



State Transport Logistics PTY LTD

A.B.N: 58 123 269 929

Head Office

18 Fairchild Street, Heatherton VIC 3202

P.O. Box 330, Braeside VIC 3195

Tel: 03 9587 4433

Fax 03 9587 6099

Heatherton Warehouse

45-55 Fairchild Street, Heatherton VIC 3202

Tel: 03 9558 3855

Fax 03 9551 4000

www.statetransport.com.au

COMMERCIAL TRADE SUPPLY AGREEMENT

To: State Transport Logistics Pty Ltd (ABN 58 123 269 929)
of 18 Fairchild Street, Heatherton VIC 3202 ("State")

(Please refer to terms and conditions of trade on the reverse of this document)

COMPANY NAME: ("the customer")

ABN

REGISTERED BUSINESS NAME

REGISTRATION NUMBER

NATURE OF BUSINESS

REGISTERED OFFICE ADDRESS

TRADING ADDRESS

POSTAL ADDRESS

PHONE NUMBER

FAX NUMBER

MOBILE NUMBER

EMAIL

ADDRESS FOR ACCOUNTS

PHONE NUMBER

FAX NUMBER

EMAIL

ACCOUNTS PAYABLE CONTACT

DATE COMMENCED TRADING

BANK

BSB NO

ACCOUNT NO.

BUSINESS REFERENCES

1

PHONE NUMBER

FAX NUMBER

2

PHONE NUMBER

FAX NUMBER

3

PHONE NUMBER

FAX NUMBER

CREDIT LIMIT REQUESTED: \$

per month

Local Transport

Experienced, professional & safe drivers
delivering on time, anywhere.

3PL Warehousing

Modern AQIS & HACCP certified food grade warehouses
with the latest technology & equipment.

Interstate Transport

Australia Wide. Quick and Reliable solutions for
General/Express, Rail, Road and Air



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COMMERCIAL TRADE SUPPLY AGREEMENT (cont.)

Name of director/authorised person signing:

Signature of director/authorised person:

Capacity of person signing:

Date:

Name of witness:

Signature witness:

Capacity of witness:

Date:

Please note that each relevant section must be completed clearly. The original of this document, if faxed to State should be returned to it.

In consideration of State supplying the customer with credit facilities:

1. We hereby guarantee the due and punctual payment to you by the customer of all moneys now owing or which may become owing by the customer to State as set out in the attached terms and conditions of contract (payment within 7 days from invoice date), a copy of which we acknowledge having received, read and understood.
2. This shall be a continuing guarantee for all debts whenever incurred by the customer with State provided that if we give you no less than one months written notice of our desire to be released from this guarantee and if at the expiration of such period, all liabilities of the customer to State have been discharged, then this guarantee shall cease to be of effect.
3. We acknowledge that State is and will be at liberty without notice to us at any time and without in any way discharging our continuing liability to grant time or other indulgences to the customer.
4. We acknowledge that the provisions of the terms and conditions of contract are hereby incorporated into and form part of this guarantee which shall bind each of us jointly and severally.

PRIVACY AT CONSENT

We acknowledge that State has informed us pursuant to section 18E(8)(c) of the Privacy Act 1988 that certain items of personal information about us contained in this application or which may be obtained by State may be disclosed to a credit reporting agency. This information includes, among other things, particulars as to our identity, the fact that an application for credit has been made and the amount of credit sought, details of current providers of credit to the customer and details of any credit at least 60 days overdue, cheques twice dishonoured and serious credit infringements.

We irrevocably agree and acknowledge that for the purpose of the Privacy Act 1988 and assessing our creditworthiness from time to time and the collection of moneys due to State that it and its workers and agents may make such enquiries as they may deem necessary including but not limited to enquiring and obtaining reports as may be allowed by law from persons nominated by us as trade referees, our creditors, bankers, financiers, credit providers, mortgage and trade insurers and credit reporting agencies ("the information sources") and we agree and consent to the information sources providing to State such information as is requested by State and permitted to be given by law for this purpose.

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TERMS AND CONDITIONS

1. Application

- 1.1 These Terms together with any applicable sales or order confirmation issued by State Transport embodies the sole terms and conditions of the Contract between State Transport and the Customer and supersedes all other conditions, representations and agreements between the parties (whether oral or in writing and whether made prior to the date of the Contract), unless expressly amended in writing by State Transport. In the event of any inconsistency arising between these Terms and any relevant sales or order confirmation issued by State Transport, the terms of the relevant sales or order confirmation prevails to the extent of such inconsistency.
- 1.2 Unless otherwise specifically agreed in writing by the parties, these Terms will prevail over existing or subsequent terms and conditions set out in any document (including any order form of the Customer), which the Customer provides to State Transport and such other terms and conditions are rejected by State Transport and are waived by the Customer.

2. Definitions

In these Terms, the following words and expressions have these meanings unless the context requires another meaning, or a contrary intention appears:

After hours means:

- (a) on a Business Day, any time that is outside Business Hours; or
- (b) on a day that is not a Business Day, any time on that day.

Associated Entity means any associated entity (as that term is defined in the *Corporations Act 2001* (Cth)) of State Transport.

Australian Consumer Law means the Australian Consumer Law set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

Business Day means a day on which trading banks are open for general business but excluding Saturdays, Sundays and public holidays in Melbourne, Victoria.

Business Hours means between 6:00am and 5:00pm, on any Business Day.

Claim means a legal proceeding (whether civil or criminal), administrative proceeding, arbitral proceeding, mediation or other form of alternative dispute resolution (whether or not held in conjunction with the proceeding), an investigation or inquiry by a government agency or a threat, allegation, complaint, cause of action, suit, arbitration, verdict, judgment, demand or other claim, howsoever arising and all Loss suffered or incurred in connection with the foregoing.

Contract means the contract or engagement entered into between State Transport and the Customer for the supply of Services by State Transport and includes these Terms (as may be amended from time to time).

Consequential Loss means any indirect or consequential loss, loss of use, loss of product or production, delayed, postponed, interrupted or deferred production, inability to produce, deliver or process, loss of profit, loss of bargain, contract, expectation or opportunity, liquidated damages, punitive or exemplary damages, in each case arising from or in connection with the performance of Services and whether or not foreseeable at the time of entering into this agreement.

Container means any container, trailer, wagon, transportable tank, Pallet, flat rack or any other unit or device used to consolidate Goods.

Customer means any person or entity for whom State Transport provides the Services under these Terms, including any person contracting with State Transport for the provision of Services or who delivers Goods to State Transport for Services to be provided.

Dangerous Goods means goods which are, or may become, volatile, explosive, toxic or liable to damage any person, property or environment whatsoever and includes those goods set out in the *Australian Code for the Transport of Dangerous Goods by Road or Rail* and/or the *IATA Dangerous Goods Regulations*.

Delivery means delivery of the Goods by State Transport, by whatever means, from the agreed originating address to the agreed destination address or otherwise when State Transport advises the Customer that the goods are available for collection from, or have been delivered to, the destination address and **Deliver** and **Delivered** will have corresponding meanings.



Force Majeure Event means acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, epidemics, pandemics, cyber warfare, cyberattacks, ransomware attacks, cyber sabotage, labour disputes and other industrial disturbances, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, machinery or equipment.

Goods means the freight/goods (including but not limited to finished product, raw material, inners, and outers, various packaged products, cartons, bags, and boxes) accepted by State Transport for Delivery and/or Storage from the Customer or on the Customer's behalf (including from any manufacturer, supplier or contractor of the Customer) and includes any Container or packaging supplied by or on behalf of the Customer.

Goods Receipt Advice means a written statement setting out the result of State Transport's inspection and count of Goods received by State Transport for Storage under clause 5.

GST has the meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) from time to time.

Heavy Vehicle National Law means the *Heavy Vehicle National Law Act 2012* (Qld) and all regulations made under that Act, as well as the associated State and Territory road transport acts and regulations adopting the *Heavy Vehicle National Law Act 2012* (Qld) and includes any subsequent replacement, modification or amendment to any of these acts and regulations;

Insolvency Event means, in relation to the Customer, the Customer becoming unable to pay its debts as and when they fall due, and each of the following:

- (a) a meeting of the Customer's creditors being called or held;
- (b) a step being taken to make the Customer bankrupt;
- (c) an application being presented, or order made, for the sequestration of the Customer's estate;
- (d) a step being taken to wind the Customer up;
- (e) a step being taken to have a receiver, receiver and manager, administrator, controller, liquidator or provisional liquidator appointed to the Customer or any of its assets or any such appointment taking place; or
- (f) the Customer entering into any type of agreement, composition or arrangement with, or assignment for, the benefit of all or any of its creditors.

Loss means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or arising from any claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual or contingent and includes Consequential Loss.

Metropolitan Area means the area which, in State Transport's opinion, is within the metropolitan area of Melbourne, Sydney, Adelaide, Brisbane, or Perth.

Packing List means a written list of the contents of a Container including details of the description and number of Goods in that Container.

Pallets mean pallets or other pooled equipment used to assist in moving freight which incurs third party hire costs as part of pooled pallet hire arrangements in the supply chain.

Personnel means any officer, employee or agent of a party and, in the case of State Transport, includes Subcontractors.

PPSA means the *Personal Property Securities Act 2009* (Cth).

Services means any operations and services to be undertaken by or on behalf of State Transport in connection with Goods (including their carriage, transport, order processing, inventory management, cartage, Delivery and/or Storage) for, or at the request of, the Customer.

Storage means:

- (a) unpacking Containers for the purpose of storing Goods by State Transport
- (b) palletising and wrapping Goods;
- (c) stocktaking;
- (d) receiving Goods into the Storage Location including confirmation of quantities and batch numbers;
- (e) handling inbound and outbound Goods into and out of the Storage Location; and
- (f) warehousing and storing Goods.



Storage Location means State Transport warehouse/s in which Goods are to be stored.

Subcontractor means any individual or entity appointed by State Transport to perform the Services on behalf of State Transport.

State Transport means State Transport Logistics Pty Ltd (ABN 58 123 269 929) and/or where the context requires, State Management Solutions Pty Ltd (ABN 26 096 709 492) and each of their respective related bodies corporate within the meaning of that expression in section 9 of the Corporations Act 2001 (Cth) carrying on business in their own names and any business names and their Personnel.

Terms means these terms and conditions of trade as amended from time to time.

3. Not a Common Carrier

3.1 State Transport:

- (a) is not a Common Carrier and will accept no liability as such; and
- (b) reserves the right to refuse, in its absolute discretion, the carriage, transport, Delivery and/or Storage of Goods.

4. Goods and Services

- 4.1 State Transport will use reasonable endeavours to perform the Services within any timeframes provided or notified to, or requested by, the Customer. However, State Transport does not guarantee that any Services will be performed within such timeframes.
- 4.2 To the extent permitted by law, the acceptance of the Goods by State Transport for Storage pending shipment will not bind State Transport to Deliver the Goods and State Transport may suspend or stop supplying the Services indefinitely at any time on 7 days' notice (except where the time for Delivery falls within that period).
- 4.3 Each request for Services from the Customer will be deemed to include a representation that the Customer is solvent and able to pay all of its debts as and when they fall due.
- 4.4 State Transport is not liable for any delay in Delivery of the Goods or in the delayed supply of Services. State Transport reserves the right to extend the date for Delivery of the Goods and the supply of Services without liability to the Customer.
- 4.5 State Transport may, at its option, Deliver Goods in instalments and failure to deliver any instalment will not entitle the Customer to cancel the balance of the request for Services.
- 4.6 State Transport may at any time require the Customer to remove the Goods from the Storage Location at the Customer's expense and if the Customer fails to do so within 7 days of such notice, then, without limiting any other right that State Transport may have, State Transport may at its option remove or dispose of the Goods and the Customer will be liable to pay State Transport's reasonable costs in connection with such removal or disposal.
- 4.7 The Customer must, at the time it requests Services from State Transport, provide accurate prior written notice and instructions regarding:
 - (a) any special handling requirements (including as to temperature) for the Storage and transport of Goods; and
 - (b) Dangerous Goods, including a full and accurate written description of them.
- 4.8 If, in the opinion of State Transport, the Goods:
 - (a) are Dangerous Goods;
 - (b) do not meet any applicable legal requirements or recommendations of a relevant government authority relating to the Goods or Services; or
 - (c) are unsuitable to be handled by State Transport, having regard to the equipment and operating procedures normally employed by State Transport in providing the Services,

State Transport may in its sole and absolute discretion:

- (d) refuse to provide the Services in respect of the Goods or any part thereof; or
- (e) perform, at the risk and expense of the Customer, any test, examination or analysis of the Goods it deems necessary to cause the Goods to comply with the requirements of any applicable laws or to make the Goods suitable to be handled by State Transport; and/or
- (f) at the cost of the Customer, destroy, dispose of or render harmless the Goods without prejudice to any of State Transport's rights under these Terms,

and the Customer will bear all risk and Loss arising in connection with such actions. The Customer further agrees to comply with any reasonable request made by State Transport to make the Goods suitable to be handled by State Transport, including



but not limited to, a request to provide State Transport with checked, audited and certified certificate (from a certifying entity nominated by State Transport) testifying as to the fitness of goods for State Transport's Services.

- 4.9 If the Customer requests State Transport to use a particular method of handling, Storage or transportation of the Goods, State Transport will endeavour to give priority to that method but if it cannot conveniently be adopted, the Customer authorises State Transport in its absolute discretion to:
- (a) use another method for handling, transporting or Storage of the Goods; and
 - (b) deviate from the usual route or method of transport of the Goods which may, in State Transport's opinion, be necessary or desirable in the performance of the Services.
- 4.10 State Transport is authorised to Deliver the Goods to any address given by the Customer for Delivery. State Transport will be deemed to have Delivered the Goods in accordance with these Terms if at the address, State Transport obtains from any person a receipt or signed delivery docket for the Goods. The Customer is entitled to request proof of delivery, provided that, if in the reasonable opinion of State Transport such requests are excessive or unreasonable, State Transport will be entitled to charge the Customer \$15.00 on each request for proof of delivery.
- 4.11 If the address given to State Transport for Delivery is unattended or Delivery is cannot otherwise be effected at that address, State Transport may at its option:
- (a) deposit the Goods at that address which will be conclusively deemed to be Delivery under these Terms; or
 - (b) store the Goods and re-Deliver the Goods to the Customer at the Customer's cost.
- 4.12 The Customer must:
- (a) give prior written notice to State Transport if any Goods are liable to customs duties or port charges or other supply chain costs and charges and pay such charges or, if agreed by State Transport, reimburse State Transport if it agrees to pay those costs and charges on the Customer's behalf;
 - (b) ensure that the Goods are ready for pickup so that State Transport is not delayed in performing the Services; and
 - (c) arrange, at its cost, all necessary labour and facilities to load and unload the Goods unless otherwise agreed with State Transport. Where the Customer is responsible for loading and unloading the Goods, the Customer must ensure that it complies with all relevant laws, State Transport's workplace safety standards and State Transport's reasonable directions.
- 4.13 State Transport is not liable for, and Customer will indemnify State Transport against, any detention or demurrage charges which are incurred by the Customer, or any third party, except to the extent that such charge has been caused or contributed to by State Transport's negligence.
- 4.14 State Transport will not exchange Pallets and the Customer must not transfer any Pallet to State Transport's pallet accounts without State Transport's written agreement. If Pallets are transferred to State Transport's account during the provision of the Services, State Transport will be entitled to charge the Customer a fee or charge of \$8.50 (or such other amount as may be prescribed by State Transport from time to time) for each such pallet exchanged. In addition, State Transport will be entitled to charge the Customer any fees which State Transport may incur from the Pallet provider in relation to State Transport's inability to recover that Pallet if:
- (a) the consignee or recipient does not have a Pallet account; or
 - (b) State Transport is unable to transfer the Pallet to the consignee/recipient's account; and
 - (c) State Transport cannot physically recover an equal number of Pallets from the consignee at the time of delivery.
- 4.15 State Transport does not accept any responsibility or liability for any other Pallet(s) delivered into State Transport's possession, custody or control and any instruction to State Transport to exchange or transfer consigned pallets to State Transport's pallet account is accepted only on the basis that the Customer will indemnify State Transport against any loss or non-recovery of the consigned pallets howsoever arising.

5. Storage Procedures

- 5.1 Where the Customer engages State Transport for Services involving the Storage of Goods, this clause 5 applies.
- 5.2 When a Container arrives at the Storage Location, State Transport will:
- (a) open the Container and inspect, count and compare the number of all incoming Goods with the Packing List provided by the Customer for that Container to the shipper carton level ; and
 - (b) send the Customer a Goods Receipt Advice in respect of the Goods.
- 5.3 State Transport will notify the Customer as soon as practicable upon becoming aware that a Container:
- (a) has a broken seal, other than where the seal has been broken to allow State Transport to de-stuff the Container;



- (b) has an incorrect seal installed;
- (c) displays signs of having been pilfered or damaged to such extent that State Transport reasonably suspects that Goods have been lost, damaged or stolen; or
- (d) contains Goods that have been delivered to the Storage Location that, based on a visual inspection only, appear to be outside the temperature range specified in any document provided to State Transport by the Customer.

- 5.4 State Transport will, where practicable, use reasonable endeavours to supply the Customer with photographic evidence when providing notice to the Customer under clause 5.3.
- 5.5 Unless otherwise agreed in writing, State Transport is not obliged to use a temperature gun or probe to verify the temperature of the Goods.
- 5.6 The Customer acknowledges that the temperature at which non-ambient Goods are stored may be subject to variation, and may not remain constant.

6. Subcontracting

- 6.1 State Transport, at its discretion, may subcontract on any terms the whole or any part of the Services.
- 6.2 If State Transport subcontracts any Services, State Transport will not be relieved of any of its liabilities or obligations under these Terms and will be liable to the Customer for any act or omission of the Subcontractor as if such act or omission were the act or omission of State Transport.
- 6.3 Every exemption, limitation, condition and liberty contained in these Terms and every right, exemption from liability, limitation, defence and immunity applicable to State Transport or to which State Transport is entitled under these Terms will also be available to and will extend to protect State Transport's Personnel and its Associated Entities.
- 6.4 For the purposes of clause 6.3, State Transport is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all State Transport's Personnel and its Associated Entities and each of them will to this extent be, or be deemed to be, parties to this agreement.
- 6.5 The Customer must not assign or transfer or purport to assign or transfer any of its rights or obligations under or in connection with the Contract to any other person or corporation whatsoever without written consent of State transport.

7. Lien over Goods

- 7.1 All Goods are accepted subject to a general lien for all charges due or that may become due to State Transport from the Customer on any account whatsoever, whether in respect of the Goods or in respect of any other goods which State Transport provides or has provided in connection with the Services.
- 7.2 Without prejudice to any other rights that State Transport may have, if charges are not paid when due, or the Goods are not collected when required or designated, then State Transport may at its option do one or more of the following:
- (a) require the Customer to remove the Goods;
 - (b) remove such Goods or part thereof and store them in such place and manner State Transport thinks fit and at the risk and expense of the Customer;
 - (c) in the case of perishable Goods immediately and without notice, and in any other case on seven (7) days' notice to the Customer, open and sell by public auction or private sale all or any of the Goods as State Transport thinks fit and apply the proceeds in or towards discharge of the lien without being liable to any person for any Loss suffered in connection with the sale of the Goods;
 - (d) return the Goods to the Customer at its last known address;
 - (e) set-off or deduct from any payment due to the Customer any amount it owes to State Transport; or
 - (f) dispose of the Goods at the expense of the Customer in any way State Transport deems fit and without compensation being payable to the Customer,

and the Customer must indemnify State Transport for all costs incurred in connection with the exercise of these rights.

- 7.3 State Transport does not have to make Goods available to the Customer until all fees and charges have been paid and the Customer or an authorised person signs a receipt for them.
- 7.4 It is agreed that the lien arising under the Contract:
- (a) attaches to the Goods when the Goods are accepted by State Transport; and
 - (b) is a security interest.
- 7.5 On request by State Transport, the Customer must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, the Contract is enforceable, perfected (including perfection by registration),



maintained and is otherwise effective. Anything that is required to be done under this clause will be done at the Customer's expense. The Customer agrees to reimburse State Transport's costs in connection with any action taken by State Transport under or in connection with this clause.

7.6 The parties agree that, to the extent permitted by the PPSA:

- (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Customer is otherwise notified in writing by State Transport);
- (b) and any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.

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

8. Charges

8.1 Unless expressly stated otherwise, all charges and amounts are exclusive of GST, fuel levies and any other applicable taxes (including but not limited to import and export duties). The Customer will be responsible for any taxes payable in connection with the provision of the Services.

8.2 Any quotation by State Transport is not an offer by State Transport to supply Services and may be withdrawn or revised at any time.

8.3 The Customer acknowledges and agrees that:

- (a) it will be responsible for ensuring that it understands the applicable, taxes rates and charges prior to requesting Services from State Transport;
- (b) State Transport may amend or vary its rates and charges at any time without prior notice to the Customer;
- (c) the rates and charges applying to a particular instance of the Services will be those in force at the time State Transport provides a quote for, or otherwise accepts a request for Services;
- (d) general storage charges will be levied on a weekly basis at the rate agreed between the Customer and State Transport (any other charges will be levied on an as notified basis from State Transport to the Customer);
- (e) charges will be deemed earned at the time the Goods are loaded for carriage or transport, whether or not those Goods are Delivered, damaged or lost;
- (f) Services provided in non-Metropolitan Areas or between different Metropolitan areas and/or After Hours will be subject to additional surcharges, including where Delivery is frustrated as a result of the Goods not being duly received at the destination address;
- (g) it will be responsible for payment of:
 - (i) any applicable fees and/or surcharges notified to the Customer, including as a result of any applicable regulatory, legislative or directive imposed on State Transport, as amended from time to time;
 - (ii) any customs duties, port charges, other supply chain costs, excises or other government charges levied in relation to the Storage or Delivery of the Goods, and that State Transport will be in no way liable for those charges;
- (h) any charges or expenses incurred by State Transport in connection with complying with any applicable law relating to the nature, condition and packaging of the Goods or with any order or requirement of any harbour, dock, railway, shipping, warehouse or any authority, person or corporation relating to Delivery or Storage of the Goods will be borne by the Customer; and
- (i) unless otherwise stated in writing, a Dangerous Goods Surcharge will apply for any or all carriers utilised through State Transport.

8.4 State Transport may, at its sole discretion and at the Customer's cost, perform any action it considers necessary or desirable to preserve the Goods or to secure the safety, Storage, carriage or Delivery of the Goods.

8.5 Where State Transport is required to re-deliver any Goods, as a result of any act or omission of the Customer (including but not limited to providing the incorrect destination address or failing to ensure that Goods are duly received at the destination address), then such re-delivery will be deemed a new transaction and subject to additional charges.

9. Invoicing and Payment

9.1 The Customer agrees and acknowledges that, subject at all times to State Transport's right to require upfront payment for Services (if State Transport notifies the Customer of this requirement):

- (a) State Transport will from time to time (usually weekly) issue a tax invoice to the Customer for the Services and the Customer must pay the charges as specified in the invoice; and



- (b) unless otherwise specified in writing by State Transport, the Customer must pay all amounts specified in an invoice within seven (7) days from the invoice date without any deduction, set-off or counterclaim whatsoever, except in accordance with clause 10.

9.2 If an invoice remains unpaid after the relevant due date, then State Transport may, in addition to any other rights or remedies available to it under these Terms or at law:

- (a) immediately suspend performance of the Services until the outstanding amount is paid in full;
- (b) suspend work until further payment is made;
- (c) exercise a general lien over, and power of sale of, the Goods under clause 7 (the Customer remaining liable to pay any amount still owing to State Transport after such sale); and
- (d) immediately commence legal proceedings to recover the amount owed.

9.3 All monies due to State Transport at the date of termination of the Contract must be paid in full at least seven (7) working days before final despatch of the Customer's Goods from the Storage Location.

9.4 State Transport is entitled to retain and be paid all commissions, allowances and remuneration paid including those customarily paid by or to forwarding agents, customs agents, shipping agents, forwarders, storers, carriers or bailees.

9.5 If State Transport makes a credit facility available to the Customer (beyond the payment terms specified in clause 9.1(b)), State Transport may, at its discretion, vary or withdraw the credit facility and may, but is not obliged, to provide reasons for such cessation. The Customer agrees to pay on demand all sums owing in connection with a credit facility if that credit facility is withdrawn. Where the Customer makes a request for credit more than 14 days after receiving an invoice, such request will not be accepted.

9.6 State Transport may charge the Customer interest on any outstanding amount at the rate of 15% per annum, accruing daily and compounding quarterly until the outstanding amount is paid in full.

10. Payment Disputes

10.1 If the Customer disputes the whole or any portion of the amount claimed in an invoice submitted by State Transport, the Customer must:

- (a) pay the portion of the amount stated in the invoice which is not in dispute in accordance with the terms of payment and
- (b) notify State Transport in writing (within five Business Days of receipt of the invoice) of the reasons for disputing the remainder of the invoice.

10.2 The parties must immediately and in good faith attempt to resolve the dispute prior to the due date of payment of the relevant disputed invoice, however, State Transport retains the right to act in accordance with these Terms.

10.3 Nothing in these Terms will prevent the Company from withdrawing services at any stage to recover any amounts owing to or claimed by State Transport from the Customer.

11. Insurances and Risk

11.1 The Customer must arrange and maintain insurance in relation to the Goods for their full insurable value at all times while the Goods are in the possession of State Transport for Delivery or Storage.

11.2 Unless otherwise agreed in writing, the Goods will not be insured by State Transport, nor will any such insurance be arranged by State Transport on behalf of the Customer.

11.3 Risk in the Goods will remain with the Customer at all times.

12. Shrinkage etc

12.1 Without limiting clause 14, State Transport will not be liable for or pay for any loss of or damage to Goods if it is caused by:

- (a) a Force Majeure Event;
- (b) ordinary loss in weight or volume, shrinkage, ordinary leakage;
- (c) ordinary wear and tear,
- (d) vibration, road conditions, weather or weather events of any kind whatsoever;
- (e) the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without Damage;
- (f) inherent vice or the nature of the Goods;
- (g) a decline in value, or loss of value as a result of the Goods becoming past, or close to, their 'use by' or expiry date;



- (h) insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary risks associated with the Services;
- (i) loss of or Damage to Goods comprising electrical or mechanical derangement;
- (j) any loss or damage suffered in connection with delay in the delivery or collection of Goods.

13. Warranties

13.1 The Customer warrants that:

- (a) it either owns the Goods, or has the authority of the owner of the Goods to enter into these Terms and act as the owner's agent in agreeing to the consignment, handling, transport and/or Storage (as applicable) of the Goods in accordance with these Terms;
- (b) it has fully and accurately disclosed in writing the composition of any Goods received or to be received by State Transport, detailing in particular whether the Goods (or part thereof) are actually or potentially noxious, dangerous, hazardous, flammable or capable of causing damage or injury or vulnerability to other goods or any persons or animals or that may endanger any mode of transport or storage in which the Goods may be loaded, carried, packed or stored;
- (c) it has provided all necessary instructions and accurate information regarding handling, care and control of the Goods having regard to the nature and packaging of the Goods;
- (d) the Goods are received by State Transport within the correct temperature range (if applicable) and are packaged to withstand handling, transport and Storage;
- (e) the Goods held by State Transport for Delivery or Storage comply with the requirements of any applicable law relating to the nature, condition and packaging of the Goods and that it will provide all necessary assistance, information and documentation to enable State Transport to comply with any of its obligations under such laws;
- (f) it will not tender any Dangerous Goods or temperature-controlled goods for Delivery or Storage, except where it has complied with clause 4.7;
- (g) it will, so far as is reasonably practicable, ensure the safety of any services performed for or on behalf of the Customer and that the Customer will meet its obligations under the Heavy Vehicle National Law where the Customer acts as a Consignor, Consignee, Loader or Packer of Goods (as each of those terms are defined in the Heavy Vehicle National Law); and
- (h) the Goods are not illegal, sanctioned or contraband and the Customer has not asked State Transport to handle, transport or store the Goods in any way that could be unlawful and that the actual handling, transport or Storage of the Goods by State Transport will not be unlawful.

13.2 Each of the warranties in clause 13.1 must be construed independently and is not limited by reference to another warranty given in that clause or anywhere else in these Terms.

14. Limitation of Liability

14.1 Except where statute or the Contract otherwise requires, the Goods are transported and/or stored, and the Services are provided, at the risk of the Customer at all times except to the extent caused by State Transport's gross negligence, wilful misconduct or breach of Contract. To the maximum extent permitted by law and subject to clauses 14.4 and 14.5:

- (a) all warranties, descriptions, representations, guarantees or conditions, whether express or implied by law, trade, customer or otherwise, and all specific conditions are expressly excluded; and
- (b) State Transport and its Personnel will not be liable for any delay or Loss arising in connection with the Services (including any Loss of, deterioration in, mis-delivery of, or failure to deliver, Goods) for any reason whatsoever, including breach of contract, negligence, breach of bailee, or wilful act or omission of State Transport or its Personnel.

14.2 State Transport is not liable for, and Customer will indemnify State Transport against, any detention or demurrage charges which are incurred by the Customer, or any third party, except to the extent that such charge has been caused or contributed to by State Transport's negligence

14.3 Nothing in the Contract excludes, restricts or modifies any guarantee, right or remedy conferred by the Australian Consumer Law or any other applicable law insofar as they cannot be excluded, restricted or modified by agreement.

14.4 Where liability cannot be reduced or excluded, State Transport's liability for any Loss or Claims arising in connection with the Services, including for breach of the Contract, in negligence or in tort or for any other common law or statutory action, will:

- (a) be limited to the extent the Loss was caused directly by State Transport or its Personnel;



- (b) in all events, exclude Loss relating to any delay in delivery out of the Goods or in the delayed supply of Services and for any Consequential Loss; and
- (c) in any one incident (excluding liability for breach of a non-excludable consumer guarantee) be limited to the re-supply of the Services, or at State Transport's option, payment of the cost of having the Services re-supplied.

14.5 In circumstances where State Transport is liable for any loss of, damage to, or deterioration of any loss of Goods, damage to Goods, misdelivery, delay in delivery or non-delivery of Goods, the maximum aggregate financial liability of State Transport is limited to the sum of \$500 for each incident (and in aggregate per annum at \$5,000) except to the extent that any loss or damage to Goods is caused by State Transport engaging in malicious conduct, deliberate or wilful misconduct, fraud or criminal conduct. All claims that result from the one original cause will be considered, for the purpose of this subclause, to have arisen from the same incident.

15. Notification of Claims

15.1 Subject to any statutory rights and remedies, the Customer's rights and remedies under the Contract will be subject to the following:

- (a) if the Customer believes State Transport is liable, it must notify State Transport in writing:
 - (i) in the case of Goods allegedly lost or damaged in the course of Delivery, within 48 hours from the Delivery of the Goods; or
 - (ii) in the case of Goods allegedly lost or damaged during Storage, within 48 hours of the removal or attempted removal of the Goods from Storage.

If State Transport does not receive a written notice from the Customer within the time limited, State Transport will be discharged from all liability whatsoever in respect of the Goods.

- (b) The Customer must allow State Transport to inspect the Goods within a reasonable time after Delivery if the Customer believes the Goods are defective or damaged.
- (c) To the extent permitted by law, State Transport will be discharged from all liability whatsoever in respect of the Goods unless legal proceedings are commenced:
 - (i) in the case of Goods allegedly lost or damaged in the course of Delivery, within 6 months from the Delivery of the Goods; or
 - (ii) in the case of Goods allegedly lost or damaged during Storage, within 12 months of the removal or attempted removal of the Goods from Storage.

16. Indemnity

16.1 The Customer will be solely responsible for and must pay and/or reimburse State Transport upon request for any:

- (a) Costs, losses, damages and/or expenses incurred; and/or
- (b) Loss incurred or Claims made against it, State Transport or any State Transport Personnel by a third party,

suffered or incurred as a result, directly or indirectly, of the provision of the Services by State Transport, save and except where they arise as a direct result of State Transport's (or its Personnel's) negligence or wilful breach of its obligations under this Agreement.

16.2 The Customer will indemnify and keep indemnified, State Transport and any State Transport Personnel from and against all costs, losses, damages and/or expenses and/or any Loss in respect of any Claims made against State Transport by any third party, suffered or incurred by State Transport as a result (whether directly or indirectly) of State Transport's provision of the Services to the Customer, save and except to the extent of State Transport (or its Personnel's) negligence or wilful breach of its obligations under this Agreement.

16.3 The Customer indemnifies State Transport and must pay and/or reimburse State Transport on request for all reasonable expenses and Loss (including but not limited to the costs of fumigation, labour and off-site temporary storage) incurred by State Transport as a result of contamination or infestation of any of its facilities (including but not limited to the Storage Location) and/or goods belonging to other State Transport customers resulting from the provision of the Services by State Transport to the Customer.

17. Default and Termination

17.1 If:

- (a) Any charges or other amounts payable by the Customer to State Transport are overdue or unpaid, the Customer is otherwise in breach of these Terms or in State Transport's reasonable opinion the Customer is likely to be unable to pay the outstanding charges or meet its other obligations owed to State Transport;



- (b) the Customer experiences an Insolvency Event; or
- (c) the legal or beneficial ownership (excluding listed companies), or the effective control (within the meaning of section 50AA of the *Corporations Act 2001* (Cth)) of the Customer, is transferred, or the nature of the Customer's business is materially altered; or
- (d) the Customer breaches the Contract, and the Customer fails to rectify the breach within 10 days of written notice from State Transport specifying the breach and requiring its remedy,

then:

- (e) State Transport may immediately cease providing all or any part of the Services which remain unperformed and, without prejudice to any other remedy available to it, terminate the Contract and the provision of Services to the Customer; and
- (f) all outstanding charges and any other amounts payable by the Customer to State Transport will, whether or not due for payment, become immediately due and payable.

18. Privacy

18.1 The Customer agrees that State Transport may:

- (a) obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by State Transport. The Customer consents to State Transport being given a consumer credit report to collect overdue payment on commercial credit;
- (b) exchange information about the Customer with credit providers either named as trade referees by the Customer or named in a consumer credit report by a credit reporting agency for any of the following purposes:
 - (i) to assess an application by the Customer for credit;
 - (ii) to notify other credit providers of a default by the Customer;
 - (iii) to exchange information with other credit providers as to the status of the Customer's credit account, where the Customer is in default with other credit providers; or
 - (iv) to assess the credit worthiness of the Customer and obtain a consumer credit report.

19. Force Majeure

- 19.1 If State Transport is wholly or partially precluded from performing the Services or otherwise complying with its obligations under these Terms by a Force Majeure Event, then State Transport's obligation to perform all of its obligations under the Contract will be suspended for the duration of the Force Majeure Event.
- 19.2 If the Force Majeure Event continues for a period longer than sixty (60) days from its initial occurrence and State Transport continues to be unable to perform the Services, then either party may terminate the Contract by written notice, without liability to the other.

20. GST

- 20.1 Any consideration to be paid or provided for a supply made under or in connection with these Terms, unless specifically described in this contract as GST inclusive, does not include an amount on account of GST. To the extent that any supply made under these Terms is a taxable supply, the GST exclusive amounts payable or to be paid for that taxable supply will be increased by the amount of GST payable in respect of that taxable supply.
- 20.2 The additional amount payable under clause 20.1 must be paid at the same time as the consideration for the taxable supply or the date on which the party making the taxable supply delivers a valid tax invoice, whichever is later.

21. Non-solicitation

- 21.1 The Customer must not, for a period of 12 months after any State Transport Personnel or vehicle supplier ceases their engagement with State Transport, procure or otherwise engage that individual or entity, either directly or indirectly through a related entity, to provide the same or similar services to the Customer without the prior written consent of State Transport.
- 21.2 If the Customer breaches clause 21.1. then the Customer agrees to pay to State Transport the following liquidated damages. If the relevant State Transport Personnel or vehicle supplier is engaged by the Customer, or a related entity of the Customer:
 - (a) on a full-time basis - \$8,500; or
 - (b) on a part-time basis - \$6,500.
- 21.3 The liquidated damages under clause 21.2 will be payable within 7 days of the later of:
 - (a) the date the relevant State Transport Personnel or vehicle supplier's engagement with State Transport is terminated; or



- (b) the date the Customer directly engages or indirectly through a related entity, procures the engagement of the relevant State Transport Personnel or vehicle supplier.

21.4 The Customer agrees that the liquidated damages payable under this clause 21 constitute a fair and reasonable pre-estimate of the loss and damage that will be suffered by State Transport if clause 21.1 is breached.

22. Cancellation

22.1 State Transport may cancel any Contract to which these Terms apply or cancel Delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. State Transport will not be liable for any Loss or damage whatsoever arising from such cancellation.

22.2 In the event that the Customer cancels an order for Services or Delivery of Goods the Customer will be liable for any loss incurred by State Transport (including, but not limited to, any loss of profits) up to the time of cancellation.

23. Applicable legislation

23.1 Notwithstanding anything contained in these Terms, State Transport will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

23.2 State Transport, the Customer and any consignee must comply with all Law, including the Heavy Vehicle National Law.

23.3 The Customer must not seek to impose any requirement on State Transport that would directly or indirectly encourage or require State Transport or any person on behalf of State Transport to speed, drive while fatigued or otherwise perform the Services in an unsafe manner or in breach of any applicable laws.

24. Miscellaneous

24.1 Whole Agreement

These Terms constitute the sole and entire agreement and understanding between the parties with respect to its subject matter and a warranty, representation, guarantee or other term or condition of any nature not contained or recorded in these Terms is of no force or effect unless contained in a subsequent document signed by the parties.

24.2 Jurisdiction

The Contract is governed by the laws in force from time to time in the State or Territory in which the Goods were accepted by State Transport for transport or Storage and the parties submit to the exclusive jurisdiction of the courts exercising jurisdiction in that State or Territory.

24.3 Severability

If any provision of these Terms is void, voidable, unenforceable, invalid or not enforceable in accordance with its terms in a particular jurisdiction then it is to be read down such that it operates to the maximum extent permitted by the law in that jurisdiction. If a provision of these Terms cannot be read down, then that provision is to be severed from these Terms so that the remaining provisions continue to bind the parties.

24.4 Variation

These Terms may be altered or amended at any time by publication on State Transport's website. Any such changes apply onto to Services requested or ordered after the amendment is made and do not apply to Services requested or ordered after the amendment is made.