

TERMS & CONDITIONS

By instructing the Company to supply the Services, the Customer agrees to accept and be bound by the Company's trading terms and conditions. All and any business undertaken by the Company shall be subject to the Company's trading terms and conditions of contract which are as follows:

Definitions

- "ACL" means the Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (Cth) and its associated Regulations as amended;
"Agreement" means the contract of cartage resulting from the acceptance by the Carrier, in writing or electronic means, of an application from the Customer or the Carrier otherwise provides the Customer with the Services.
"Carrier" shall mean Higgins Services Pty Ltd ACN 616 080 927 as trustee for Higgins Services Trust (ABN28 535 732 455), its employees, servants, agents, subsidiaries and/or associated entities (where the context so permits the terms 'Carrier' or 'Company' shall be interchangeable for the other).
"Company" shall mean Higgins Services Pty Ltd ACN 616 080 927 as trustee for Higgins Services Trust (ABN28 535 732 455) its employees, servants, agents, subsidiaries and/or associated entities.
"Customer" shall mean the applicant in the attached application for credit, the shipper (consignor), the receiver (consignee), the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are arranged and/or performed and if more than one party means those parties jointly and severally.
"Goods" shall mean the chattels, articles or things tendered for by the Customer for the Services and shall include the container(s), unit load device(s) or other packaging containing the same and any other pallet(s) delivered with the same to the Company or Subcontractor by the Customer or for or on its behalf.
"Services" shall mean the carriage, transport, movement, packing, handling, storage/warehousing and/or any other service arranged or performed by the Company, pursuant to, or ancillary to, this contract with the Customer.
"Dangerous goods" shall mean such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods, persons, plants or animals or to any thing including that in which the Goods are carried, handled or stored.
"Valuables" shall mean bullion, coins, precious stones, jewellery, antiques, or works of art.
"Perishable goods" shall mean Goods that shall be in fact or law liable to deteriorate in quality and/or value and shall include, but not be limited to, fruits, vegetables, dairy products, meat, etc.
"Subcontractor" shall mean and include any person, firm or company (other than the Company) that arranges or performs the Services (or a part thereof).
"PPSA" means the *Personal Property Securities Act 2009* (Cth) and its associated Regulations as amended.

"PPSR" means the Personal Property Securities Register.

Company's Capacity

- The Company and Customer agree that:
 - the Company acts as agent only in arranging the Services (or a part thereof) except in circumstances where:
 - it performs the Services (or a part thereof),
 - it expressly agrees/undertakes in writing to act as principal or
 - where a Court holds it to be principal.
 - without limiting the generality of 2(a), the Company acts as agent when an air, road or sea carrier issues an air waybill, consignment note or sea carriage document for the designated carriage in that document naming the Customer or its agent (excluding the Company) as shipper and/or consignee in said document.
 - without limiting the generality of 2(a), the Company's supply of a container or equipment as part of the Services is not evidence in itself that the Company acts as a principal.

Not a Common Carrier/Entire Agreement

- The Company is not a common carrier and accepts no liability as such. Services are arranged, undertaken and/or performed by the Company subject only to these conditions of contract which constitute the entire agreement between the Company and the Customer. No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the arranging, undertaking or performing of any of the Services for any customer whether before, during or after the Service has commenced and further reserves the right to open and/or inspect all Goods at its discretion and at the Customer's expense.

Indemnity

- The Customer undertakes that no claim or allegation shall be made against the Company's employees, servants, agents, Subcontractors (including the Subcontractors' employees and agents) or other person who may be vicariously liable for the acts or omissions of such parties which imposes or attempts to impose upon any such party any liability whatsoever in connection with the Goods whether or not arising out of negligence on the part of such party. If any such claim or allegation should nevertheless be made, the Customer will indemnify the Company against all consequences thereof. Without prejudice to the foregoing, every such party shall have the benefit of all provisions herein benefiting the Company as if such provisions were expressly for its benefit, and in entering into this contract, the Company, to the extent of these provisions, does so not only on its own behalf, but also as agent and trustee for such parties.
 - The Customer shall indemnify the Carrier against all consequences, loss, damage or injury arising

out of any fraud, error, act, omission, misstatement, breach of any applicable law or regulation or misrepresentation by the Customer or other owner of the Goods and against the consequences of insufficient or improper packaging, labelling or addressing of the Goods and including:

- (i) all claims and demands whatsoever by whoever made in excess of the liability of the Carrier under these Terms.
 - (ii) all losses or damage suffered by and claims made against the Carrier caused by or arising out of the carriage by the Carrier of dangerous Goods whether or not declared by the Customer as dangerous Goods.
 - (iii) all customs and/or excise duties, costs, fines or penalties which the Carrier becomes liable to pay for any reason whatsoever in respect of the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations.
- (c) The Carrier shall indemnify the Customer against all losses, claims, of demands whatsoever arising directly from the Carrier's fraud or wilful default.
- (d) The parties each acknowledge and agree to use reasonable endeavours to mitigate and limit its loss or damage.

Warranties by the Customer

5. The Customer warrants:

- (a) that it is the owner of the Goods or otherwise has the authority of the owner or person having an interest in the Goods or any part thereof to enter into the Agreement, or other contractual document or otherwise accept and consign the Goods upon and subject to these conditions.
- (b) that the person releasing or delivering the Goods to the Company is authorised to sign the Agreement, or other contractual document or otherwise accept and agree to these conditions on the Customer's behalf.

Exclusion and Limitation of Liability

6. (a) Subject to the terms and conditions in this contract and applicable convention or law, the Services are supplied by the Company at the Customers risk and the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether:
- (i) arising from an authorised or unauthorised act contemplated or un contemplated act under this contract;
 - (ii) caused by the negligence and/or recklessness and/or wilful misconduct of the Company's servants, employees, agents, Subcontractors or otherwise;
 - (iii) a breach or fundamental breach of contract;
 - (iv) resulting from, or attributable to, any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or Contractors as to the classification of, liability for, amount, or tax

applicable to any goods subject of any Service.

- (b) In all cases where liability cannot be limited or excluded by this agreement because of mandatory applicable statute, convention or law [as amended from time to time], the provisions of the applicable statute, convention or law shall be deemed incorporated herein and any rights, immunities and/or defences therein shall be available to the Company. For the purpose of determining the extent of the Company's liability for loss of or damage to the Goods under this agreement or any mandatory applicable legislation, the value of the Goods lost or damaged is agreed to be the invoice cost value.
- (c) In all cases where liability cannot be excluded or limited by this agreement for breach of any condition or warranty in respect of the Services pursuant to statute or otherwise, the liability of the Company is limited to any one or more of the following as determined by the Company at its absolute discretion:
 - (i) providing supply of the Services again; or
 - (ii) payment of the cost of having the Services supplied again.
- (d) Without limiting the generality of the foregoing, the Company shall in no circumstances be liable for loss or damage other than to the Goods, including indirect or consequential loss or damage arising from the Services performed in respect of the Goods including loss of market, loss of profit or loss of contracts howsoever caused. The rights, immunities, defences and limits provided for in these conditions shall apply in any action against the Company for loss or damage whether the action be found in contract, bailment, tort or otherwise notwithstanding any breach of the contract or condition hereof by the Company.
- (e) Further without limiting the generality of the foregoing, the Company shall not be liable for any loss or damage suffered by the Customer or any other person as a result of a failure or inability of the Company or Contractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Contractors or otherwise.
- (f) No declaration of value will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer and accepted in writing by the Company and extra charge paid if required by the Company.
- (g) It is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:
 - (i) Any claim for loss or damage must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are completed, whichever date occurs first;
 - (ii) Any claim for loss/non-delivery of Goods must be notified in writing to the Company within 60 days from the date the Goods should

have been delivered or the Services should have been completed, whichever date occurs first;

- (iii) Any right to any legal remedy against the Company shall be extinguished unless legal proceedings are brought against the Company in the state of Queensland and not otherwise within 6 months from the date of this contract or the date the Services were completed or Goods delivered, or the date the Services should have been completed or the Goods should have been delivered, whichever date occurs first.

Insurance

7. Given the rights of the company to exclude or limit liability pursuant to sub-paragraphs (a) to (h) of the above provision, the Customer should seek its own insurance cover for loss or damage it may incur. No insurance will be arranged or effected by the Company on the Customer's behalf. The Customer warrants that the Goods are insured by a reputable insurer to the extent necessary to cover any loss or liability the Customer has to the Company.

Loading and Unloading on and from Transportation Vehicle

8. (a) The Customer shall be responsible for the cost of, and arranging for, the loading and unloading of the Goods on and from the relevant transportation vehicle.
- (b) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company or Subcontractor, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- (c) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- (d) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection and complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, the Customer shall have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

Warehousing

9. The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company. In every case, whether warehousing is incidental or the primary Service provided by the Company, it will be provided at the Customer's risk and expense as a primary charge(s)

or a charge(s) incidental to or in connection with the carriage of the Goods or any Service hereunder.

Customer's Indemnity

10. (a) The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost, outlay, cost or other liability incurred by the Company:
- (i) howsoever caused or incurred, whether arising directly or indirectly from any Service arranged or performed by the Company and/or
- (ii) as a result of any breach of the terms, conditions or warranties in this contract by the Customer.
- (b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents, Subcontractors or any other party or authority.
- (c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.

Quotations

11. (a) Quotations for the Services are made on an immediate acceptance basis and are subject to withdrawal or revision without notice at the Company's discretion.
- (b) Charges referred and prices quoted or displayed on the Company's website are for information and are estimates only. These may change depending on any additional services or charges/fees incurred as will be advised by the Company to the Customer and will be payable by the Customer.
- (c) Goods will be reweighed/remeasured to determine the chargeable weight. If this weight is more than that amount originally charged to the Customer, the Customer will be recharged based on the correct weight for which the Customer will be liable.

Routes and Procedures

12. If the Company is instructed by the Customer and agrees to use a particular method or type of Service, the Company shall give due consideration to the method or type designated but shall at all times have the right to choose or vary such method or type of Service or route and procedure adopted in respect of the Service performed. The Customer hereby authorises the Company to substitute alternate carriers or Service providers without notice to the Customer.

Payment of Expenses/Duties & Release of Information

13. The Customer authorises the Company in effecting the Services, but with no obligation on the part of the Company, to:
- (a) pay any duties, taxes, imposts, outlays, costs or charges in respect of the Goods and/or Services
- (b) release or allow inspection of the Goods or any information and/or documents of the Customer, the Goods, the Services or relating thereto as required by authorities,

and the Customer shall indemnify the Company in respect of any disbursement, expense, cost, loss, fine or damage incurred by the Company in doing so and releases the Company from any liability in connection therewith.

Responsibility for Fees/Charges

14. (a) The Customer shall pay the Company for all fees rendered and any charges it incurs for any reason in respect of the Services performed. This includes the payment of fees/charges which the Company is advised or agrees will be paid by a third party which then fails to so pay. Such fees/charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises, otherwise delivered by the Customer to the Company or Subcontractor or on receipt of the Company's invoice whichever occurs first. Fees and charges shall be payable in accordance with the term stated in the Company's invoice or if not stated, will be payable on delivery. All fees and charges are non-refundable.
- (b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.
- (c) The Customers shall pay the Company interest as liquidated damages at the Westpac Trading Bank overdraft rate plus 5% on overdue fees or charges invoiced. Provision of Credit by the Company to the Customer may be suspended by the Company at its own discretion if fees and charges invoiced are overdue or otherwise.
- (d) Where there are special instructions by the Customer to the effect that charges shall be paid by a third party other than the Customer, and that third party does not pay the said charges within seven (7) days of the date set for payment or, if no date is set for payment, within seven (7) days of provision of the Services, then the Customer shall be obliged to pay the said charges within the provisions contained in these Terms

Valuables, Dangerous goods, Perishable goods, Livestock, etc.

15. (a) (i) Except as agreed in writing, the Company will not accept Valuables, Dangerous goods, Perishable goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company or Subcontractors to handle or deal with any such goods otherwise than as agreed in writing, the Customer (not the Company) shall be liable for any loss, damage or cost thereto or consequent thereon whether direct, indirect or consequential and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- (ii) Any such goods may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. In the event

that the goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.

- (b) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other carriage devices) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.
- (c) The Customer's compliance with (b) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

Delivery/Completion

16. (a) The Company is authorised to deliver the Goods to the consignee or its agent at the address nominated to the Company by either the Customer, the consignor, the consignee or their agents and it is expressly agreed that the Company shall be deemed to have delivered the Goods in accordance with this contract if it or relevant Subcontractor obtains a receipt, signed delivery docket for the Goods or signature on its consignment note from any person at that address.
- (b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company in its sole discretion may at its option either deposit the Goods at the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.
- (a) Dates and times specified or requested for completion of carriage or any other Service are estimates only and the Company shall not be liable for failure to complete carriage or any other Service on such date(s) or time(s).

Sale and Disposal of Goods

17. (a) The Company and its Subcontractors shall be entitled at the cost and expense of the Customer, subject to any compliance with any applicable law, to sell or dispose of:
- (i) Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee or for any other reason, and
- (ii) any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

- (b) If the Goods are sold pursuant to Clause (a) above, the Company can use the proceeds of sale to discharge any fees and charges owed by the Customer, including the costs of sale. Any balance of any proceeds remaining following such discharge will be remitted to the Customer.
- (c) From the time the Carrier, or its servants or agents, receive the Goods into its custody, the Goods and all of the Customers present and future rights in relation to the Goods and any documents relating to those Goods, are subject to a continuing security interest in favour of the Carrier for the payment of all the amounts owed for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any at all debts, charges, expenses or any other sums due and owing by the Customer to the Carrier. Further, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction and legal and administration costs.
- (d) In addition to the power of the *Disposal of Uncollected Goods Act 1967* the Company has the power of a statutory lien over the Customers Goods for all moneys payable by the Customer to the Company pursuant to section 3 of the *Storage Liens Act 1973* (Qld) (Act).
- (e) The storer's lien on goods is declared to be a statutory interest to which section 73(2) of the *Personal Property Securities Act 2009* (Cwth) applies and has priority over all security interests in relation to the Customers Goods.
- (f) Should some part of the moneys payable to the Company remain in arrears for a period of not less than 6 months (or such other period as may be allowed by the Act), The Company will, after providing written notice in accordance with the Act, sell the Customers Plant by public auction.

Regulation Compliance

18. (a) The Customer shall exercise all reasonable care and comply with all applicable laws, Government regulations/directions and industry standards including those relating to the packing, carriage, storage, customs clearance, delivery, inspection or other Services in respect of the Goods, and shall provide such information and documents as may be necessary to exercise such care and comply with such laws, regulations and standards. The Company shall not be liable to the Customer or any other party for loss or expense due to the Customer's failure to comply with this provision and the Customer will indemnify the Company for any expense, damage or liability incurred by the Company in so complying.
- (b) The Customer has complied with all applicable laws (including where necessary the Australian Code for the Transport of Dangerous Goods by Road and Rail, Air Navigation Orders Pt 33 and the International Maritime Dangerous Goods Code), or the Heavy Vehicle National Law including the Chain of Responsibility relating to the notification, description (on the consignment note or separately) consigning and packaging of the

Goods and the expenses and charges of the Carrier in complying with any such law or with any order or requirement thereunder or with the requirement of any harbour, dock, railway, shipping, customs warehouse or other authority or company shall be paid by the Customer. Additional charges shall be paid on such Goods if deemed necessary by the Carrier.

- (c) The Customer warrants that it has fully and adequately described the Goods on the consignment note.
- (d) The Carrier is entitled to open any document wrapping package or other container in which the Goods are placed or carried to inspect the Goods to determine either their nature or condition or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced.

Law and Jurisdiction

19. (a) Any dispute arising under this Contract shall be governed by the laws Queensland shall be determined exclusively by the courts of Queensland or by the court of the Company's choice.
- (b) A reference to any law includes a statutory modification, substitution or re-enactment of it.

Representations

20. By signing the letter of instruction or otherwise accepting these conditions, the Customer agrees that it did not rely on any representation, promise, warranty or condition of the Company or its Subcontractor not expressly made (in writing) part of this contract.

Severance & Waiver

21. It is hereby agreed that if any provision or part of any provision of this contract is unenforceable, such unenforceability shall not affect the application of any other part of such provision or any other provision hereof. Further, should the Company elect not to exercise any of its rights under this contract, under any other contract/agreement or under law, such election shall not constitute a waiver of any rights relating to any other or subsequent breach by the Customer.

Inconsistency & Priority

22. (a) To the extent of any inconsistency of enforceable terms or a part thereof herein, these terms will prevail over any other terms issued by the Company or Customer.
- (b) The use of the Customer's own form is no derogation to these terms and conditions.

Competition and Consumer Act 2010 (CCA)

23. (a) Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (Non-Excluded Guarantees).

- (b) The Company acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- (c) Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Company makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Company's liability in respect of these warranties is limited to the fullest extent permitted by law.
- (d) If the Customer is a consumer within the meaning of the CCA, the Company's liability is limited to the extent permitted by section 64A of Schedule 2.
- (e) If the Company is required to replace the Goods under this clause or the CCA, but is unable to do so, the Company may refund any money the Customer has paid for the Goods.
- (f) If the Customer is not a consumer within the meaning of the CCA, the Company's liability for any defect or damage in the Goods is limited to the value of any express warranty or warranty documentation provided to the Customer by the Company at the Company's sole discretion; limited to any warranty to which the Company is entitled, if the Company did not manufacture the Goods; otherwise negated absolutely.
- (g) Subject to this clause 11, returns will only be accepted provided that:
 - (i) the Customer has complied with the provisions of clause 11.1; and
 - (ii) the Company has agreed that the Goods are defective; and
 - (iii) the Goods are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (iv) the Goods are returned in as close a condition to that in which they were delivered as is possible.
- (h) Notwithstanding clause 23 but subject to the CCA, the Company shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
 - (i) the Customer failing to properly maintain or store any Goods;
 - (ii) the Customer using the Goods for any purpose other than that for which they were designed;
 - (iii) the Customer continuing the use of any Goods after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (iv) the Customer failing to follow any instructions or guidelines provided by the Company;
 - (v) fair wear and tear, any accident, or act of God.
- (i) Notwithstanding anything contained in this clause if the Company is required by a law to accept a return then the Company will only accept a return on the conditions imposed by that law.
- (j) Our Goods and Services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled:

- (i) to cancel your service contract with us; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (k) You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service.

Reasonable Care/Force Majeure

24. Where the Company is unable to carry out any obligation under the contract or any loss or damage is caused to the Goods or otherwise due to any circumstance, matter or thing beyond its reasonable control ("force majeure") or its exercise of reasonable care, the Company shall be excused and released from such obligations or liability to the extent of such prevention, restriction or interference so caused. If an event beyond the Carrier's reasonable control occurs, the Carrier may suspend or terminate the Agreement by 24 hours' written notice to the Customer.

Personal Property Securities Act

25. (a) In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- (b) Upon assenting to these terms and conditions in writing, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all Goods that are the subject of the performance of the Services or will be the subject of the Services in the future.
- (c) The Customer undertakes to:
- promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Carrier may reasonably require to;
 - register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (i) register any other document required to be registered by the PPSA; or
 - (ii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
 - (iii) indemnify, and upon demand reimburse, the Carrier for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
- (b) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;

- (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of the Carrier;
- (d) immediately advise the Carrier of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- (e) The Carrier and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- (f) The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- (g) The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- (h) Unless otherwise agreed to in writing by the Carrier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- (i) The Customer must unconditionally ratify any actions taken by the Carrier pursuant to this clause 20.
- (j) Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions the PPSA.

Security and Charge

26. (a) In consideration of the Carrier agreeing to perform the Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or personal assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these Terms including, but not limited to, the payment of any money.
- (b) The Customer irrevocably appoints the Carrier and each director of the Carrier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 26 including, but not limited to, signing any document on the Customer's behalf.

Default

27. (a) If the Customer defaults in payment by the due date of any amount payable to the Carrier, then all money owed by the Customer to the Carrier, will at the discretion of the Carrier, become immediately due and payable and the Carrier may:
- (i) reverse the amount of any discounts allowed;
 - (ii) charge the Customer interest on any amount due and unpaid at the rate of 10% per annum, payable from the due date until the date of payment in full;
 - (iii) charge the Customer for all costs and expenses (including without limitation all legal costs and expenses) incurred by the Carrier resulting from the default or in taking action to enforce compliance with the Agreement (including any mercantile agent fees);

- (iv) cease or suspend supply of any further Services to the Customer;
 - (v) by 48 hours' written notice to the Customer, terminate any uncompleted contract with the Customer.
- (b) All money which is or may become payable by the Customer to the Carrier on any account, may at the discretion of the Carrier, become immediately due and payable and the Carrier immediately cancel or suspend the Agreement and the credit terms comprised in the application:
- (i) where the Customer breaches any provision of these Terms;
 - (ii) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors (other than as specified in the amendments to the *Corporations Act 2001* (Cth) enacted by Part 2 of the *Treasury Law Amendment (2017 Enterprise Incentives No. 2) Act 2017* (Cth)); or
 - (iii) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
 - (iv) where a Customer has an account with another branch of the Carrier or a related party (as that term is defined in the *Corporations Act 2001*) of the Customer has an account with the Carrier and the Customer breaches the terms of the other branch Agreement or the related party breaches the terms of its Agreement with the Carrier.

Consigned Goods Policy

28. (a) The Customer must comply with the following Consigned Goods Policy in respect of all consigned Goods:
- (i) all consigned Goods must be packed in appropriate packaging to ensure they arrive at the destination in the same condition they were presented to the Carrier.
 - (ii) all consigned Goods must be clearly marked with, type of product, sender and receivers details, the Customer's pallet, batch or carton identification numbers.
 - (iii) all consigned Goods and pallets must be in sound condition and free from dirt, wood, nails, vermin and any contamination.
 - (iv) all consigned Goods must be stabilised and appropriately secured and fit for road transport.
 - (v) consigned Goods that are sensitive to temperature must be presented at the correct transit temperature for that product.
 - (vi) consigned Goods that are sensitive to temperature and are to be collected and pre-cooled on behalf of the sender, the Carrier must be notified with enough lead time prior to pick-up to enable the correct temperature to be obtained prior to dispatch.
 - (vii) all consigned Goods must be ready for transport prior to the pick-up cut-off times for the destination.

- (viii) all relevant paperwork including the Carrier's consignment note must be completed and ready to travel with the Goods.
- (ix) all pallets must be on an exchange basis unless pallets are transferred direct from the Customer's pallet account.
- (x) all charges relating to any consigned Goods must be charged to an approved Carrier customer account.
- (xi) all Carrier customer accounts must operate within the Carrier's stated credit terms.
- (b) The Carrier reserves the right to refuse to carry any consigned Goods presented outside these conditions.
- (c) The Carrier will not be held responsible for any claims for any consigned Goods presented in poor condition or outside the optimum transit temperature for that product where the Carrier is requested by the Customer to transport the Goods to meet time schedules.

General

29. (a) The Customer shall give written notice to the Carrier within seven (7) days of any change of ownership or control of the Customer. The Customer hereby agrees to indemnify and keep indemnified the Carrier against any loss, damage, cost or expense incurred by the Carrier as a result of the Customer's failure to notify the Carrier of any such change of ownership and/or control. The Carrier reserves the right to vary any Customer order, hold or discount entitlements upon any change of ownership or control of the Customer.
- (b) A notice must be in writing and handed personally or sent by email, facsimile or prepaid mail to the last known address of the addressee. Notices sent by pre-paid post are deemed to be received within 7 business days from the date of the notice. Notices sent by facsimile or email are deemed received on confirmation of successful transmission.
- (c) If any provision of these Terms is held to be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- (d) The expiry or termination of the Agreement does not affect the rights which have accrued before that expiry or termination or any rights and obligation of the parties which survive the expiry or termination.
- (e) The Carrier may licence, sub-contract or assign all or any part of its rights and obligations without the Customer's consent and in so doing the Carrier is fully discharged from its obligations to the Customer.
- (f) This Agreement is personal to the Customer and the Customer may not assign its interest in or obligations under the Agreement without the Carrier's written consent which consent shall not be unreasonably withheld.
- (g) The Customer warrants that it has the power to enter into this Agreement and has obtained all necessary authorisations to allow it to do so, it is

- not insolvent and that this Agreement creates binding and valid legal obligations on it.
- (h) All rights, immunities and limitations of liability in these Terms shall continue to have their full force and effect in all circumstances and notwithstanding any dispute, or breach or purported breach by any party.
 - (i) The Carrier's Privacy Policy forms part of these Terms and Conditions and is available at www.higginssservices.com.au