
Northside Removals– Terms & Conditions of Trade

1. Definitions

- 1.1 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.2 **“Contractor”** means Northside Removals (QLD) Pty Ltd T/A Northside Removals, its successors and assigns or any person acting on behalf of and with the authority of Northside Removals (QLD) Pty Ltd T/A Northside Removals.
- 1.3 **“Sub-Contractor”** means and include:
- (a) any other person or entity with whom the Contractor may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (b) and any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.3(a).
- 1.4 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting the Contractor to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.5 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.
- 1.6 **“Goods”** means cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Contractor’s Services, or for storage by the Contractor.
- 1.7 **“Services”** means all services supplied by the Contractor (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, or other place or area, loading or unloading the Goods from any vehicle or other conveyance, stowing or packing the Goods, or fumigating or otherwise handling the Goods etc.) to the Client and are as described on the quotations, invoices, consignment note, manifests, sales order or any other forms as provided by the Contractor to the Client and includes any advice or recommendations (where the context so permits the terms ‘Goods’ or ‘Services’ shall be interchangeable for the other).
- 1.8 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.9 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website, and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using the Contractor’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.10 **“Price”** means the Price payable (plus any GST where applicable) for the Services as agreed between the Contractor and the Client in accordance with clause 5 below.
- 1.11 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

2. Acceptance

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts delivery of the Goods.
- 2.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 2.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 2.4 The Client acknowledges that:
- (a) the supply of Goods on credit shall not take effect until the Client has completed a credit application with the Contractor and it has been approved with a credit limit established for the account. In the event that the supply of Goods requested exceeds the Client’s credit limit and/or the account exceeds the payment terms, the Contractor reserves the right to refuse delivery; and
 - (b) the Goods are carried or transported and any other Services performed by the Contractor are subject only to these conditions and the Contractor reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion; and
 - (c) unless otherwise agreed to in writing by the Contractor, the Services shall be conducted during normal trading hours of 8.00am-5.00pm seven days a week, excluding public holidays.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 14 of the Electronic Transactions (Queensland) Act 2001 or any other applicable provisions of that Act or any Regulations referred to in that Act.

3. Errors and Omissions

- 3.1 The Client acknowledges and accepts that the Contractor shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by the Contractor in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by the Contractor in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of the Contractor; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

4. Change in Control

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

5. Price and Payment

5.1 At the Contractor's sole discretion, the Price shall be either:

- (a) as indicated on any invoice provided by the Contractor to the Client; or
- (b) the Price as at the date of Delivery of the Goods according to the Contractor's current price list; or
- (c) the Contractor's quoted price (subject to clause 5.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

5.2 The Contractor reserves the right to change the Price:

- (a) if a variation to the Contractor's quotation is requested;
- (b) to reflect any increase in the cost to the Contractor beyond the reasonable control of the Contractor (including, but not limited to, difficult access to the property such as the like of stairs and gates, disassembly of Goods to be moved, the requirement of lifting equipment, packing of Goods, variations in the cost of fuel or increases in taxes, customs duties, insurance premiums, or warehousing costs);
- (c) charge freight by kilometres travelled or weight, measurement or value of the Goods, and may at any time re-calculate such freight (including re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured) and amend the Price accordingly; and
- (d) in the event that any information supplied by the Client at the time of quotation is incorrect, inadequate, or inaccurate, the Contractor reserves the right (at its sole discretion) to either change the Price or to perform the Services strictly in accordance with the original quotation. If The Contractor agrees to perform the additional/alternative Services, the Price shall be varied pro-rata to allow for an adjustment in quantity, volume and/or weight of the Goods, plus additional loading and unloading times.

5.3 Variations will be charged for on the basis of the Contractor's quotation, and will be detailed in writing, and shown as variations on the Contractor's invoice. Payment for all variations must be made in full at the time of their completion.

5.4 At the Contractor's sole discretion, a non-refundable deposit may be required.

5.5 Time for payment for the Goods being of the essence, the Price will be payable by the Client on the date/s determined by the Contractor, which may be:

- (a) on or before delivery of the Goods;
- (b) by way of instalments/progress payments in accordance with the Contractor's payment schedule;
- (c) seven (7) days following the end of the month in which a statement is posted to the Client's address or address for notices;
- (d) the date specified on any invoice or other form as being the date for payment; or
- (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by the Contractor.

5.6 Payment may be made by cash, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Contractor.

5.7 The Contractor may in its discretion allocate any payment received from the Client towards any invoice that the Contractor determines and may do so at the time of receipt or at any time afterwards. On any default by the Client the Contractor may re-allocate any payments previously received and allocated. In the absence of any payment allocation by the Contractor, payment will be deemed to be allocated in such manner as preserves the maximum value of the Contractor's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

5.8 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 Contractor nor to withhold payment of any invoice because part of that invoice is in dispute.

5.9 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Contractor an amount equal to any GST the Contractor must pay for any supply by the Contractor 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.

5.10 The Client acknowledges and agrees that the Client's obligations to the Contractor for the provision of the Services shall not cease until:

- (a) the Client has paid the Contractor all amounts owing for the particular Services; and
- (b) the Client has met all other obligations due by the Client to the Contractor in respect of all contracts between the Contractor and the Client.

5.11 Receipt by the Contractor of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then the Contractor's ownership or rights in respect of the Services, and this Contract, shall continue.

6. Delivery and Consignment Note

6.1 The Contractor is authorised to deliver the Goods at the address given to the Contractor by the Client for that purpose and it is expressly agreed that the Contractor shall be taken to have delivered the Goods in accordance with this Contract if at that address the Contractor obtains from any person a receipt or a signed delivery docket for the Goods.

6.2 It is agreed that the person delivering any Goods to the Contractor for carriage or forwarding is authorised to sign the consignment note for the Client.

7. The Contractor not a Common Carrier

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

8. Insurance

8.1 The Contractor will not, without the Client's written instruction, and the Contractor's written approval, insure the Goods, and:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Contractor;
- (b) subject to sub-clause (c):
 - (i) the Contractor is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all;
 - (ii) under no circumstances will the Contractor be under any liability with respect to the arranging of any such insurance and no claim will be made against the Contractor for failure to arrange or ensure that the Goods are insured adequately or at all.
- (c) any such insurance is at the Client's own expense. Where the Client's instruction does not specify the class of insurance to be effected, the Contractor may in its discretion affect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
 - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
 - (ii) loss, damage or expensed proximately caused by delay;
 - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
 - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
 - (v) any exclusion common to that class of insurance;
 - (vi) any other exclusion advised by the Client to the Contractor, detailed in the special instructions.

9. Client-Packed Goods

9.1 Where included in the Contractor's quotation, the Contractor shall (unless specifically instructed by the Client) pre-pack the Goods to a standard suitable for the distance those Goods are to be carried, and this standard shall also be contingent on the mode of transportation of the Goods.

9.2 Subject to the Contractor's quotation, the Contractor shall not be liable for loss of or damage to the Goods caused by:

- (a) the manner in which the Goods have been pre-packed; or
- (b) the unsuitability of the Goods for carriage or storage; or
- (c) the unsuitability or defective condition of the Goods; and
- (d) furthermore, whilst all care shall be taken, in the case of items ready for transport to the Client's nominated address (regardless of whether the Contractor's packaging or the Client's supplied packaging (including, but not limited, the item's manufacturer's original packaging for that item) is used or no wrappings are used), the Contractor will not accept any liability for any loss or damage that may occur to the items due to failure of adequate protection provided by the Client or the Client's agent. Once the Client has inspected the Goods at delivery or at the time of pick-up and the Client acknowledges the Goods are considered free of any defects then all risk passes to the Client in the event of any further alleged damage caused after delivery. Additional wrappings are subject to additional costs.

10. Client's Responsibility

10.1 The Client expressly warrants to the Contractor 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 this Contract, and by entering into this Contract the Client accepts these terms and conditions for the consignee as well as for all other persons on whose behalf the Client is acting;
- (b) the Goods are fit for carriage, comply with any applicable legal requirements relating to the nature, condition and/or packaging of the Goods (and that the expenses of complying with such requirements or any other lawful requirements of any authority, other body or the company shall be at the Client's cost);
- (c) the person handing over the Goods to the Contractor is authorised to sign and accept these terms and conditions; and
- (d) it is solely the Client's responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
- (e) any packaging, labelling and/or marking by the Client accurately describes the Goods as to content, weight and method of handling or otherwise, complies with applicable goods codes, any other applicable laws and with any relevant Australian or international standards;
- (f) at the Contractor's discretion, where differences or omissions between address and/or contact information written on the consignment and/or other documentation or in any form of communication (including, but not limited to, email and telephone) provided by the Client to the Contractor, the Contractor shall reserve the right to choose which delivery information is followed and shall not be held liable for any associated costs in relocation of the Goods if this address is the incorrect one;
- (g) where the Contractor is engaged to transport a packaged item/s, the Contractor reserve the right to refuse to transport these item/s where it is deemed that the packaging is insufficient or inadequate; and
- (h) bookings shall be made by the person or company who intends to pay the Contractor for the provision of the Services unless otherwise clarified prior to quoting.

10.2 The Client shall indemnify the Contractor against any loss (including any fine, levy, charge or other monetary imposition to which the Contractor may become liable incidental to the carriage) damage, death or injury, including loss or damage to the Contractor's containers and/or equipment arising out of:

- (a) the Client's unreasonable detention of any vehicle container or other equipment of the Contractor; and
- (b) any breach of the Client's warranties under clause 10.1, including the failure to comply with clause 10.1(e).

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- 10.3 The Client shall ensure, to the best of their ability, that all Goods to be removed (other than Goods being removed from storage) or stored are uplifted by the Contractor and that none is taken in error.
- 11. Conditions of Storage**
- 11.1 The Contractor will prepare an inventory of Goods received for storage and will ask the Client to sign the said 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 Contractor, 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 Contractor will be entitled to make a reasonable additional charge.
- 11.2 The Contractor's storage charges shall be as quoted to the Client for the first twenty-six (26) weeks of storage, after which period the Contractor may change the storage charges from time to time by giving twenty-eight (28) days written notice to the Client.
- 11.3 The Contractor is authorised to remove the Goods from one warehouse or container without any costs to the Client. The Contractor will notify the Client of the removal in case the Goods are re-located to a new address not less than five (5) days prior the removal (except in an emergency, when such notice will be given as soon as possible).
- 11.4 The Client is entitled upon giving reasonable notice to the Contractor to inspect the Goods in store but a reasonable charge may be made by the Contractor for this service.
- 11.5 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 storage at any time by giving the Contractor not less than five (5) working days' notice of the same. If the Client gives the Contractor less than the required notice then the Contractor 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.
- 12. Dangerous Goods**
- 12.1 "Dangerous Goods" shall mean any cars, power boats, large trailers, barbed wire, netting roofing, iron, large quantities of timber or coal, LPG cylinders or any Goods or substance which is, or is likely to be dangerous, noxious, explosive, inflammable, radio-active, corrosive or of a damaging nature and include Goods likely to harbour or encourage vermin, borer or other pests. Unless agreed in writing, the Client shall not deliver to the Contractor, or cause the Contractor to deal with or handle, Dangerous Goods in relation to the Services and/or for storage.
- 12.2 If the Client is in breach of clause 12.1:
- (a) the Client, and any person delivering the Dangerous Goods to the Contractor, or causing the Contractor to handle or deal with the Dangerous Goods, shall be liable for any loss or damage caused to, or by the Dangerous Goods, or by their nature, and shall indemnify and keep indemnified the Contractor against all loss, damages, claims and costs (howsoever arising) incurred by the Contractor in connection therewith; and
- (b) the Dangerous Goods may be destroyed or otherwise dealt with as determined by the Contractor in its absolute discretion at the expense of the Client (or by any other person in whose custody they may be at the relevant time also at the expense of the Client), and neither the Contractor nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the Dangerous Goods.
- 13. Personal Property Securities Act 2009 ("PPSA")**
- 13.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 13.2 Upon assenting to these terms and conditions in writing the Client 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 and/or collateral (account) – being a monetary obligation of the Client to the Contractor for Services – that have previously been supplied and that will be supplied in the future by the Contractor to the Client.
- 13.3 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 Contractor 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 13.3(a)(i) or 13.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Contractor 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 Contractor;
- (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of the Contractor;
- (e) immediately advise the Contractor 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.
- 13.4 The Contractor 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.
- 13.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 13.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 13.7 Unless otherwise agreed to in writing by the Contractor, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 13.8 The Client must unconditionally ratify any actions taken by the Contractor under clauses 13.3 to 13.5.
- 13.9 Subject to any express provisions to the contrary (including those contained in this clause 13), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

14. Security and Charge

- 14.1 In consideration of the Contractor agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 14.2 The Client indemnifies the Contractor from and against all the Contractor's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Contractor's rights under this clause.
- 14.3 The Client irrevocably appoints the Contractor and each director of the Contractor as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 14 including, but not limited to, signing any document on the Client's behalf.

15. Loss or Damage

- 15.1 Subject to clause 10 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Contractor shall not be under any liability for:
- (a) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or any confiscation, requisition, destruction of or damage by order of any authority, or seizure under legal process;
 - (b) compliance with the directions of any person or lawful authority entitled to give them;
 - (c) deterioration (including accidental damage or wear and tear), contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, mis-delivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of the Contractor or not);
 - (d) 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 any delay in delivery, forwarding or transit or failure to deliver the Goods;
 - (e) any act or omission whether wilful, reckless, negligent or otherwise of the Contractor, or its servants or agents or subcontractors;
 - (f) any failure to follow instructions given to the Contractor by, or on behalf of, the Client, whether or not such failure is wilful;
 - (g) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging; and
 - (h) any act, omission or neglect of the Client, including insufficient or improper packaging, labelling or addressing or quality of description of the Goods, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.

16. Claims

- 16.1 Notwithstanding clauses 8 and 15, in the event that the Client believes that they have any claim against the Contractor then they must lodge any notice of claim for consideration and determination by the Contractor within twenty-four (24) hours of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 16.2 The failure to notify a claim within the time limits under clause 16.1 is evidence of satisfactory performance by the Contractor of its obligations hereunder.

17. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)

- 17.1 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**).
- 17.2 The Contractor acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 17.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, the Contractor makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Goods. The Contractor's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 17.4 If the Client is a consumer within the meaning of the CCA, the Contractor's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.5 If the Contractor is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, the Contractor may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.
- 17.6 If the Client is not a consumer within the meaning of the CCA, the Contractor's liability for any defect or damage in the Goods is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Contractor at the Contractor's sole discretion;
 - (b) limited to any warranty to which the Contractor is entitled, if the Contractor did not manufacture the Goods;
 - (c) otherwise negated absolutely.

18. Default and Consequences of Default

- 18.1 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 a half percent (2.5%) per calendar month (and at the Contractor's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes the Contractor any money the Client shall indemnify the Contractor from and against all costs and disbursements incurred by the Contractor in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Contractor's contract default fee, and bank dishonour fees).
- 18.3 Further to any other rights or remedies the Contractor may have under this Contract, if a Client has made payment to the Contractor, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by the Contractor under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

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- 18.4 Without prejudice to the Contractor's other remedies at law the Contractor shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Contractor shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to the Contractor becomes overdue, or in the Contractor's opinion the Client will be unable to make a payment when it falls due;
 - (b) the Client has exceeded any applicable credit limit provided by the Contractor;
 - (c) 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
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

19. Cancellation

- 19.1 Without prejudice to any other remedies the Contractor may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions the Contractor may suspend or terminate the supply of Goods to the Client. The Contractor will not be liable to the Client for any loss or damage the Client suffers because the Contractor has exercised its rights under this clause.
- 19.2 The Contractor may cancel any contract to which these terms and conditions apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Client. On giving such notice the Contractor shall repay to the Client any money paid by the Client for the Goods. The Contractor shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 19.3 In the event that the Client cancels Delivery of Goods the Client shall be liable for any and all loss incurred (whether direct or indirect) by the Contractor as a direct result of the cancellation (including, but not limited to, any loss of profits).

20. Privacy Policy

- 20.1 All emails, documents, images or other recorded information held or used by the Contractor is Personal Information, as defined and referred to in clause 20.3, and therefore considered Confidential Information. The Contractor acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). The Contractor acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by the Contractor that may result in serious harm to the Client, the Contractor will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 20.2 Notwithstanding clause 20.1, privacy limitations will extend to the Contractor in respect of Cookies where the Client utilises the Contractor's website to make enquiries. The Contractor agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to the Contractor when the Contractor sends an email to the Client, so the Contractor may collect and review that information ("collectively Personal Information")
- If the Client consents to the Contractor's use of Cookies on the Contractor's website and later wishes to withdraw that consent, the Client may manage and control the Contractor's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 20.3 The Client agrees that the Contractor may exchange information about the Client with those credit providers and with related body corporates 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 including the Client's repayment history in the preceding two (2) years.
- 20.4 The Client consents to the Contractor being given a consumer credit report to collect overdue payment on commercial credit.
- 20.5 The Client agrees that personal credit information provided may be used and retained by the Contractor for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 20.6 The Contractor may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 20.7 The information given to the CRB may include:
- (a) Personal Information as outlined in 20.3 above;
 - (b) name of the credit provider and that the Contractor is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that

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- the Client no longer has any overdue accounts and the Contractor has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
- (g) information that, in the opinion of the Contractor, the Client has committed a serious credit infringement;
- (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 20.8 The Client shall have the right to request (by e-mail) from the Contractor:
- (a) a copy of the Personal Information about the Client retained by the Contractor and the right to request that the Contractor correct any incorrect Personal Information; and
- (b) that the Contractor does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 20.9 The Contractor will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 20.10 The Client can make a privacy complaint by contacting the Contractor via e-mail. The Contractor will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.
- 21. Unpaid Seller's Rights**
- 21.1 All Goods or carried for, on behalf of, the Client that are received by the Contractor shall be subject to a general lien for any monies owed by the Client to the Contractor as a result of this Contract or any previous agreement between the Contractor and the Client. In order to exercise its rights under this lien, the Contractor shall have the right to seize or retain or to defer or refuse delivery of any Goods that are the subject of this lien should circumstances arise that make it reasonable to conclude that the Client is unwilling or unable to pay any due charges in the required form or at the required place or time. Where the charges of the Contractor remain unpaid for a minimum period of twenty-eight (28) days, the Contractor may give twenty-eight (28) days' written notice by certified or registered mail to the last known address of the Client of intention to sell the Goods. If the amount owing is not paid within that further period the Contractor may open any packages, DISPOSE OF THE GOODS or SELL ALL OR ANY OF THE GOODS by auction or by private treaty at its absolute discretion. Out of any monies arising, the Contractor may retain its charges and all charges and expenses of the detention and sale. It shall credit the surplus, if any, to the person entitled to it. Any such sale shall not prejudice or affect any other rights that the Contractor may have to recover any outstanding charges due or payable in respect of such service or the said detention or sale.
- 22. Force Majeure**
- 22.1 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, civil disturbance, riot, Government intervention or regulations, Council conditions or specifications, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party ("**Force Majeure**").
- 22.2 If a party becomes unable (wholly or in part) by Force Majeure, to carry out any of its duties or obligations under this Contract:
- (a) the party must give the other party prompt written notice of:
- (i) detailed particulars of the Force Majeure;
- (ii) so far as is known, the probably extent to which the party will be unable to perform or will be delayed in performing the duty or obligation.
- (b) the relevant duty or obligation, so far as it is affected by the Force Majeure, will be suspended during the continuance of the Force Majeure; and
- (c) the party will use all reasonable efforts to overcome or remove the Force Majeure as quickly as possible.
- 23. General**
- 23.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 23.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state in Queensland which the Contractor has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 23.3 Subject to clause 17, the Contractor 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 Contractor of these terms and conditions (alternatively the Contractor's liability shall be limited to damages which under no circumstances shall exceed the Price of the Goods).
- 23.4 The Contractor may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.
- 23.5 The Client cannot licence or assign without the written approval of the Contractor.
- 23.6 The Contractor may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of the Contractor's sub-contractors without the authority of the Contractor.
- 23.7 The Client agrees that the Contractor may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for the Contractor to provide Goods to the Client.
- 23.8 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.