on all overdue accounts a rate which is 4% higher than the cash rate last published by the Reserve Bank of Australia as at the Due Date, calculated and payable daily and compounded from the due date until the invoice is paid in full. The parties agree that this interest charge is not a penalty, but a true measure of damages incurred by Us;

- ii) Require You to pay cash on delivery of any further Services;
- iii) Suspend or cease supplying Services to You;
- iv) Demand Your immediate payment of all outstanding monies on Your account whether or not the Due Date has passed;
- v) Allocate any payments received from You against interest charges, costs and Additional Expenses first before allocating payments to the Services; and
- vi) Preclude You from participating in any special deals, discounts, bonus payments redemptions, rebates and all other incentive programs until Your account is no longer overdue.

Managing Issues That May Arise

11. INSURANCE

- (a) Whilst the FreightSafe Warranty automatically applies to all supply of Services, it is not a substitute for insurance and We do not provide or arrange insurance for the Goods by default. You acknowledge and agree that You are responsible for obtaining and maintaining your own insurances, including marine cargo insurance.
- (b) You must:
 - i) Ensure that the FreightSafe Warranty coverage is sufficient to meet the full insurable value of the Goods, nature of the Goods, risk profile of the Goods and the Services to be provided; and/or
 - ii) Obtain and maintain (at Your own expense) separate insurance for the full insurable value of the Goods, nature of the Goods and risk profile of the Goods (including foreseeable loss and damage in carriage or storage). You must take out this insurance if You opt out of the FreightSafe Warranty, or if the coverage is inadequate for the value of the Goods.
- (c) Regardless of the FreightSafe Warranty or any additional insurances You may take over the Goods, You must also obtain and maintain the following insurance cover:
 - i) Marine cargo insurance;
 - ii) Public liability insurance with cover of not less than \$20M for each occurrence or liability event; and
 - iii) Any other insurance that We may reasonably require.
- (d) We are not responsible for arranging Your insurance or making any claim on Your insurance, either in Our own capacity or on Your behalf.
- (e) You must provide Us with a certificate of currency of Your insurance on request.
- (f) You are responsible for obtaining and maintaining the required insurances from the time that risk in the Goods passes to You. To the extent permitted by law, You acknowledge and agree that Your insurance is responsible for all Loss which may occur to Goods during the Services.
- (g) Payment of the Services is not dependent upon on any insurance claim. Where any amount for Services or Additional Expenses is outstanding, You are not permitted to delay, withhold or set-off payment on the basis of any pending insurance claim.
- (h) You acknowledge and agree that You have had the opportunity to take independent financial or professional advice in relation to insurance.

12. RISK AND OWNERSHIP

- (a) Unless the parties otherwise agree in writing, all risk in the Goods and Services (except for Loss or damage to Goods that is directly caused by Us or which cannot be excluded by law) passes to You when the Goods are delivered to Our Site, handed to Us, loaded onto Our Equipment or otherwise reach Our possession, whichever occurs first.
- (b) **You acknowledge and agree that all Goods are carried or stored entirely at Your risk, subject only to any mandatory implied rights which cannot be lawfully excluded and Loss or damage to Goods that is directly caused by Us.**
- (c) All Goods are held by Us for You as bailee to secure payment of the Services ("**Bailment**"). This Bailment may constitute a PPS Lease for the purposes of the PPSA;
- (d) Ownership of Our Equipment remains with Us at all times and never passes to You.

- (e) We will store Goods in a way that clearly identifies the Goods as Your property and, subject to Your obligations of these Terms, prevent the Goods from being lost or damaged as reasonably possible.
- (f) We will not resell any Goods without Your prior written consent, except for Goods subject to Our general lien in these Terms or statutory lien pursuant to the *Storage Liens Act 1935* (NSW).
- (g) We must store, carry, transport or deliver the Goods as Your fiduciary agent in accordance with Your reasonable instructions.

Making Sure We Get Paid

13. LIEN OVER GOODS

- (a) To secure payment of all monies You owe Us for the supply of Services, and pursuant to a general lien in contract and/or the *Storage Liens Act 1935* (NSW) as applicable in other States and Territories, We may retain all Goods in Our possession and refuse to release such Goods until You pay for the Services and any Additional Expenses (**Lien**).
- (b) If We exercise the Lien, You have no right to collect or receive the Goods, instruct Us as to the Goods or otherwise deal with the Goods subject to the Lien.
- (c) You are responsible for all Additional Expenses incurred in relation to Goods the subject of the Lien.
- (d) Once the Services and any Additional Expenses have been paid, We may deliver the Goods to You or Your nominated Site, or require You to collect them.
- (e) The Lien may only be waived or abandoned by Us in Our discretion. Any waiver or abandonment of the Lien must be communicated by Us expressly and in writing.
- (f) If payment of the Services and Additional Expenses is not made, We may exercise Our power to sell the Goods and apply the proceeds of sale to any amount owing to Us in accordance with the rights and obligations of the *Storage Liens Act 1935* (NSW).

14. SECURITY OVER REAL ESTATE

- (a) To secure payment of all monies You owe Us for the supply of Goods and Services, You:
 - i) Charge all of Your interest in real and personal property (including all property acquired after the date of these Terms) in favour of Us, whether or not a demand has been made on You ("**Charge**"). This Charge constitutes a General Security Agreement for the purposes of the PPSA;
 - ii) Authorise and consent to Us taking all actions necessary to give effect to the Charge, including the lodgement of a caveat upon any title of Your real property, whether held in Your own right or as trustee of any trust, or any other security document; and
 - iii) Agree to deliver to Us within 7 days of written demand a Memorandum of Mortgage in registrable form. You agree that any amount payable to Us payable on demand incorporating the covenants contained in Memorandum No. Q860000 registered at the Land Registry Services New South Wales as amended to comply with and reflect any appropriate laws in the jurisdiction(s) where You have any beneficial interest in real and personal property and as amended appropriately to comply with any formal requirements of registration.
 - iv) Irrevocably appoint Us and any person nominated by Us severally as Your attorney, with power to execute, sign and deliver (which delivery may be subject to such terms and conditions as the attorney thinks fit) such caveat, mortgage or other security document to effect the Charge granted under this part.

15. PERSONAL PROPERTY SECURITIES ACT 2009 (CTH)

Security for Goods and/or Equipment Supplied

- (a) You acknowledge and agree that these Terms constitute a security agreement for the purposes of the PPSA ("**Security Agreement**") and create a security interest in the Goods and/or Equipment supplied by Us from time to time and any proceeds of supply of the Goods and/or Equipment to secure payment for the Goods and/or

- Equipment supplied (“**Security Interest**”).
- (b) Each supply of Goods and/or Equipment by Us under these Terms is subject to the Security Agreement for the purposes of the PPSA.
 - (c) We may lodge a financing statement on the Personal Property Securities Register (“**PPSR**”) in respect of the Security Interest in the Goods and/or Equipment and the proceeds of the supply of the Goods and/or Equipment, including as a purchase money security interest (as that term is defined in the PPSA) (“**PMSI**”), pursuant to these Terms.

General Security Agreement for Services Supplied

- (d) For the purpose of any general security agreement (“**General Security Agreement**”), “**Collateral**” means all Your present and after-acquired personal property, including circulating and non-circulating assets. Collateral includes any personal property in respect of which You have at any time, or may in the future have at any time, a sufficient legal or equitable right, title, interest or power to grant a security interest either in Your own right or as trustee of a trust.
- (e) You acknowledge and agree that:
 - i) In addition to any other Security Interest created by these Terms, these Terms also constitute a General Security Agreement for the purposes of the PPSA and create a security interest in Your Collateral to secure payment for the Services supplied (“**Security Interest**”);
 - ii) Each supply of Services by Us under these Terms is subject to the General Security Agreement for the purposes of the PPSA; and
 - iii) We may lodge a financing statement on the PPSR in respect of the Security Interest in the Collateral pursuant to these Terms.

Assurances

- (f) You must do all things, provide all information and sign all documents that are necessary and reasonably required to enable Us to acquire a perfected Security Interest in the Goods, Equipment and/or Services (as the case may be) including for the purposes of:
 - i) Ensuring that any Security Interest created under, or provided for, by these Terms:
 - a. Attaches to the Goods, Equipment and/or Collateral that are intended to be covered by that Security Interest; and
 - b. Is enforceable, perfected and otherwise effective; and
 - c. Has the priority required by Us.
 - ii) Enabling Us to prepare and register a financing statement or financing change statement;
 - iii) Enabling Us to register a PPS Lease pursuant to the PPSA (where applicable);
 - iv) Enabling Us to register a PMSI pursuant to the PPSA (where applicable);
 - v) Enabling Us to register an ALLPAAP pursuant to the PPSA (where applicable); and
 - vi) Enabling Us to exercise and maintain any of Our rights or powers in connection with any such Security Interest.
- (g) If You dispose of the Goods or the Collateral, You must:
 - i) Immediately pay any proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as specified by subsection 14(6)(c) of the PPSA, unless otherwise specified by Us in writing; and
 - ii) Not allow any other charge or security interest to exist over those proceeds without Our written consent if that security interest could rank ahead of Our Security Interest.
- (h) If a higher-priority security interest does arise in the Goods, the Collateral and/or their proceeds of sale despite Your obligations under this section, You must:
 - i) Ensure that You receive cash proceeds for the Goods and/or Collateral of at least equal to the market value of the Goods and/or Collateral; and
 - ii) Immediately pay those proceeds to Us in reduction of all amounts owing by You to Us, which We may apply towards amounts owing by You to Us in such order as We see fit.

- (i) You must never dispose of Our Equipment.
- (j) You must not change Your name, structure, status or partnership, or assign or sell Your business to another party, or initiate any change to any registered documentation, or act in any other manner which would impact on Our registered Security Interest without Our prior written consent. You agree that Your liability under these Terms is not affected by such an event until a new application for credit in Your new entity name as restructured or changed is made and approved by Us in writing.

Exclusion of Notices and Other Obligations

- (k) To the extent permitted by law and for the purposes of sections 115(1) and 115(7) of the PPSA:
 - i) We do not need to comply with sections 95, 118, 121(4), 125, 129(2), 129(3), 130, 132(3)(d) or 132(4); and
 - ii) Sections 142 and 143 are excluded;
 - iii) For the purposes of section 115(7) of the PPSA, We do not need to comply with sections 132 and 137(3).
- (l) To the extent permitted by law, You agree to waive:
 - i) Your rights to receive any notice that is required by any provision of the PPSA (including a notice of a verification statement) or any other law before a secured party or a receiver exercises a right, power or remedy; and
 - ii) Any time period that must otherwise lapse under any law before a secured party or a receiver exercises a right, power or remedy.
- (m) If the law that requires a period of notice or a lapse of time cannot be excluded, but the law provides that the period of notice or lapse of time may be agreed, that period or lapse is one day or the minimum period the law allows to be agreed (whichever is the longer).

Provision of Information

- (n) You agree not to exercise Your rights to make any request of Us under section 275(6) of the PPSA, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.
- (o) The parties must not disclose information of the kind mentioned in section 275(1) of the PPSA, except in the circumstances where:
 - i) Disclosure is required by sections 275(7)(b) to (e) of the PPSA; and/or
 - ii) We disclose information of a kind mentioned in section 275(1) of the PPSA to the extent that We are not doing so in response to a request made by an “interested person” (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.
- (p) Notwithstanding the obligations of this section, You shall only authorise the disclosure of information for the purposes of section 275(7)(c) of the PPSA, or request information under section 275(7)(d) of the PPSA, if We approve such disclosure or request for information in writing.
- (q) Nothing in this part prevents any disclosure of information by Us that We believe is reasonably necessary to comply with any other obligations that We may have under the PPSA.

Other

- (r) If You default in the timely performance of any obligation owed to Us, We may enforce the Security Interest by exercising all or any of Our rights under these Terms, the general law and the PPSA.
- (s) Nothing in this part limits or is limited by any other provision of these Terms or any other agreement between the parties.

How We Reduce Risk

16. WARRANTIES AND EXCLUSIONS

- (a) Neither party excludes or limits the application of any statute (including the *Competition and Consumer Act 2010* (Cth) as amended from time to time (“**the CCA**”)), where to do so would contravene that statute or cause any provision of these Terms to be void. Nothing in these Terms modifies or excludes the conditions, warranties, and undertakings and other legal rights under the Act and other laws.
- (b) Except as expressly set out in the CCA, these Terms, or a separate

warranty document, We give no implied warranties or representations under these Terms or in connection with the Services that We supply.

- (c) The parties warrant to each other that:
 - i) The parties each comply with and will continue to comply with all applicable laws for the ethical conduct of business, including Anti-Bribery and Anti-Corruption Laws and Modern Slavery Laws;
 - ii) The parties must take all reasonable steps to ensure that there is no bribery, corruption or modern slavery in respect of the Goods, Services or supply chain;
 - iii) The parties do not have any conflict of interest in relation to the Goods or Services;
 - iv) The parties and their personnel have not been found guilty of any offence relating to Anti-Bribery and Anti-Corruption Laws or Modern Slavery Laws; and
 - v) The parties must each ensure that its personnel are adequately trained to carry out any and all obligations pursuant to Anti-Bribery and Anti-Corruption Laws and Modern Slavery Laws.
- (d) You acknowledge and agree that:
 - i) You must maintain adequate records for compliance with Anti-Bribery and Anti-Corruption Laws and Modern Slavery Laws, and provide such records that We reasonably require on request;
 - ii) You must immediately notify Us in writing if any warranties given in these Terms are no longer correct;
 - iii) You are responsible for ensuring that the Services are suitable for Your intended Site and use. In that regard, You agree that You have not relied on any inducement, representation or statement made by or on behalf of Us in purchasing the Goods and Services;
 - iv) No sale under these Terms constitutes a sale by sample or description;
 - v) We are a private carrier and are not responsible for the sale, identification or description of any Goods.
- (e) To the extent permitted by law, all other implied warranties, terms and conditions are excluded.

17. FREIGHTSAFE WARRANTY

- (a) We offer an optional warranty facilitated by third-party, FreightWise Services Pty Ltd ACN 101 566 465 trading as FreightSafe ("FreightSafe"). The terms and conditions of the FreightSafe warranty ("FreightSafe Warranty") are contained in a separate document that is available on our Website or on request.
- (b) **If You do not wish to be included in the FreightSafe Warranty, You must notify Us in writing when submitting Your Booking or sign an opt-out disclaimer.**
- (c) The FreightSafe Warranty is automatically included on Your Booking up to the value of \$2,500 per Booking, unless You have opted out by written to Us or signed an opt-out disclaimer in accordance with these Terms.
- (d) If You opt-out of the FreightSafe Warranty, You acknowledge and agree that no warranty or insurance is provided by Us and You must take out and maintain appropriate insurance in accordance with section 11 of these Terms.
- (e) Even if You are covered by the FreightSafe Warranty, You acknowledge and agree that it is not a replacement for Your own, complete insurance requirements.
- (f) You acknowledge that it is Your responsibility to assess whether the FreightSafe Warranty is appropriate for Your needs and to make Your own arrangements for additional insurance where necessary.
- (g) If You require extended coverage beyond the limits offered by the FreightSafe Warranty, You must obtain a quote and written acceptance from Us in advance. Approval for increased coverage is subject to Our discretion.
- (h) The FreightSafe Warranty does not include or cover marine insurance. You are responsible for any and all marine insurance in relation to the Goods.

18. LIMITATION OF LIABILITY

- (a) This section applies to Loss that You may suffer or incur as a result of or in connection with these Terms, the Goods or Services.
- (b) To the extent permitted by law, and where it is appropriate to do so, We may limit Our liability to You pursuant to these Terms by Our choice of:
 - i) Resupplying the Services; or
 - ii) Replacing the Services with an equivalent (or paying the cost to supply an equivalent); or
 - iii) Refunding the price You paid for the Services.
- (c) To the extent permitted by law, Our liability for Loss that You suffer or incur in relation to these Terms will not exceed the total price of all Services supplied, except for the following types of Loss:
 - i) Personal injury (including sickness and death);
 - ii) Breach of privacy legislation;
 - iii) Breach of intellectual property rights;
 - iv) Breach of confidentiality;
 - v) Statutory liability that cannot be contracted out of;
 - vi) Property damage that is covered by insurance.
- (d) We are not liable to You for any loss of profits, loss of sales, loss of market, loss of goodwill or reputation, third party claims, incidental or special damages, indirect or consequential loss of any kind.
- (e) We will not be liable to You for Loss in relation to the Goods and Services where:-
 - i) The Loss or damage to Goods that is caused by Your act or omission in relation to the Goods, including failure to correctly pack or label the Goods, failure to accurately classify or describe the Goods, failure to advise Us of any perishable or refrigeration requirements;
 - ii) Your actions cause any failure to forward or deliver the Goods, or any delay in Our ability to collect or delivery the Goods;
 - iii) You have used Goods and Services other than for the purposes for which they were designed or intended, including for an illegal purpose; or
 - iv) Goods have been subject to abnormal conditions beyond Our control, including temperature, water, fire, humidity, vermin, insect, disease, pressure, neglect or other environmental conditions.
- (f) Neither party will be liable for any breach of these Terms which is wholly or partly caused by a Force Majeure event. This exclusion does not include Your obligation to pay for the Services and any Additional Expenses.
- (g) Nothing in these Terms affects the duty of a party to mitigate damages after a breach of these Terms by the other party.

19. INDEMNITIES

- (a) To the extent permitted by law, You indemnify Us against and You must pay Us for any direct Loss that We suffer or incur as a direct result of Your act or omission (or any entity or person that You are responsible for) pursuant to these Terms or in relation to the Goods and Services, including but not limited to Your breach of these Terms, breach of a warranty provided by these Terms, negligence, fraud or illegal conduct.
- (b) Specific situations that You must indemnify Us against and pay Us for (or Our agents, employees or contractors) include:
 - i) All legal costs which We incur as a result of any breach, act or omission by You under these Terms. This includes legal or mercantile agent fees on an indemnity basis for the recovery of unpaid Services, any action taken to secure a charge and Lien of Goods;
 - ii) Any stamp duty or other government rates, taxes (including GST) or charges levied on or in connection with any Credit Account and supply of Services;
 - iii) Any Loss that We incur as a result of Your failure to adequately or appropriately package, label, describe or otherwise prepare the Goods, or to provide all resources and information that We need to provide the Services;
 - iv) Any Loss that We incur by relying on information that You

- provide which is inaccurate, incomplete or obsolete;
- v) Any Loss that We incur as a result of You cancelling your Booking in a way that is not permitted by these Terms;
 - vi) All costs associated with the registration, maintenance and withdrawal of any Security Interest created under these Terms;
 - vii) Any Loss that We incur due to missed or delayed delivery that is caused by You;
 - viii) Any Loss that We incur as a result of Your failure to comply with HVNL requirements;
 - ix) Any Loss that We incur as a result of Your failure to take out the appropriate insurances required by these Terms;
 - x) Any Loss arising out of Your failure to provide a safe, suitable and compliant Site with clear, close and easy access for Us to deliver the Goods (including personal injury or death);
 - xi) Any Loss that We incur as a result of refrigerated, dangerous, contaminated or illegal Goods undisclosed by You or without Our prior written consent, including reputational damage, third-party claims, clean up costs, penalties, personal injury or death; and
 - xii) Any Loss that We incur due to Your non-compliance with Anti-Bribery and Anti-Corruption Laws or Modern Slavery Laws.
- (c) This indemnity will be proportionally reduced to the extent that We or any of Our representatives caused or contributed to the Loss.
 - (d) This indemnity is a continuing obligation which is separate and independent from your other obligations under these Terms or at law and this indemnity survives termination of these Terms.

Ending Our Agreement

20. DISPUTE RESOLUTION

- (a) If the parties have a dispute in relation to the Services or these Terms, then the parties must follow this dispute resolution procedure:
 - i) The disputing party must give the other party written notification of the dispute;
 - ii) On receipt of a dispute notice issued in accordance with this section, the parties must:
 1. Refer the dispute to its respective senior management;
 2. Each party's senior management representatives must endeavour to resolve the dispute within 30 days of the date of the dispute notice (or such other period as agreed between the parties in writing);
- (b) If the dispute has not been resolved by senior management representatives of each party within 30 days of the dispute notice (or such other period as agreed in writing), then either party **may** (but is not required to) elect to resolve the dispute by mediation via the Australian Disputes Centre (**ADC**) before commencing arbitration or litigation. Any ADC mediation must be conducted in accordance with the ADC Guidelines for Commercial Mediation which operate at the time the matter is referred to ADC. The ADC Guidelines set out the procedures to be adopted, the process of selection of the mediator and the costs involved. This paragraph survives termination of these Terms;
- (c) Either party must not commence legal proceedings (except proceedings seeking interlocutory relief) about the dispute unless and until the dispute has been referred for resolution under these Terms and to the extent that this dispute resolution procedure has been completed;
- (d) Either party must not oppose any application for a stay of any legal proceedings that may be issued in respect of a dispute, pending the completion or termination of the procedure set out in this section;
- (e) The parties must continue to perform their respective obligations under these Terms, even if a dispute exists;
- (f) The parties must keep all information relating to any dispute confidential for the purposes of dispute resolution, unless otherwise required by law or at the direction of a court of competent jurisdiction. No party may use any information or documents obtained through the dispute resolution process for any purpose other than an attempt to settle the dispute between the parties.

21. TERMINATION

- (a) By giving You written notice, We can:
 - i) Suspend or cancel the supply of Services (including a current Booking or Bookings in transit);
 - ii) Suspend or terminate Your Credit Account, if You have one;
 - iii) Require immediate payment of the balance of any Credit Account, invoices or any other amounts due and payable whether or not the Due Date has expired;
 - iv) Register a default with any credit reporting agency, where applicable;
 - v) Suspend or terminate the contract created by these Terms (collectively "**Our Termination Rights**").
- (b) We can exercise Our Termination Rights immediately when:
 - i) You have not paid Our invoice (including any Additional Expenses) by the Due Date;
 - iii) You allow distress to be levied or a judgment, order or security to be enforced, or to become enforceable against Your property including under the PPSA;
 - iv) You engage in illegal activity related to the Goods and Services, including ;
 - v) You engage in conduct which, in Our reasonable opinion, may damage Our goodwill or reputation;
 - vi) An Insolvency Event occurs.
- (c) In all other situations, either party may terminate these Terms:
 - i) Immediately by written notice if the other party is in breach of a material clause of these Terms and the breach is not rectified within 7 days of the termination notice;
 - ii) Without cause by giving the other party at least 30 days' written notice.
- (d) When these Terms are terminated:
 - i) We may exercise Our repossession rights for all unpaid Goods stipulated by these Terms;
 - ii) We may recover from You, and You must pay, all outstanding amounts for Goods, Services and Additional Expenses imposed by these Terms; and
 - iii) Either party may pursue any additional or alternative remedies provided by law.

Other Information

22. PRIVACY

- (a) We may collect personal and credit information in Our dealings with You (or any of Your guarantors) in accordance with Our Privacy Policy pursuant to the *Privacy (Credit Reporting) Code 2014*, the *Privacy Act 1988* (Cth), the *Privacy (Enhancing Privacy Protections) Act 2012* (Cth), and the Australian Privacy Principles. You consent to that information being collected. You can obtain a copy of Our Privacy Policy by contacting Us in writing.

23. GENERAL

- (a) Any clauses which are expressed to be, or are by their nature, intended to survive expiry or termination of these Terms will survive expiry or termination of these Terms.
- (b) A failure to exercise or a delay in exercising any right, power or remedy under these Terms does not operate as a waiver. A single or partial exercise or waiver of the exercise of any right, power or remedy does not preclude any other or further exercise of that or any other right, power or remedy. A waiver is not valid or binding on the party granting that waiver unless made in writing.
- (c) If any part of these Terms becomes void or unenforceable for any reason, then that part will be severed and, to the extent possible, all remaining parts continue with full force and effect without being affected by the severance of any other parts.
- (d) These Terms may be executed in any number of counterparts, each of which when executed and delivered constitutes a duplicate original, but all counterparts together constitute one agreement.

- (e) In addition to any other method of service provided by law, a notice may be sent by prepaid post, facsimile, email or courier to the address of a party as that address set out in the Contract or subsequently notified. A notice has no legal effect unless it is in writing.
- (f) A notice is deemed to have been delivered and received on the day if by hand, courier, email or fax, or otherwise on the second business day after posting.
- (g) You agree to receive invoices via email.
- (h) You agree that email communications from Us to You constitute an "electronic communication" within the meaning of the *Electronic Transactions Act 2000* (NSW) ("ETA").
- (i) You agree that the receipt and service of notices via email is "an information system for the purpose of receiving electronic communications" within the meaning of the ETA.
- (j) You agree that evidence of the "dispatch" (within the meaning of the Act) by Us of an email is also prima facie evidence of the "receipt" of the email by You within the meaning of the ETA. Unless the contrary is proven the time of receipt will be deemed to be twenty (20) seconds after the time of the "dispatch" of the email.

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