



BRILLY LOGISTICS PTY LTD

ACN 166 596 587

TERMS & CONDITIONS

1. DEFINITIONS

1.1. The following words have the following meanings:

"Carrier" shall mean Brilly Logistics Pty Ltd and its successors and assigns or any person acting on behalf of and with the authority of Brilly Logistics Pty Ltd.

"Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client that has requested the Carrier to provide the Services. If more than one Client has entered into these Terms and Conditions, the Clients shall be jointly and severally liable to pay the Price.

"Consignee" shall mean the person to whom the Goods are to be delivered by way of the Carrier's Services.

"Delivery Address" means the nominated address that the Client has requested the Goods be delivered to. Unless a Delivery Address has been specified, the Carrier cannot undertake the Services.

"Goods" shall mean any cargo to be loaded onto a vehicle (including but not limited to machinery, equipment and structures) together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Carrier's Services, or for storage by the Carrier.

"GST" means GST within the meaning of the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition acts of the Commonwealth.

"GST Act" means the A New Tax System (Goods and Services Tax) Act 1999 (Cth) and the related imposition Acts of the Commonwealth.

"Guarantor" means that person (or persons) who agrees herein to be liable for the debts of the Client on a principal debtor basis.

"PPSA" means the Personal Property Securities Act 2009.

"Price" shall mean the cost of the Services as agreed between the Carrier and the Client subject to clause 4.

"Quotation" shall mean the statement of the price for the Carrier to transport the Goods of the Client

"Services" shall mean all services supplied by the Carrier to the Client and are as described on the Quotations, invoices, consignment note, airway bills, manifests, sales order or any other form provided by the Carrier to the Client.

"Sub-Contractor" shall mean and include:

- (a) Railways, sea freight or airways operated by the Commonwealth or any state or any other country or by any corporation; or
- (b) any other person or entity with whom the Carrier may arrange for the carriage or storage of any Goods the subject of the contract; or
- (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub clauses (a) and (b) above.

"Terms and Conditions" means these terms and conditions.

1.2. The singular shall mean and include the plural and vice versa and any gender shall mean and include all other genders.

1.3. The provisions of the Schedules constitute part of these Terms and Conditions.

1.4. References to any statutory enactment shall mean and be construed as reference to that enactment as amended modified and re-enacted from time to time.

1.5. The index does not form part of these Terms and Conditions and shall not affect the interpretation of these Terms and Conditions.

1.6. Clause headings and highlighting of text shall not affect the interpretation of these Terms and Conditions.

2. THE COMMONWEALTH COMPETITION AND CONSUMER ACT 2010 AND FAIR TRADING ACTS

2.1 Nothing in these Terms and Conditions is intended to have the affect of excluding or contracting out any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts.

2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

2.3 Liability of the Carrier arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the *Competition and Consumer Act 2010* or howsoever arising, is limited to any of the following as determined by the Carrier:

- (a) the supplying of the Services again; or
- (b) the payment of the cost of having the Services supplied again; or
- (c) where the Client is a consumer as defined in the *Competition and Consumer Act 2010*, then the Client may also be entitled to a refund.

3. ACCEPTANCE

3.1 Any instructions received by the Carrier from the Client for the supply of Services shall constitute acceptance of these Terms and Conditions.

3.2 These Terms and Conditions are to be read in conjunction with the Carrier's quotation, consignment note, agreement, airway bills, manifests, or any other document as provided by the Carrier to the Client. If there are any inconsistencies between these documents then these Terms and Conditions shall prevail.

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

4. PRICE AND PAYMENT

4.1 At the Carrier's sole discretion the Price shall be either;

- (a) as indicated on invoices provided by the Carrier to the Client in respect of Services supplied; or
- (b) the Price as at the date of delivery of the Goods according to the Carrier's current price list; or
- (c) the Carrier's quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon the Carrier provided that the Client has given the Carrier written notice of its acceptance, within seven (7) days of the relevant Quotation

Such Price being calculated by reference to:

- (a) the type Goods to be carried;
 - (b) the distance the Carrier is required to travel to pickup the Goods;
 - (c) the distance the Carrier is required to travel to deliver the Goods to the Delivery Address;
 - (d) any additional fees, charges and expenses the Carrier may incur that are not in the ordinary course of business.
- 4.2 The Carrier may by giving written notice to the Client increase the Price to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier (including, without limitation increases in taxes, customs duties, insurance premiums, fuel, or warehousing costs).
- 4.3 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 4.4 At the Carrier's sole discretion a non-refundable deposit may be required.
- 4.5 At the Carrier's sole discretion, payment;
- (a) shall be due in full prior to the Services being carried out by the Carrier; or
 - (b) on delivery of the Goods; or
 - (c) for approved Client's, shall be due on fourteen (14) days following the end of the month in which a statement is posted to the Client's address or address for notices.
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated, then payment shall be due seven (7) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by bank cheque, or by direct credit, or by any other method as agreed in writing between the Client and the Carrier.
- 4.8 Unless otherwise stated the Price does not include GST, which will be added at the time the invoice is prepared. In addition to the Price the Client must pay to the Carrier an amount equal to any GST the Carrier must pay for any supply by the Carrier under this or any other agreement for the sale of the Goods. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 4.9 For the purposes of this clause:
- (a) expressions used in this clause have the same meaning as those expressions in the GST Act.
 - (b) to the extent that a party makes a taxable supply under or in connection with these Terms and Conditions except where express provision is made to the contrary, the consideration payable by a party under or in connection with these Terms and Conditions represents the value of the taxable supply for which payment is to be made and on which GST is to be calculated.
 - (c) If a party makes a taxable supply under or in connection with these Terms and Conditions for a consideration which, under clause 7.1, represents its value, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.
 - (d) Upon receipt of the consideration and GST payable, a valid tax invoice will be delivered to the party which paid that sum within 7 days of payment.

5. QUOTATION AND PRICING

- 5.1 The Carrier is under no obligation to perform Services for a Client.
- 5.2 A Quotation is valid for a period of 30 days from the date of quotation, unless the Carrier otherwise specifies in writing. The Carrier may withdraw any Quotation prior to a Client accepting it.
- 5.3 The Carrier reserves the right to withdraw, change or re-issue a Quotation if the supply of the quoted Services does not start within 30 days after the date of the Quotation.
- 5.4 The Carrier reserves the right to change its quoted price if the Services:
- (a) are stopped or suspended for more than 30 days;
 - (b) are changed in any way before, during or after commencement of the Services; or
 - (c) have not been completed within two months of the date of the Quotation.
- 5.5 The price quoted is subject to the Client ordering all of the Services described in the Quotation. If the Client orders less than all of the Services specified in a Quotation, then the Carrier reserves the right to revise the price.
- 5.6 The following conditions apply to all Quotations and Prices:
- (a) Prices exclude Fuel Levy (to be advised monthly).
 - (b) Prices include a 1 hour load per truck.
 - (c) Demurrage is charged (this varies depending on the trailer configurations and road conditions).
 - (d) No allowance has been made for crane, forklift or any other mechanical loading/unloading.
 - (e) Loading and unloading is the responsibility of the Client.
 - (f) Quotations do not include any allowance for the transport of Dangerous Goods.
 - (g) Quotations are only valid for the dimensions and weight provided at the time of quoting.
 - (h) Freight must match these dimensions or additional charges may be levied.
 - (i) Please refer to this quotation number on all correspondence and consignment notes or additional charges may apply.
 - (j) All quotations are subject to these Terms and Conditions.

6. CONDITIONS OF STORAGE

- 6.1 The Carrier will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Carrier, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case the Carrier will be entitled to make a reasonable additional charge.
- 6.2 The Carrier is authorised to remove the goods from one warehouse to another without cost to the Client. The Carrier will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in event of emergency, when such notice will be given as soon as practicable).
- 6.3 The Client is entitled upon giving the Carrier reasonable notice to inspect the Goods in store but a reasonable charge may be made by the Carrier for this service.
- 6.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving the Carrier not less than five (5) working days notice. If the Client gives the Carrier less than the required notice the Carrier will still use their best endeavours to meet the Clients requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 6.5 The Client agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from the Carrier to do so. In default, the Carrier may after fourteen (14) days SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by

private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to the Carrier.

7. CARRIER NOT COMMON CARRIER

7.1 The Carrier is not a Common Carrier and will accept no liability as such. All Goods are carried or transported and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

8. CLIENT-PACKED CONTAINERS

8.1 If a container has not been stowed by or on behalf of the Carrier, the Carrier shall not be liable for loss of or damage to the Goods caused by:

- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.

9. NOMINATION OF SUB-CONTRACTOR

9.1 The Client hereby authorises the Carrier (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Carrier shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

10. FORCE MAJEURE

10.1 Except for the purposes of clause 19.1(c), neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

11. METHOD OF TRANSPORT

11.1 If the Client instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method designated but if that method cannot conveniently or safely be adopted by the Carrier the Client shall be deemed to authorise the Carrier to carry or have the Goods carried by another method or methods.

12. ROUTE DEVIATION

12.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage that may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.

13. CHARGES EARNED

13.1 The Carrier's charges shall be considered earned in the case of Goods for carriage, as soon as the Goods arrive at the Client's nominated Delivery Address.

14. DEMURRAGE

14.1 The Client will be and shall remain responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in excess of 60 minutes in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period shall commence upon the Carrier reporting for loading or unloading. No allowance has been made for crane, forklift or any other mechanical loading/unloading. Loading/Unloading including labour, is the responsibility of the consignor

15. DANGEROUS GOODS

15.1 Unless otherwise agreed in advance in writing with the Carrier the Client or their authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods.

15.2 In the event the Carrier does accept Dangerous Goods for carriage or storage, then such Goods must be accompanied by a full declaration of their nature and contents and be properly and safely packed in compliance with statutory regulations applicable to the carriage of those Goods, by the Client prior to collection.

15.3 The Client shall be liable for and hereby indemnifies the Carrier for all loss (including consequential loss), damage, injury or liability howsoever caused arising out of the carriage or storage of any such Dangerous Goods, whether declared as such or not and whether or not the Client was aware of the nature of the Goods.

15.4 In the event that any Dangerous Goods are delivered to the Carrier without written consent or whether they are not distinctly marked to indicate the nature and character of the Goods or if in the opinion of the Carrier the articles are or are liable to become of a dangerous and flammable or damaging nature, the same may at any time be destroyed, disposed or, abandoned or rendered harmless without compensation to the Client and without prejudice to the Carrier's right to freight.

16. CONSIGNMENT NOTE

16.1 It is agreed that the person delivering Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note for the Client.

17. CLIENT'S RESPONSIBILITY

17.1 The Client expressly warrants to the Carrier that:

- (a) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of these Terms and Conditions and by entering into these Terms and Conditions the Client accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Client is acting; and
- (b) the Goods are fit for carriage and/or storage.

18. CLIENT'S ACKNOWLEDGEMENT

18.1 The Client acknowledges and agrees that:

- (a) no agent or employee of the Carrier is permitted to alter or vary any term or condition; and
- (b) no representations have been made by any employee or agent of the Carrier to the Client; and
- (c) the Carrier enters into these Terms and Conditions for and on behalf of itself and its servants, agents and sub-contractors, all of whom shall be entitled to the benefit of the Agreement and shall be under no liability whatsoever to the Client, or anyone claiming through the Client in respect of the Goods, in addition to or separately from that of the Carrier under these Terms and Conditions.

19. DELIVERY

19.1 The Carrier:

- (a) is authorised to deliver the Goods to the Delivery Address.
- (b) where possible, will have a Client site representative sign a delivery docket to confirm receipt of the Goods at the delivery address. The Client unconditionally agrees with the Carrier that the Carrier will be taken to have delivered the Goods in accordance with these Terms and Conditions if following every

effort by the Carrier to contact the Client, the Goods are unloaded at the Delivery Address and no delivery docket has been signed.

- (c) must advise the Client if it is unable to deliver the Goods as a result of industrial action at the Delivery Address. The Client must advise the Carrier of an alternative Delivery Address as soon as possible however during the time between the Action Notice and when the Carrier delivers the Goods to the alternative Delivery Address, the Client will be charged an additional fee calculated by the Carrier on an hourly rate.

19.2 The Carrier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions of these Terms and Conditions.

19.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of these Terms and Conditions.

19.4 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. If the Client is unable to take delivery of the Goods as arranged then the Carrier shall be entitled to charge a reasonable fee for redelivery.

19.5 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

19.6 The failure of the Carrier to deliver shall not entitle either party to treat these Terms and Conditions as repudiated.

20. LOSS OR DAMAGE

20.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) the Carrier shall not be liable under tort or contract for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of the Carrier or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Carrier may at the expense of the Client dispose of or destroy any Goods which the Carrier believes have deteriorated or become objectionable or a source of danger or contamination; and
- (c) the Client will indemnify the Carrier against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the Goods.

20.2 Where the Client expressly requests the Carrier to leave Goods outside the Carrier's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Client's sole risk and it shall be the Client's responsibility to ensure the Goods are insured adequately or at all.

21. INSURANCE

21.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Carrier; and
- (b) the Carrier is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are adequately insured; and
- (c) under no circumstances will the Carrier be under any liability with respect to the arranging of any such insurance and no claim will be

made against the Carrier for failure to arrange or ensure that the Goods are insured adequately or at all.

22. DEFAULT & CONSEQUENCES OF DEFAULT

22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Carrier's sole discretion such interest shall compound monthly at such a rate).

22.2 If the Client owes the Carrier any money the Client shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Carrier's collection agency costs, and bank dishonour fees).

22.3 Without prejudice to any other remedies the Carrier may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Carrier may suspend or terminate the supply of Services to the Client and any of its other obligations under these Terms and Conditions. The Carrier will not be liable to the Client for any loss or damage the Client suffers because the Carrier exercised its rights under this clause.

22.4 Without prejudice to the Carrier's other remedies at law the Carrier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Carrier shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. UNPAID CARRIER'S RIGHTS TO DISPOSE OF GOODS

23.1 The Carrier shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Carrier for all sums payable by the Client to the Carrier, and the Carrier shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. The Carrier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

24. PERSONAL PROPERTY SECURITIES ACT 2009 ("PPSA")

24.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
- (b) financing change statement has the meaning given to it by the PPSA;
- (c) security agreement means the security agreement under the PPSA created between the Client and the Carrier by these Terms and Conditions; and
- (d) security interest has the meaning given to it by the PPSA.

24.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these Terms and Conditions:

- (a) constitute a security agreement for the purposes of the PPSA; and
- (b) create a security interest in all Goods being transported by the Carrier; and
- (c) that the Carrier is the holder of a purchase money security interest ('PMSI') by virtue of these Terms and Conditions and/or the PPSA

24.3 The Client undertakes to:

- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which the Carrier may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 24.3(a)(i) or 24.3(a)(ii);
- (b) 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;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;
- (d) 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.

24.4 The Carrier and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

24.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

24.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

24.7 Unless otherwise agreed to in writing by the Carrier, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

24.8 The Client shall unconditionally ratify any actions taken by the Carrier under clauses 24.3 to 24.5.

25. SECURITY AND CHARGE

25.1 Despite anything to the contrary contained herein or any other rights which the Carrier may have howsoever:

- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Carrier or the Carrier's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Carrier (or the Carrier's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met.
- (b) should the Carrier elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis.
- (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Carrier or the Carrier's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 25.1.

26. PRIVACY ACT 1988

26.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for the Carrier to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by the Carrier.

26.2 The Client agrees that the Carrier may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:

- (a) to assess an application by the Client; and/or
- (b) to notify other credit providers of a default by the Client; and/or
- (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
- (d) to assess the creditworthiness of the Client.

The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.

26.3 The Client consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).

26.4 The Client agrees that personal credit information provided may be used and retained by the Carrier for the following purposes (and for other purposes as shall be agreed between the Client and Carrier or required by law from time to time):

- (a) the provision of Services; and/or
- (b) the marketing of Services by the Carrier, its agents or distributors; and/or
- (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
- (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
- (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.

26.5 The Carrier may give information about the Client to a credit reporting agency for the following purposes:

- (a) to obtain a consumer credit report about the Client;
- (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

26.6 The information given to the credit reporting agency may include:

- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
- (b) details concerning the Client's application for credit or commercial credit and the amount requested;
- (c) advice that the Carrier is a current credit provider to the Client;
- (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
- (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
- (f) information that, in the opinion of the Carrier, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
- (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
- (h) that credit provided to the Client by the Carrier has been paid or otherwise discharged.

27. CANCELLATION

- 27.1 The Carrier may cancel any contract to which these terms and conditions apply or cancel the Services at any time before the Services are completed by giving written notice to the Client. On giving such notice the Carrier shall repay to the Client any sums paid in respect of the Price. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.
- 27.2 In the event that the Client cancels the Services, then the Client shall be liable for any loss incurred by the Carrier (including, but not limited to, any loss of profits) up to the time of cancellation.

28. GENERAL

- 28.1 Each provision of these Terms and Conditions shall be deemed to be separate and severable from the others of them. If any provisions of these Terms and Conditions are determined to be invalid or unenforceable in any jurisdiction, such determination and the consequential severance (if any) shall not invalidate the rest of the Agreement which shall remain in full force and effect as if such provision had not been made a part thereof, nor shall it affect the validity or enforceability of such provision in any other jurisdiction.
- 28.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 28.3 These Terms and Conditions and any contract to which they apply shall be governed by the laws of Western Australia and are subject to the jurisdiction of the courts of Western Australia.
- 28.4 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by the Carrier.
- 28.5 The Carrier shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Carrier of these Terms and Conditions.
- 28.6 The Carrier may license or sub-contract all or any part of its rights and obligations without the Client's consent.
- 28.7 The Carrier reserves the right to review these Terms and Conditions at any time. If, following any such review, there is to be any change to these Terms and Conditions, then that change will take effect from the date on which the Carrier notifies the Client in writing of such change. Except where the Carrier supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 28.8 The Terms and Conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 28.9 No waiver of any provision of these Terms and Conditions nor consent to any departure from the terms of these Terms and Conditions, by any of the Parties shall be effective unless the same shall be in writing and then such waiver or consent shall be effective only in the specific instance and for the purpose for which it is given. No default or delay on the part of any of the Parties in exercising any rights, powers or privileges hereunder shall operate as a waiver thereof or of any other right hereunder; nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.
- 28.10 These Terms and Conditions may be amended or varied only by agreement in writing signed by the parties. Unless the context otherwise so requires, a reference to these Terms and Conditions shall include a reference to these Terms and Conditions as amended or varied from time to time.