

Please read all the following conditions carefully. By engaging our services, You agree to these conditions.  
Please note:

- Our services are priced based on the exclusions and limitations set out in these conditions which are set out in clauses 10 and 11.
- If any loss of or damage to Your Goods occurs, We will only be liable to the extent that the loss or damage results from our negligence or a breach of these conditions.
- To recover for any loss of or damage to Your Goods, regardless of the circumstances, we recommend that You or the owner of the Goods arrange to purchase an appropriate insurance policy that covers the Goods.
- There are some goods that We do not agree to carry or store (see clause 4.1(f)) and accordingly, we do not accept any liability for loss of or damage to these sorts of goods.
- We require notice from You, in writing, prior to the commencement of our services should You require that We transport or store certain types of goods. These include any goods or collections of goods that are worth more than \$5,000, any fragile items or jewellery or if You have any boxes You have packed Yourself, the contents of which are worth more than \$500 (see clause 4.1(e)).

#### Private removals

- If Our services are not provided in connection with a business You are operating, You have the benefit of the consumer guarantees set out in the Australian Consumer Law, which cannot be excluded by agreement. If there are any major defects or failures in the Services, You are entitled:
  - to cancel Your agreement with Us; and
  - to a refund of any unused portion, or to compensation for its reduced value.
- You may also be entitled to compensation from Us for any other reasonably foreseeable loss or damage.
- If the failure does not amount to a major failure, You are entitled to have those failures rectified in a reasonable time and, if this is not done, to cancel Your agreement and obtain a refund for the unused portion of the agreement.

#### Commercial Removals

- If these services are provided in connection with a business operated by You and any Consignee, the guarantees in the Australian Consumer Law do not apply. Additional exclusions of liability and a cap on Our liability for loss of or damage to Goods of \$500 per item and \$10,000 in the aggregate apply (see clause 11.6).

## TERMS AND CONDITIONS OF FURNITURE REMOVALS

### 1. DEFINITIONS

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1.1 The meanings of the terms used in this document are set out below.

Term	Meaning
<b>Australian Consumer Law</b>	means the Australian Consumer Law as set out in Schedule 2 of the <i>Competition and Consumer Act 2010</i> (Cth)
<b>Approved Credit Customer</b>	means a person who We have agreed to grant credit facilities
<b>Authority</b>	includes any legal or administrative authority acting within its legal powers and exercising any jurisdiction within any nation, state, municipality, port or airport

<b>Term</b>	<b>Meaning</b>
<b>Business Day</b>	means any day that is not a Saturday, Sunday or any other day which is a public holiday in the place where an act is to be performed or a payment is to be made
<b>Cash Customer</b>	means a person who is required to make payment for Services at or before the time of the purchase of the Services
<b>Chain of Responsibility Law</b>	means the Heavy Vehicle National Law as enacted in any Australian state, the <i>Road Traffic (Administration) Act 2008 (WA)</i> and the <i>Road Traffic (Vehicles) Act 2012 (WA)</i> and any other state, territory or Commonwealth legislation dealing with the obligations of parties involved in road transport activities, such as consignors, transport operators, loaders, drivers and schedulers
<b>Charges</b>	means any fees payable by You to Us in relation to, but not limited to, the Goods transported or Stored by Us and Services provided by Us
<b>Claim</b>	includes any liability, loss, claim or legal action
<b>COD Customer</b>	means a person who is required to make payment for Services on or before delivery of them
<b>Conditions</b>	means these Terms and Conditions of Furniture Removals, including any alterations made by Us and advised to You from time to time
<b>Consequential Loss</b>	means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of Services and whether or not foreseeable at the time of entering into any agreement incorporating these Conditions
<b>Container</b>	means any container used to carry Goods and any equipment within or connected to a container in respect of which We perform or are requested to perform Services or which enters Our premises in connection with the Services
<b>Dangerous Goods</b>	means Goods which are or will become, noxious, dangerous, hazardous, explosive, radioactive, inflammable or likely to encourage any vermin or pest or capable by their nature of causing damage or injury to other goods or to any person or animal or to any thing in which those Goods are carried, handled or Stored and includes any Goods, whether or not bulk or packaged goods, which are classified under any Law as dangerous
<b>Force Majeure Event</b>	means an event beyond Our reasonable control including acts of God, wars (declared or undeclared), rebellions, insurrections, acts of terrorists, acts of Government bodies (including Authorities), road closures, border closures, interruptions to power or fuel supply, accidents, floods, cyclones, strikes, boycotts, lockouts or other labour disturbances, maritime disasters, explosions, fires, epidemics, pandemics, cyber warfare, cyber attacks, ransomware attacks, cyber sabotage and any other matters which are beyond Our reasonable control

<b>Term</b>	<b>Meaning</b>
<b>Goods</b>	means the furniture and other personal effects and any other goods accepted from You, or on Your behalf, for the provision of Services, together with any container, packaging or documents supplied by You or on Your behalf
<b>GST</b>	has the same meaning as in <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
<b>GST Law</b>	has the same meaning as in the <i>A New Tax System (Goods and Services Tax) Act 1999</i> (Cth)
<b>GST Rate</b>	means the rate of GST under the GST Law
<b>Invoice</b>	means a tax invoice under the GST Law
<b>Law</b>	means the provision of any statute, rule, regulation, proclamation, ordinance or by-law
<b>Outstanding Amount</b>	means any amount which remains unpaid upon the expiry of the credit terms (if any) extended by Us, or for which You are otherwise liable to Us
<b>Owner</b>	includes the owner, consignor and consignee of any Goods or Container and any other person who is or may become interested in any Goods or Container and anyone acting on their behalf
<b>PPSA</b>	means the <i>Personal Property Securities Act 2009</i> (Cth)
<b>Pre-Removal Services</b>	means integrated services provided by Us to prepare a home for sale, including decluttering, packing, rubbish removal and Storage
<b>Prohibited Items</b>	means items that require refrigeration and other perishable items, firearms, ammunition, Dangerous Goods, illegal or stolen goods, rubbish and other waste material, organic liquid or waste products, flammable materials, open containers of liquid, pool chemicals, gas canisters and asbestos
<b>Requirement</b>	means any requirement, notice, order or direction of any Authority
<b>Services</b>	means the services We agree to provide to You, whether gratuitously or otherwise, including transportation, Storage, packing, unpacking, handling, Pre-Removal Services, completing documents and the provision of advice and other services which You and We may agree in writing are to be Services
<b>Special Goods</b>	means any of the following (a) Goods which are of a fragile or brittle nature and which are not readily apparent as such; (b) any item or related collection of items (such as a dining room suite, or a coin collection) having a value in excess of \$5,000; (c) any Goods which comprise jewellery, precious objects, works of art, money collections of items or precision equipment; or (d) any boxes You have packed Yourself the contents of which are worth more than \$500
<b>Store/Storage</b>	means receiving Goods into a storage location operated by Us or on Our behalf and storing Goods and making them available for re-delivery

<b>Term</b>	<b>Meaning</b>
<b>Subcontractor</b>	means any person We engage to carry out all or any part of the Services, including any person, who pursuant to a contract or arrangement with any other person (whether or not We are that person) performs or agrees to perform the Services
<b>Us, We or Our</b>	means All Purpose Enterprises Pty Ltd (ABN 30 010 084 367) trading under its own name, under the business name 'All Purpose Transport' or under any other business name
<b>You or Your</b>	means the person at whose request or on whose behalf We provide Services

## **2. NEGATION OF LIABILITY AS COMMON CARRIER & APPLICATION OF CONDITIONS**

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- 2.1 We are not a common carrier and do not accept liability as such and reserve Our right to refuse to perform Services in respect of any goods.
- 2.2 All Services We perform for You are subject to these Conditions and any prior agreement is superseded. These Conditions will be incorporated into any agreement between You and Us for the performance of Services.
- 2.3 These Conditions may be varied:
- (a) by written agreement signed by Our Managing Director and a person authorised by You; or
  - (b) unilaterally by Us pursuant to clause 2.4.
- 2.4 We may vary these Conditions by providing You with reasonable notice of at least 30 days of any changes by providing a copy of the revised conditions to You (whether by email, link or otherwise).

## **3. OUR OBLIGATIONS**

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- 3.1 We will:
- (a) provide the Services with due skill and care, in accordance with relevant industry practices and Our expertise;
  - (b) use reasonable endeavours to promptly and carefully deliver the Goods to the address nominated by You and to effect delivery at the date and time that You request;
  - (c) take reasonable care so that the Services comply with and conform with all relevant Laws and Requirements; and
  - (d) to the extent that We Store the Goods, account for all Goods received and use modes of Storage appropriate to the nature of the Goods.

## **4. YOUR OBLIGATIONS**

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- 4.1 You represent and warrant that:
- (a) You have the authority of all Owners and persons interested in the Goods to enter into and agree to these Conditions on their behalf;
  - (b) any Goods packed by You are properly packed in a manner adequate to withstand normal handling or Storage and to comply with any applicable Law or Requirement;

- (c) You will nominate, before the loading or unloading of the Goods, Yourself or another person (**nominated person**) who will have authority to supervise the loading and unloading and make all decisions on Your behalf in relation to the loading and unloading. You will ensure that the nominated person is present when the Goods are being loaded and unloaded;
  - (d) You have made full disclosure of any Dangerous Goods in accordance with clause 9 and that, other than those Goods which You have disclosed to Us, the Goods do not include any Goods described in clause 9.4;
  - (e) You will, prior to the commencement of the Services, notify us in writing of any Special Goods;
  - (f) You will not pack, or ask Us to transport or store any Prohibited Items;
  - (g) You will assist us in identifying all Goods to be removed (other than Goods being removed from Storage);
  - (h) You will provide Us with access to the premises on which the Goods are located to allow us to provide the Services; and
  - (i) You will comply with all Laws and Requirements in relation to loading, handling and unloading of Goods and for ensuring that proper facilities and safeguards are in place for collecting, delivering, loading, handling and unloading of the Goods.
- 4.2 We are not required to dismantle or re-install any Goods. If any Goods cannot be safely transported without first being dismantled, You will be responsible for ensuring the Goods are dismantled before they are collected by Us and for reassembling or reinstalling the Goods once they have been unloaded.
- 4.3 You will use Your best endeavours to assist Us in performance of the Services by:
- (a) providing Us with any information or documents reasonably required by Us to perform the Services, at Your own cost;
  - (b) giving Us sufficient instructions to enable Us to adequately perform the Services;
  - (c) providing Us with any information concerning the nature of the Goods and their packaging that We reasonably request;
  - (d) providing us with access to Your premises to the extent reasonably necessary for Us to perform Our obligations under these Conditions; and
  - (e) deciding on any required course of action which We request You to select from alternative courses of action, in such reasonable time as not to delay or disrupt Our performance of the Services.

## **5. INSPECTION**

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- 5.1 You authorise Us to open any Container in which the Goods are placed or packaged, or which is otherwise associated with the Goods, for the purpose of determining the nature of the contents, condition, ownership or destination of the Goods or for any other purpose which We consider reasonably necessary.
- 5.2 If by Law or Requirement of Authorities at any place a document, envelope, package or other Container has to be opened for the Goods to be inspected, We will not be liable for any loss, Consequential Loss, damage or delay incurred as a result of any opening, unpacking, inspection or repackaging. We will be entitled to recover the cost of such opening, unpacking, inspection and repackaging from You.
- 5.3 If You claim that any Goods have been damaged by Us, We may inspect the Goods upon providing reasonable notice in writing to You. You authorise Us to enter the premises upon which the Goods are held to conduct the inspection.

## **6. DELIVERY AND DISPOSAL**

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- 6.1 You are responsible for confirming that all Goods have been delivered and that all Goods are in an acceptable condition. You will be asked to sign an inventory or other documents at the conclusion of the transit and You will notify Us of any lost or damaged Goods in accordance with clause 22.1.
- 6.2 We are entitled to depart from Your instructions (including deviating from the usual method of Services or transport route or changing the place of Storage) if We, acting reasonably, think it necessary in the circumstances.
- 6.3 Any action by Us in accordance with clause 6.2 does not:
- (a) confer a right of cancellation or refusal of acceptance of delivery by You or the Owner; or
  - (b) make Us liable for any loss, Consequential Loss or damage.
- 6.4 If, without advance notice to Us, the nominated delivery site is unattended or if delivery cannot otherwise be effected by Us, We will contact You to obtain alternative instructions for delivery. We may make an additional charge for following the alternative instructions.
- 6.5 If We are unable to obtain alternative instructions, We will Store the Goods in a manner determined in Our discretion, acting reasonably. We may make an additional charge for reasonable costs and expense incurred in relation to that Storage, including a fee for delivery into Storage and a redelivery fee.
- 6.6 If in Our reasonable opinion or the opinion of any Authority, Goods constitute a risk to other goods, property, life or health, those Goods may be destroyed, disposed of or otherwise dealt with at Our discretion (acting reasonably) and at Your risk and expense.

## **7. STORAGE**

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- 7.1 We may remove the Goods from a place of Storage to another place of Storage within the same city at Our discretion, without cost to You. We will notify You of the change in address as soon as practicable.
- 7.2 If We are engaged to Store or arrange Storage of Goods, we are not required to make the Goods available for collection or removal from the place of Storage unless all Charges have been paid and unless You have completed and provided all documents that We reasonably require You to complete or provide.
- 7.3 You may inspect the Goods in store by providing Us with five Business Days' notice, at a time agreed by both parties (which must be between 8am and 2pm on a Business Day, unless otherwise agreed). We are entitled make a reasonable charge for providing access to the Goods.
- 7.4 If We continue to store Your Goods after any agreed end date for Storage, or if We are storing Goods pursuant to clause 6.5, We may, at our discretion, require You to remove Your Goods from Storage by providing 14 days' written notice to You.
- 7.5 You, or a person authorised by You, may remove Your Goods from Storage by providing Us with five Business Days' notice in writing. Goods must be collected between 8 am and 2 pm on a Business Day, unless otherwise agreed.

## **8. SUBCONTRACTING**

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- 8.1 We and any Subcontractor are entitled to subcontract, on any terms, the whole or any part of the Services.
- 8.2 If We subcontract any Services, We:
- (a) will not be relieved of any of Our liabilities or obligations under any agreement incorporating these conditions; and

(b) will be liable to You for any act or omission of the Subcontractor as if such act or omission were Our act or omission.

8.3 Every exemption, limitation, condition and liberty in these Conditions and every right, exemption from liability, defence and immunity of whatever nature for Our benefit or to which We are entitled is also available and will extend to protect:

(a) all Subcontractors;

(b) all of Our employees, agents and every other person by whom the Services or any part of them are performed or undertaken; and

(c) all persons who are or might be vicariously liable for the acts or omissions of any person referred to in clause 8.3(a) and 8.3(b).

8.4 For the purpose of this clause 8, We are or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them will to this extent be, or be deemed to be, a party to any agreement incorporating these Conditions.

## **9. DANGEROUS GOODS**

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9.1 You warrant that You have provided Us with full written details of any Dangerous Goods (in accordance with any Laws or Requirements if applicable) prior to obtaining a quotation or requesting Us to provide Services.

9.2 If You become aware that any Goods are classified as Dangerous Goods and You have not notified Us in accordance with clause 9.1, You must provide Us with full written details of any Dangerous Goods (in accordance with any Laws or Requirements if applicable) prior to Us providing the Services.

9.3 We may, in Our absolute discretion, refuse to remove, transport or Store any of the Dangerous Goods notified to us in accordance with clause 9.2.

9.4 You warrant that:

(a) any description of the Goods provided to Us is accurate;

(b) subject to clauses 9.1 and 9.2, the Goods are not:

(i) infested with vermin or pests;

(ii) Dangerous Goods and are only noxious, dangerous, hazardous, flammable, volatile or offensive to the extent disclosed under clause 9.1; or

(iii) of a kind reasonably capable of causing loss, damage or injury to Us or any third party.

9.5 If You breach a warranty in clause 9.4, the Goods may at Your cost be destroyed, disposed of, abandoned or rendered harmless by Us without compensation to You and without prejudice to Our right to Charges.

9.6 You must declare in writing to Us any Goods which may be liable to customs duties or official restrictions.

## **10. OUR LIABILITY FOR LOSS OR DAMAGE TO THE GOODS – PRIVATE FURNITURE REMOVALS**

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10.1 This clause applies where Our Services are not required for the purposes of a business, trade, profession or occupation carried on by You and any consignee, in which case:

(a) these Conditions include the guarantees set out in sections 60, 61 and 62 of the Australian Consumer Law, including a guarantee that the Services will be rendered with due care and skill;

- (b) We will not be liable for any loss of Goods, damage to Goods or mis-delivery, delay in delivery or non-delivery of Goods during the provision of Services, except to the extent caused by Our breach of these conditions, Our negligence or wilful misconduct;
- (c) We will not be liable for loss of or damage to the Goods to the extent that the loss or damage is caused by You or someone else that we are not responsible for at law; and
- (d) where packing is not undertaken by Us or a Subcontractor:
  - (i) We will not be liable for any loss or damage that occurs during packing or unpacking; and
  - (ii) We will not be liable for any loss or damage that occurs during transport or storage due to that packing.

10.2 Electrical and mechanical appliances, computer equipment, scientific instruments and certain musical instruments are inherently susceptible to suffer damage or disorder upon removal and to the extent permitted by Law, We will only be liable for loss of or damage to such Goods where there is evidence of Our negligence comprising visible external physical damage to the relevant Goods that has been caused by Us.

10.3 We will not be liable for any loss of or damage to Prohibited Items.

## **11. OUR LIABILITY FOR LOSS OR DAMAGE TO THE GOODS – BUSINESS REMOVALS**

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11.1 This clause applies if the Services are required by You for the purposes of a business, trade, profession or occupation in which You are engaged and the Goods are being delivered to a consignee (which may be You) who is carrying on a business, trade, profession or occupation in connection with the Goods.

11.2 To the extent permitted by Law, We will not be liable for any loss of Goods, damage to Goods or mis-delivery, delay in delivery or non-delivery of Goods during the provision of Services except to the extent that such loss of Goods, damage to Goods or mis-delivery, delay in delivery or non-delivery of Goods is caused by Our negligence or wilful default (including the negligence of a Subcontractor).

11.3 Where packing is not undertaken by Us or a Subcontractor:

- (a) We will not be liable for any loss or damage that occurs during packing or unpacking; and
- (b) We will not be liable for any loss or damage that occurs during transport or storage due to the packing.

11.4 Electrical and mechanical appliances, computer equipment, scientific instruments and certain musical instruments are inherently susceptible to suffer damage or disorder upon removal. To the extent permitted by Law, We will only be liable for loss of or damage to such goods where there is evidence of Our negligence comprising visible external physical damage to the relevant Goods that has been caused by Us.

11.5 Notwithstanding any other provision of these Conditions, to the extent permitted by Law, We will not be liable for any:

- (a) loss of or damage to Goods caused by:
  - (i) a Force Majeure Event;
  - (ii) Us following Your instructions;
  - (iii) the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
  - (iv) vibration, road conditions, weather or weather events of any kind whatsoever;



- (v) the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
  - (vi) inherent vice or the nature of the Goods;
  - (b) loss of or damage to Goods comprising electrical or mechanical derangement, shrinkage or ordinary wear and tear; or
  - (c) loss of or damage to Prohibited Items.
- 11.6 Notwithstanding any other provision of these Conditions, to the extent permitted by Law, Our maximum financial liability in relation to or in any way connected with any loss of Goods or Damage to Goods or misdelivery, delay in delivery or non-delivery of Goods is limited to \$500 per item or package and, in any event, \$10,000 in the aggregate for any one transaction involving the provision by Us of Services.
- 11.7 For the purposes of clause 11.6, a 'transaction' includes every aspect of a single job involving Services, including packing, transportation, Storage, delivery and any unpacking.
- 11.8 Notwithstanding any other provision of these Conditions, We will not be liable, under any circumstances, for Consequential Loss.
- 11.9 The limitations of liability set out in clauses 11.5 to 11.7 do not apply to the extent that any loss of or damage to Goods is caused by Us engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct.
- 11.10 If We are liable for damage to or loss of any Goods, no Claim may be made unless notice of the Claim is lodged in accordance with clause 22.1.

## **12. AUSTRALIAN CONSUMER LAW**

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Notwithstanding any other provision of these Conditions, We will continue to be subject to any guarantee provided by the Australian Consumer Law if and only to the extent that the Australian Consumer Law is applicable to these Conditions and prevents the exclusion, restriction and modification of such guarantee.

## **13. INSURANCE**

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- 13.1 We are not obliged to insure, or to arrange insurance in respect of, the Goods.

## **14. VALUE OF THE GOODS**

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In a claim for loss of or damage to the Goods, any estimate of the inventory and value of the Goods which You have provided to Us will be prima facie evidence of the value of any particular Goods and of the total value of the Goods.

## **15. CHARGES**

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- 15.1 Subject to clause 15.3, the Charges for the Services will be as quoted in writing by Us. If a Charge for the Services is not quoted then it will be in accordance with Our current price list. Any verbal quotations are subject to written confirmation by Us.
- 15.2 You must pay Us all Charges as soon as they are due without any deduction or deferral for any Claim or set-off.
- 15.3 Notwithstanding acceptance by You of any quotation or estimate of Charges, We may make reasonable additional Charges if:

- (a) the Goods are a different weight, mass, density, length, width or general nature (to that previously described to Us) or differ in any respect to the description of the Goods provided to Us;
  - (b) there is any change or alteration by You or the Owner to the agreed date or time for commencement or completion of the Services;
  - (c) You ask us to provide Services with respect to goods or work that differs from the Services for which the quotation or estimate of Charges has been given, as a result of the information provided by You being incorrect or incomplete;
  - (d) the Goods are not delivered to Us for the provision of Services on the agreed date or at the agreed time; or
  - (e) there is any delay in loading or unloading other than because of Our default.
- 15.4 If any additional charges in clause 15.3 are imposed, upon Your request, We will provide available information and documents supporting these additional charges.
- 15.5 If You instruct Us that the Charges will be paid by the consignee or any other third party and the consignee or third party does not pay the Charges when due, You must pay such Charges on demand.
- 15.6 You may cancel any agreement incorporating these conditions prior to collection of the Goods by Us, provided You give Us written notice to that effect at a time which is no less than five Business Days before the scheduled date for collection. If You fail to comply with this provision, You forfeit any deposit paid to Us.

## **16. GST**

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- 16.1 This clause applies if You are or may become liable to pay GST in relation to any Services under these Conditions:
- (a) Unless otherwise stated, all Charges quoted are exclusive of GST. In addition to such charges, You must pay GST on the Taxable Supply to Us of an amount equal to the GST exclusive consideration multiplied by the GST Rate. GST will be payable by You without any deduction or set off for any other amount at the same time as the GST exclusive consideration is payable. In all other respects, GST will be payable by You to Us upon the same basis as the GST exclusive consideration is payable by You under these Conditions.
  - (b) We will issue an Invoice to You for the amount of GST referable to the Taxable Supply. We will include in any such Invoice such particulars as are required by the GST Law in order that You may obtain an input tax credit for the amount of GST payable on the Taxable Supply.
  - (c) If any part of the consideration is referable to both a Taxable Supply and anything that is not a Taxable Supply, the amount of GST payable by You will be determined by Us and will be the same amount of GST that would be payable if the Taxable Supply were the only Supply made to You.
  - (d) If You default in the payment on the due date of any amount payable pursuant to clause 16.1(a) then, without prejudice to any other remedies We have, You will pay to Us upon demand an amount equal to the amount of any damages or interest or additional GST that may become payable by Us arising out of Your default.

## **17. TRADING TERMS**

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- 17.1 You are required to make payment as follows, If You are:
- (a) a Cash Customer, when purchasing the Services;
  - (b) a COD Customer, on receiving the delivery docket from Us; or

(c) an Approved Credit Customer, within 14 days of the date of the Invoice.

17.2 Unless We notify You otherwise You are a Cash Customer.

17.3 We are entitled to charge interest calculated at 10% per annum, compounded annually on all Outstanding Amounts.

## **18. DEFAULT**

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18.1 If You fail to pay any monies by the payment due date, or otherwise commit a serious breach of these Conditions, We may in our absolute discretion do any one or more of the following without prejudice to any other rights We have under any Law:

- (a) cancel any credit facility made available to You;
- (b) where You are an Approved Credit Customer, call up any monies owed by You on any Invoice whether or not the period of 30 days has expired;
- (c) retain all monies paid on account; or
- (d) suspend or terminate the provision of Services.

## **19. LIEN AND POWER OF SALE**

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19.1 We have a general lien over the Goods (and any related documents) for all amounts due by You to Us on any account whatsoever, including in respect of the Goods and any other goods in respect of which We provide or have provided Services.

19.2 If You:

- (a) fail to pay any monies by the payment due date,
- (b) do not collect Goods on the agreed end date for Storage or in accordance with a notice issued pursuant to clause 7.4,

without prejudice to any other rights We may have under Law, We may:

- (c) remove any of the Goods and Store them at a Charge in such place and in such manner as We, acting reasonably, think proper and at Your risk and expense; or
- (d) without notice and immediately in the case of perishable Goods, or otherwise on the provision of 30 days' notice in writing, sell the Goods on such terms as We reasonably think fit.

19.3 You are liable to Us for the costs of any notice, publication, Storage, sale or attempted sale under this clause.

19.4 For the purposes of preparing the goods for sale under this clause, You authorise Us to open and inspect the contents of any Containers, boxes or packages. We may, at our discretion elect which contents will be sold. Those items that we do not elect to sell may be held by Us for such time as We consider appropriate and, once any moneys owing by You to Us have been paid, we may invite You to collect those items. If You fail to collect those items within a reasonable time, or if any items fail to sell, We may, at our discretion, dispose of them or donate them to charity.

19.5 On a sale under this clause, We may apply the proceeds towards the payment of the expenses set out in clause 19.3 and towards payment of any Outstanding Amount and pay any balance to You.

19.6 The lien arising under these Conditions:

- (a) attaches to the Goods when the Goods are accepted by Us; and

(b) is a security interest.

19.7 On request by Us, You must promptly do anything reasonably necessary for the purposes of ensuring that any security interest created under, or provided for by, these Conditions is enforceable, perfected (including perfection by registration), maintained and is otherwise effective.

19.8 To the extent permitted by the PPSA:

(a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless You are otherwise notified in writing by Us); and

(b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.

19.9 Terms used in this clause have the same meaning as under the PPSA.

## **20. FORCE MAJEURE**

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20.1 We are not liable for Our failure to perform, or delay in performing, an obligation (except an obligation to pay money) if:

(a) the failure or delay arose from a Force Majeure Event; and

(b) We gave You notice of the Force Majeure Event promptly after becoming aware of it.

## **21. COMPLIANCE WITH LAWS**

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21.1 Both parties agree to comply with all applicable Laws including Chain of Responsibility Law.

21.2 You must not impose any requirement on Us that would directly or indirectly encourage or require Us or any person on our behalf to speed, drive while fatigued or otherwise perform the Services in an unsafe manner.

## **22. TIME LIMITS ON CLAIMS FOR DAMAGE OR LOSS**

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22.1 If You believe the Goods to be damaged or missing, You are responsible at all times for notifying Us of the details of the loss or damage in writing to Our head office as soon as possible and, in any event, not later than thirty (30) days after the delivery was effected or would in the ordinary course of business have been effected.

22.2 You acknowledge that the purpose of clauses 11.10 and 22.1 is to allow Us an opportunity to promptly investigate the cause of any loss of damage. Clause 11.10 will not apply if You have a reasonable excuse for Your failure to give written notice.

## **23. PRIVACY**

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23.1 You agree to Us using Your personal information for the primary purpose of providing You with the Services or any related secondary purpose.

23.2 Both parties will comply with the *Privacy Act 1988* (Cth). Any personal information obtained or supplied in connection with the Services will be collected, used, stored, disclosed, transferred and destroyed in accordance with the Australian Privacy Principles and the Law.

## **24. NOTICES**

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24.1 Unless You notify Us otherwise Your address for notices will be any address (including email address) or contact details contained in any delivery document You provide to Us.

24.2 Any notice sent by post is deemed to have been given on the third day following the day of posting.

## **25. RELATIONSHIP**

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We, in the performance of all work, Services, and activities, are and will be an independent contractor and not an employee, partner, agent or principal of You. Nothing in these Conditions will be construed to create a partnership or joint venture relationship between Us and You and neither party will have the authority to bind or obligate the other in any manner.

## **26. SURVIVAL**

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The termination or expiry of any agreement incorporating these Conditions will not affect any accrued rights or remedies to which either party is entitled and all indemnities in these Conditions survive the termination or expiry of any agreement incorporating these Conditions.

## **27. FURTHER ASSURANCES**

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Each party must do anything necessary or desirable (including executing any relevant agreements) to give full effect to these Conditions and the transactions contemplated by these Conditions.

## **28. INTERPRETATION**

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28.1 References to:

- (a) statutes, regulations, ordinances, by-laws and orders include all statutes, regulations, ordinances, by-laws and orders amending, consolidating or replacing them;
- (b) a person are to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture, government body and any other entity recognised by Law as a legal person.

28.2 Words importing any gender include all other genders and the singular includes the plural and vice versa.

28.3 Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

28.4 Headings are inserted for guidance and do not affect the interpretation of these Conditions.

28.5 Where You comprise two or more persons, an agreement or obligation to be performed or observed by You binds those persons jointly and severally.

28.6 Wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)'.

28.7 The failure of a party to take action to enforce its rights under any agreement incorporating these Conditions or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these Conditions.

28.8 These Conditions are governed by and are to be construed in accordance with the Law of the State of Queensland. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the Courts of Queensland and Courts entitled to hear appeals from those Courts.

28.9 If You commence or continue to engage in any dealings with Us, these Conditions will be deemed to apply to Our dealings, whether or not You have signed an acknowledgment of their application.

28.10 If it is held by a Court that any part of these Conditions is void, illegal, voidable or unenforceable (or would be unless severed) then that part is severable from the Conditions and will not affect the continued operation of the rest of the Conditions.

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