



Service Agreement - General Terms and Conditions effective 1st July 2014

The parties agree as follows:

1. Interpretation

- a. "Agent(s)" any sub-contractors or third parties engaged by the Supplier to carry out or discharge the Services, including without limitation such carries (whether common or otherwise), forwarding agents or shipping agents as the Supplier may deem necessary
- b. "Chain of Responsibility Laws" means any State, Territory or Commonwealth legislation or regulations based on or adapted from the provisions of the National Transport Commission (Road Transport Legislation - Compliance and Enforcement Bill) Regulations 2006 or National Transport Commission (Road Transport Legislation – Compliance and Enforcement Regulations) Regulations 2006 as approved by each State and Territory Government; and any State, Territory or Commonwealth legislation or regulations in respect of driver fatigue management
- c. "Credit Facility" means any credit account provided by the Supplier at its discretion to the Customer.
- d. "Customer" means any person, organisation, business who orders goods and/or Services from the Supplier or otherwise has an account with the Supplier and if more than one account whoever the Supplier designates is responsible for the ordering of goods.
- e. "Customer's Goods" means goods belonging to the Customer or goods over which the Customer exercises control and in relation to which the Supplier is requested to supply the Services.
- f. "Dangerous Goods" includes goods which are or may become dangerous, inflammable, radio-active or are damaging in nature and goods likely to harbour or encourage vermin or other pests.
- g. "GST" means the tax imposed or sought to be imposed by the GST Acts.
- h. "GST Acts" means A New Tax System Goods and Services Act 1999 and the related imposition and acts of the Commonwealth. Any term used in this clause which is defined meaning in the GST Acts shall have the same meaning in this clause as ascribed to that term in the GST Act.
- i. "Invoice" is defined by clause 3(a) herein.
- j. "Order" means any request or order by or from the Customer for the supply of the Supplier's Goods or the Services by the Supplier.
- k. "Owner" means any 3rd party who may claim some right or title to the Customer's Goods
- l. "Payment Date" is defined by clause 3(b) herein.
- m. "PPSA" means the Personal Properties Securities Act 2009.
- n. "PMSI" means a purchase money security interest as defined by the PPSA.
- o. "Services" is defined by clause 4(a) herein.
- p. "Supplier's Goods" means goods ordered by the Customer from the Supplier
- q. "Invoice" means the Supplier's invoices sent from time to time to the Customer.

r. "Supplier" means TRANSMS PTY LTD and includes any employees, agent, servants or subcontractors of the Supplier.

s. "Supplier's Warehouse" means any warehousing facility operated by the Supplier or any third party with whom the Supplier sub contracts.

t. "Terms" means these terms and conditions of sale set out herein.

u. "Unpaid Goods" is defined by clause 5(f) herein

2. General

a. This Agreement commences on the date of this Agreement and shall continue until termination in accordance with this Agreement.

b. These Terms are the only terms by which the Supplier's Goods will be sold or the Service provided by or through the Supplier to the Customer.

c. By placing an Order for the Services or for the Supplier's Goods with the Supplier the Customer agrees to accept and be bound by these Terms. Any terms other than those implied by law will not be binding upon the Supplier.

d. The Supplier reserves the right to amend these Terms from time to time without prior notice to the Customer.

e. The non exercise or delay in exercising any power or right by the Supplier does not operate as a waiver of that power or right nor does any single exercise of a power or right preclude any other or further exercise of it or the exercising of any other power or right. A power or right may only be waived in writing signed by the parties to be bound by the waiver.

f. If there is any inconsistency (whether expressly referred to or implied from these sales conditions or otherwise) between the provisions of these Terms and those of any document of the Customer these Terms prevail to the extent of the inconsistency.

g. The Supplier reserves the right at its absolute discretion to add to or remove from its range of products (including the Supplier's Goods supplied to the Customer) at any time without notice to the Customer -
Termination

h. The Customer or the Supplier may terminate this Agreement by giving the other at least 30 days' notice in writing.

i. Each party may terminate this Agreement with immediate effect by giving written notice to the other if:

i. the other party breaches any other provisions of this Agreement and fails to remedy the breach within 14 days after receiving written notice requiring it to do so; or

j. Notwithstanding clause 2(i), The Supplier may immediately terminate this Agreement by notice in writing to the Customer if the Customer fails to pay any money owed to the Supplier by its due date.

k. Termination of this Agreement does not affect any accrued rights or remedies a party may have and the party's obligations under clauses 3, 4, 5, 6 and 14 continue after expiration or termination of this Agreement.

l. The Supplier is an independent contractor of the Customer and nothing in this Agreement constitutes a relationship of joint venture, employment or partnership between the Customer and the Supplier or any third party engaged by The Supplier.

m. The Customer may not assign or otherwise transfer any right or obligation arising out of this Agreement.

n. This Agreement is governed by the laws applicable in the State of Victoria and the parties submit to the jurisdiction of the courts of that state.

o. This Agreement constitutes the entire agreement between the parties and supersedes all prior representations and agreements.

p. The whole or any part of any clause of this Agreement that is illegal or unenforceable will be severed and will not affect the continued operation of the remaining provisions of this Agreement.

3. Payment

a. The Supplier will, from time to time issue invoices(s) in respect to the Supplier's Goods and the Services provided to Customer ("Invoice")

b. The Customer must pay the Supplier for Suppliers Goods or for the Services within 7 days from the date shown on the Invoice ("Payment Date"). The Invoice is conclusive evidence of the Goods sold and delivered to Customer for which the Customer is liable.

c. The Customer waives all its rights to challenge the Suppliers invoices if The Customer does not contest the Suppliers invoice in writing within 14 days from the date of the invoice.

d. If an Invoice is not paid by the Payment Date, the Supplier reserves the right to charge interest on unpaid invoices at a rate 2% higher than the rate fixed under section 2 of the Penalty Interest Rate Act 1983.

e. When the Supplier is instructed to collect freight and/or generally provide the services, duties, charges or other expenses from any third party including Fuel Surcharges which may vary from time to time, the Customer:

i. shall remain responsible for these amounts; and

ii. shall pay these amounts to the Supplier on demand where these amounts have become due and have not been paid to the third party

iii. shall indemnify the Supplier for any such expenses paid by the Supplier on the Customers behalf.

j. The Customer will be liable to the Supplier for any and all costs incurred by the Supplier in recovering any monies outstanding to it from the Customer on an indemnity basis.

g. The Supplier shall be entitled to payment and the Customer shall be obliged to pay and discharge accounts rendered by the Supplier notwithstanding any failure to collect or deliver the goods of the Customer for any reason whatsoever including without limitation:

i. The consignee of such goods refusing to pay any cost or expense to be paid by it or the consignee refusing to take delivery of goods;

ii. Delivery of the goods otherwise being frustrated by, inter alia, the death or insolvency of the consignee, a failure to locate the consignee or otherwise;

iii. The goods perishing in transit.

4. Appointment of the Supplier and the Suppliers right

a. The Supplier undertakes the business of Warehousing, freight collection and forwarding brokerage services, and the sale and supply of Packaging ("the Services").

b. The Customer appoints the Supplier and the Supplier accepts such appointment, as its exclusive facilitator of the Services, subject to the terms and conditions of this Agreement.

c. The Customer hereby appoints the Supplier as its agent solely for the purpose of clearing and entering the Customer's Goods through customs. If the Supplier subcontracts this work the Customer hereby certifies that the Supplier is the consignee for the purpose of designating a customs broker to perform customs clearances and entries.

d. The Supplier may sub-contract or engage any third party to carry out or discharge the Services, including without limitation such carries (whether common or otherwise), forwarding agents or shipping agents as it may

deem necessary or expedient for the purpose of the freighting of the Customer's Goods. The Supplier is further authorised to accept on behalf of the Customer any terms and conditions of any Bill of Lading or other form or term of contract used by any carrier procured by the Supplier to carry the Customer's Goods and any such terms and conditions will be accepted by the Customer signing this agreement and binding on the Customer.

e. If at any time the Supplier reasonably considers that the carriage of the Customer's Goods should not be undertaken or continued (including where carriage of the Customer's Goods is likely to be affected by hindrance, risk, delay, difficulty or disadvantage of any kind, including the condition of the Customer's Goods) whenever or howsoever arising), or only continued after effecting any necessary incidental matters or incurring additional expense or risk, the Supplier shall be entitled to:

i. without notice to the Customer, abandon the carriage of such cargo (which may consist of placing the Customer's Goods, or any part of them, at the Customer's disposal at any place where the Supplier may deem safe and convenient) or to effect such additional incidental matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected, whereupon the responsibility of the Supplier in respect of the Customer's Goods shall cease; and

ii. be reimbursed by the Customer for the cost of all such additional incidental matters and all such additional expense incurred; and

iii. the Customer acknowledges that action taken by the Supplier under this clause shall be deemed to constitute due delivery under the Bill of Lading, and the Supplier shall be entitled to the Price (without set-off).

f. If the Supplier (or any person whose Services the Supplier makes use of) considers:

i. the performance of the Supplier's obligations are likely to be effected by any hindrance, risk, delay, difficulty or disadvantage whatsoever; and

ii. the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of the Supplier or such other person, the Supplier may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which the Supplier deems safe and convenient.

g. Where the Supplier exercises its rights and obligations under clause 4(e), responsibility and liability of the Supplier in respect of the Customer's Goods shall thereupon cease absolutely.

h. Where the Supplier (or any person whose Services the Supplier makes use of) is entitled to call upon the Customer or Owner to take delivery of the Customer's Goods at a designated time and place and delivery of the Customer's Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place the Supplier (or such other person) shall be entitled to store the Customer's Goods in the open or under cover at the sole risk and expense of the Customer.

i. Notwithstanding clauses 4 (e) to (h), the Company shall be entitled (but under no obligation) without any responsibility or liability to the Customer and Owner, to sell or dispose of:

i. all Customer's Goods which the Supplier considers cannot be delivered as instructed, but only upon giving twenty-one (21) days' notice in writing to the Customer, and

ii. without notice, Customer's Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.

j. Where the Supplier sells or disposes of Customer's Goods pursuant to clause 4(i) the Customer shall be responsible for any costs and expenses of the sale or disposal.

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

l. If at any time the Customer's Goods are required to be warehoused or otherwise held at a place pending their removal, freighting or delivery, such goods shall be held at the Customer's sole risk and expense.

5. PPSA, Retention of Title and Lien

a. The Customer hereby acknowledges that these Terms constitute a security agreement which creates a security interest in favour of the Supplier in all of the Supplier's Goods previously supplied by the Supplier to the Customer (if any), all of the Customer's Goods which may from time to time be in the possession of the Supplier and all after acquired goods supplied by the Supplier to the Customer (or for the Customer's account) to secure the payment from time to time and at a time, including future advances. The Customer agrees to grant a PMSI to the Supplier.

b. The Customer acknowledges and agrees that by assenting to these terms the Customer grants a security interest (by virtue of the retention of title clause in these Terms and Conditions of Trade) to the Supplier and all the Supplier's Goods previously supplied by the Supplier to the Customer (or for the Customer's account) or the Customer's Goods in the Supplier's control and these terms shall apply notwithstanding anything express or implied to the contrary contained in the Customer's purchase order.

c. The Customer undertakes to:

i. sign any further documents and/or provide any further information (which information the Customer warrants to be complete, accurate and up-to-date in all respects) which the Supplier may reasonably require to enable registration of a financing statement or financing change statement on the Personal Property Securities Register ("PPSR");

ii. not register a financing change statement as defined in section 10 of the PPSA or make a demand to alter the financing statement pursuant to section 178 of the PPSA in respect of the Goods without the prior written consent of the Supplier;

iii. give the Supplier not less than 14 days written notice of any proposed change in the Customer's name and/or any other changes in the Customer's details (including by not limited to changes in the Customer's address, facsimile number, email address, trading name or business practice);

iv. pay all costs incurred by the Supplier in registering and maintaining a financing statement (including registering a financing change statement) on the PPSR and/or enforcing or attempting to enforce the security interest created by these Terms and Conditions of Trade including executing subordination agreements;

v. be responsible for the full costs incurred by the Supplier (including actual legal fees and disbursements on a solicitor and client basis) in obtaining an order pursuant to section 182 of the PPSA; and

vi. the Customer waives any rights it may have under sections 115 of the PPSA upon enforcement.

d. Pursuant to section 157 of the PPSA, unless otherwise agreed to in writing by the Supplier, the Customer waives the right to receive the verification statement in respect of any financing statement or financing change statement relating to the security interest.

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

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

h. The Customer agrees that immediately on request by the Supplier the Customer will procure from any persons considered by the Supplier to be relevant to its security position such agreement and waivers as the Supplier may at any time require

i. Title to the Supplier's Goods does not transfer to the Customer until the Supplier receives full payment for such Goods. Until then the Customer must in respect to the Goods for which payment has not been received ("Unpaid Goods"):

i. store Unpaid Goods separately;

ii. keep separate records of the sale and of the proceeds of the sale of the Unpaid Goods and make the proceeds of sale then to a separate account and immediately pay the proceeds to the Supplier; and

iii. if the Unpaid Goods are used in a manufacturing process or mixed with other materials the customer must record the value of the Unpaid Goods so consumed in relation to each unit of finished product (Unit) and upon sale of any Unit immediately pay that amount from the proceeds of sale to the Supplier;

j. If the Supplier does not receive payment for the Supplier's Goods by the Payment Date the Customer irrevocably authorises the Supplier to enter the Customer's premises (or any premises under the control of the Customer or as agent of the Customer) if the Unpaid Goods are stored at such premises and use reasonable force to take possession of the Unpaid Goods without liability for trespassing, negligence or compensation to the Customer or anyone claiming through the Customer whatsoever.

k. The Supplier shall upon giving reasonable notice (either orally or in writing) to the Customer be entitled to inspect at any reasonable time and place the records and accounts required to be kept by the Customer by Clause 5(i)iii herein and the Customer shall make all such records and accounts available for inspection.

l. Risk for the Supplier's Goods passes to the Customer at the time the Goods are delivered to the Customer at the nominated delivery point.

m. The Customer otherwise gives the Supplier a Security Interest in all of the Customer's present and after-acquired property to which the Supplier's Goods or materials supplied or financed by the Supplier have been attached or incorporated.

n. The Customer grants to the Supplier a general lien for all costs charges and expenses which become due to the Supplier by the Customer on any account in respect to the Supplier's Goods and the Customer's Goods and the Supplier may at any time detain, withhold or store the Customer's Goods until such amounts as are outstanding to the Supplier from the Customer in accordance with clause 3 herein are paid in full.

o. The Customer charges in favour of the Supplier with the payment of any and all amounts at any time and from time to time due to the Supplier by the Customer any Supplier's Goods or Customer's Goods at any time in the possession of the Supplier or any carrier (whether common or otherwise) engaged by The Supplier to carry or cart the Customer's goods.

p. Where any sum due to the Supplier from the Customer or Owner remains unpaid, the Supplier, on giving twenty-eight (28) days' notice in writing to the Customer, shall be entitled (without liability to the Customer or Owner) to sell or dispose of the Customer's Goods by public auction or by private treaty at the risk and expense of the Customer and to apply the proceeds of any such sale or disposal in or towards the payment of the sums due and the Customer indemnifies the Supplier for any loss or damage which the Customer or Owner may suffer as a result of the Supplier taking the action contemplated by this clause.

6. Customer's Acknowledgments and Obligation

a. The Customer acknowledges that the Supplier and/or the Agents are not a common carrier and has none of the obligations or liabilities of a common carrier. The Supplier reserves the right to accept or refuse the carriage of any of the Customer's Goods at its discretion.

b. The Customer agrees that it will not otherwise contact or approach the Agents or any of the third parties described in clause 4(d) or enter into agreements with them. Such action will constitute a breach of this agreement and the Customer will be liable to the Supplier for all loss and damage suffered by the Supplier as a result of the breach of this term.

c. The Customer certifies that all statements and information it provides relating to the exportation, importation and delivery of the Customer's Good will be true and correct. And the Customer acknowledges that in the event that it makes untrue or fraudulent statements about the Customer's Goods or any of its contents the Customer risks a civil claim and/or criminal prosecution the penalties for which include forfeiture and sale of the Customer's Goods.

d. The Customer certifies that the contents of the Customer Goods have been prepared and packed safely and carefully by the Customer to protect against the ordinary risks of transport including any associated sortation and/or handling process, or the performance by us of other services.

e. The Customer assumes responsibility for and guarantees compliance with all applicable export controls laws.

f. The Customer acknowledges that, as a person or company commissioning the carrying of goods, it is subject to the Chain of Responsibility Laws and could be held responsible for breaches of road laws and may be made legally liable. The Customer hereby agrees and undertakes to comply with all Chain of Responsibility Laws and acknowledges its duties, inter alia, to not coerce, induce or encourage a breach of road transport laws and to

take reasonable steps to make sure that the Customer does not pass on to other parties, including the Supplier, any false or misleading information about the Customer's Goods. A breach of these and any duties owed pursuant to the Chain of Responsibility Laws will constitute a breach of this Agreement.

g. The Customer must make known to the Supplier in writing the name, nature and value of goods subject to special rates of carriage all such goods shall be carried and conveyed absolutely at the Customer's own risk.

h. In respect of storing the Customer's Goods on a permanent basis and Warehousing at the Supplier Warehouse, the Customer accepts and acknowledges that the Customer's Goods are stored at the Customer's own risk and the Supplier is not liable for loss, damage by fire, flood, earthquake or otherwise. The Customer further acknowledges that no Insurance arrangements and requirements were requested of the Supplier to insure the Customer's Goods stored at the Supplier Warehouse.

i. The Supplier or any governmental authority including customs and security may open and inspect the Customer's Goods at any time and take any action we consider necessary in relation to a shipment.

j. In the event that any amount due and payable under these terms is unpaid the Supplier has the right to list a default against the Customer with a credit reporting agency - Dangerous Goods

k. The Customer shall not cause the Supplier to deal with or handle Dangerous Goods

l. The Customer acknowledges that any Dangerous Goods shall be freighted at the Customer's own risk and Customer shall be liable to and indemnify the Supplier for any loss and damage (including consequential loss, loss of profits or loss of business), arising from the freight of such Dangerous Goods.

m. If in the Supplier or the nominated sub-contractor/Carriers opinion the Customer's Goods are, or are liable to become Dangerous Goods the Supplier may at any time and at the Customer's cost destroy, dispose of, abandon or render them harmless without compensation to the Customer or any third party and without prejudice to the Supplier's right to payment under this Agreement.

7. Delivery of the Supplier's Goods and the Customer's Good

a. Unless otherwise agreed the Supplier may select the method of delivery and the Supplier is not liable for any loss or damage of any kind whatsoever arising from late delivery.

b. If the Supplier is unable to deliver the Customer's Goods because of an incorrect address or the Customer's Good not being accepted for delivery at the address provided then additional charges and/or clause 4(i) to (m) herein may apply.

c. The Customer acknowledges and agrees that time is not of essence in relation to the delivery and that it must accept and pay for the Supplier's Goods or the Services even if the Supplier's Goods and/or Services are delivered after the requested date.

8. Price

a. Prices are subject to change without notice and the Supplier's Goods and the Services will be dispatched or provided at the price determined, in its absolute discretion, by the Supplier on the date of dispatch and as set out in the Invoice. The Invoice is conclusive evidence of the Prices for which the Customer is liable.

b. Any reference by the Supplier to retail prices any quoted prices are an indication or guide only.

9. Orders and Return

a. Orders are non-cancellable.

b. The Customer shall not return the Supplier's Goods to the Supplier without obtaining a return authorisation from the Supplier. The Supplier may give a return authorisation where there has been a shipping error or the Supplier's Goods are faulty or for such other reason as the Supplier at its sole discretion may determine.

c. All orders placed are subject to acceptance by the Supplier.

d. Clerical errors are subject to correction.

10. Warranties & Liabilities – Supplier’s Good

a. The Supplier gives no representation or warranty in relation to the Supplier’s Goods and the Customer acknowledges that it has not relied on any representation or warranty made on behalf of the Supplier in relation to the Supplier’s Goods. The Competition and Consumer Act 2010 (Cth) and the State or Territory legislation implies certain conditions and warranties into these Terms for the benefit of the Customer (Statutory Warranties). To the extent permitted by the law Statutory Warranties: -

i. are expressly excluded;

ii. the liability of the Supplier (if any) arising from the breach of the Statutory Warranties is restricted to: -

A. the replacement of the Supplier’s Goods or the supply of the equivalent Goods;

B. the payment of the cost of replacing the Supplier’s Goods or acquiring equivalent Goods;

C. repayment of any part of the Purchase Price for the Supplier’s Goods which has been paid by the Customer, by credit to the Customer’s account, in cash or by cheque at the Supplier’s absolute discretion.

b. Subject to the Statutory Warranties it is the responsibility of the Customer to ensure that the Supplier’s Goods are sufficient, suitable and fit for the Customer’s purpose.

c. The Supplier, its officers, employees or Agents are not liable for any loss or damage of any kind whatsoever including without limitation, consequential or economic loss or loss of profits even if due to the negligence to the Supplier, its officers, employees or agents arising out of or in connection with the supply Suppliers goods and the delivery of the Customer’s Goods. This exclusion extends to any promotion activities advertising statement about the Goods or their performances or characteristics of or by the Customer.

d. The Supplier may require the Supplier’s Goods to be returned by the Customer and such goods must be sent freight paid to an address notified by the Supplier. Where goods are not returned freight paid the Supplier may deduct the amount of freight payable from any refund or replacement it agrees to make. Returns may be subject to a handling charge equivalent to 20% of the purchase price of the relevant goods.

e. The Customer acknowledges that this term shall not apply to goods that have been altered, neglected, damaged or stored by the Customer in any manner that adversely affects them. These rights are in addition to the Customer’s rights under the Competition and Consumer Act 2010 (Cth).

f. The Customer warrants that it:

i. has product safety and product recall procedures in place which conform with the requirement of all laws and the recommendations of the Australian and New Zealand regulatory authority;

ii. will not make any unauthorised use of or any claim to intellectual law or industrial property which pertains to the Goods or is the property of the Supplier;

iii. will handle and store Goods at all times as directed by the Supplier or in the absence of such direction in accordance with the prevailing industry standards or procure them to do so;

11. Liability and Indemnity – Customer’s Good

a. The Customer’s Goods shall be freighted and/or stored at the Customer’s own risk and the Supplier shall not be liable to the Customer on any account whatsoever for any loss or damage occasioned to the Customer’s Goods at any time from the time of their initial collection to the time of their delivery to the consignee. The Customer acknowledges and agrees that the Supplier carries on business as a facilitator / co-ordinator of the freighting and warehousing of goods whereby the collection, carrying and storage of those goods is undertaken by Agents. The Customer acknowledges and agrees that it will be bound by any terms and conditions of carriage or cartage imposed by any Agent.

b. The Customer hereby indemnifies, and shall keep indemnified, the Supplier and its Agents in respect of all loss or damage (including consequential loss, loss of profits or loss of business) which may be suffered by the Supplier as a result of the provision of the Services by the Supplier to the Customer or the Customer’s breach of this Agreement and .

c. The parties acknowledge that the Supplier may incur liabilities in performing the Services and that the Supplier has agreed to incur such liabilities only on terms of being indemnified by the Customer in accordance with this Agreement.

d. To the extent permitted by law and subject to clause 11(a), any condition or warranty that would otherwise be implied in this Agreement is hereby excluded.

e. To the extent permitted by law, the liability of the Supplier for any breach of any implied condition or warranty shall be limited to, at the option of , the Supplier one or more of the following:

i. the supply of the Services again; or

ii. the payment of the cost of having the Services supplied again.

f. To the extent permitted by law, the Supplier shall be under no liability to the Customer in respect of any consequential or indirect loss or damage, loss of business, which may be suffered or incurred, or which may arise directly or indirectly in respect of the Services, excluding any such damage incurred and resulting from any wilful and deliberate negligent act or default by the Supplier or its employees. The liability of the Supplier in any such instance and regardless of the grounds shall in each case be limited to an amount of \$50.00 in respect of all goods.

12. Insurance.

a. The Customer shall maintain commercial general liability insurance including premises or operations, broad form property damage, independent contractors, and contractual liability covering its obligations hereunder for bodily injury and property damage, with a combined single limit of not less than \$1,000,000 each occurrence. The Customer shall maintain, during the term of this Agreement, product liability insurance in an amount not less than \$2,000,000 on a per occurrence basis. The Customer shall carry the insurance required herein with insurance companies licensed to do business in the state(s) where operations are maintained. All policies will provide that such coverage under these policies will not be cancelled or materially changed without at least 30 days prior written notice to the other Party.

b. The Supplier is not required to affect any insurance in respect to the Customer's Goods.

13. Pallet Control

a. Unless otherwise agreed by the Supplier in writing:

i. The Customer must not transfer any pallets to any account which the Supplier may have with a pallet hirer;

ii. All pallets which may be supplied to the Customer as part of the carriage of the Customer's Goods or the Supplier's Goods by the Supplier and which the Suppliers does not transfer to the Customer's account with a pallet hirer must be made available for collection by the Supplier when requested and must not be used for any other purpose. For the avoidance of any doubt the Supplier will not be liable to the Customer for any storage fees in relation to the pallets;

iii. pallet exchanges will not be allowed;

iv. the Supplier does not take responsibility for, or supply or exchange plain pallets.

b. If pallet transfers are agreed by the Supplier in writing:

i. the Supplier will reject transfers that are lodged by the Customer after one week from the time of pick-up;

ii. the financial responsibilities for pallets will be transferred between the Customer's account and the account of the Supplier at the time the pallets are transferred.

14. Confidentiality - The Customer agrees that it must keep the terms of this Agreement and any quoted prices confidential and not otherwise contact or approach any of the third parties described in clause 4(d) without the Supplier's consent in writing.

15. Notices - Each party notifying or giving notice under this Agreement must:

a. notify the recipient in writing; and

b. hand deliver or send by pre-paid post to the address of the recipient or send by facsimile transmission, to the address or facsimile number specified below (or other address or facsimile number notified in accordance with this clause):

i. The Supplier details as set out at the top of this Agreement; and

ii. The Customer: details as set out at the top of this Agreement.

16. Goods and Services Tax

a. The Customer acknowledges that the Supplier has listed prices for Goods and Services to be sold does not include GST.

b. If GST is imposed on any supply made by the Supplier the Customer must pay to the Supplier and in addition to any other consideration for that supply an amount not greater than the amount equal to the GST payable by the Supplier in connection with that supply as determined by the Supplier in good faith and not in contravention of the law.

[1] These terms & conditions may change at any time without notice. Please refer to www.tmsonline.com.au for details

Date _____/_____/_____

Full Name 1 _____

Signature 1 _____

Full Name 2 _____

Signature 2 _____