

BIC LOGISTICS – Terms and Conditions

1. **Definitions**
 - 1.1 "Supplier" shall mean Newcastle Courier Innovative Services Pty Ltd Trading as BIC Logistics and its successors and assigns or any person acting on behalf of and with the authority of Newcastle Courier Innovative Services Pty Ltd Trading as BIC Logistics.
 - 1.2 "Sub-Contractor" shall mean and include:
 - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom the Supplier may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
 - 1.3 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting the Supplier 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 part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Client's executors, administrators, successors and permitted assigns.
 - 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of the Supplier's Services.
 - 1.5 "Services" shall mean all services supplied by the Supplier to the Client (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, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or otherwise handling the Goods, or anything else done in relation thereto), including the offering of any advice or recommendations.
 - 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of the Supplier's Services, or for storage by the Supplier.
 - 1.7 "Dangerous Goods" means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this contract) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in the legislation governing carriage by road or rail in the States and Territories of Australia.
 - 1.8 "Price" shall mean the cost of the Services (plus any GST where applicable) as agreed between the Supplier and the Client subject to clause 4 of this contract.
 - 1.9 "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 Services provided by, the Supplier.
 - 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and the Supplier.
 - 2.3 These terms and conditions are to be read in conjunction with the Supplier's quotation, consent note, agreement, airway bills, manifests, or any other forms as provided by the Supplier to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
 - 2.4 These terms and conditions contain the whole of the contract between the Client and the Supplier in relation to the provision of Services and any previous contracts are hereby negated.
 - 2.5 None of the Supplier's agents or representatives are authorised to make any representations, statements, promise, warranty, conditions or contracts not expressed by the manager of the Supplier in writing, nor is the Supplier bound by any such unauthorised statements.
 - 2.6 Any time specified by the Supplier for provision of the Services is an estimate only and the Supplier will not be liable for any loss or damage incurred by the Client as a result of any delay. However, both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that the Supplier is unable to provide the Services as agreed solely due to any action or inaction of the Client then the Supplier shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
 - 2.7 Except under special arrangements previously made in writing, the Supplier will not accept or deal with any:
 - (a) Dangerous Goods. Any person delivering such Goods to the Supplier, or causing the Supplier to handle or deal with any such Goods, shall be liable for all loss or damage caused thereby and shall indemnify the Supplier against all penalties claims damages costs and expenses arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the sole discretion of the Supplier (or any other person in whose custody they may be at the relevant time such Goods are accepted) if they become dangerous to other goods or property;
 - (b) bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and the Supplier will not accept any liability whatsoever for any such Goods.
 - 2.8 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 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 Supplier 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 Supplier 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 Supplier 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 willful misconduct of the Supplier, 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 Supplier 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, or business practice). The Client shall be liable for any loss incurred by the Supplier as a result of the Client's failure to comply with this clause.
5. **Price and Payment**
 - 5.1 At the Supplier's sole discretion the Price shall be either:
 - (a) as indicated on invoices provided by the Supplier to the Client in respect of Services provided;
 - (b) the Supplier's current Price at the date of delivery of the Goods according to the Supplier's current rates schedule; or
 - (c) the Supplier's quoted Price (subject to clause 5.2) which shall be binding upon the Supplier provided that the Client shall accept in writing the Supplier's quotation within thirty (30) days;
 - (d) have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Client. The Supplier may, at any time, open any container or any other package or unit in order to re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
 - 5.2 The Supplier reserves the right to change the Price:
 - (a) if a variation to the Supplier's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of the Supplier, delivery times or date or otherwise, etc.);
 - (b) to reflect any increases to the Supplier in the cost of providing the Services which are beyond the reasonable control of the Supplier (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, administration costs (including photocopying, postage, etc.), or increases in fuel costs, taxes or customs duties, insurance premiums or warehousing costs, or for any other services, facilities or resources provided by the Supplier);
 - (c) for any delay over thirty (30) minutes in either loading and/or unloading (from when the Supplier arrives onsite), and/or any overnight or extended storage occurring other than from the Supplier's fault.
 - 5.3 At the Supplier's sole discretion, a non-refundable deposit may be required.
 - 5.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by the Supplier, which may be:
 - (a) on the Supplier's receipt of the Goods;
 - (b) before delivery of the Services;
 - (c) by way of instalments/progress payments in accordance with the Supplier's payment schedule;
 - (d) the date specified on any invoice, consent note, airway bill, manifest, or any 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, consent note, airway bill, manifest, or any other form given to the Client by the Supplier.
 - 5.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and the Supplier.
 - 5.6 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 Supplier nor to withhold payment of any invoice because part of that invoice is in dispute.
 - 5.7 The Client shall be liable for and pay to the Supplier any additional costs or expenses the Supplier may incur and for any loss or damage occasioned either directly or indirectly to the Supplier as a result of the Supplier relying upon the description and particulars provided by the Client or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
 - 5.8 Unless otherwise stated the Price does not include GST. In addition to the Price, the Client must pay to the Supplier an amount equal to any GST the Supplier must pay for any provision of Services by the Supplier under this or any other agreement. 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.
 - 5.9 Receipt by the Supplier 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 Supplier's ownership or rights in respect of the Services, and this contract, shall continue.
 - 5.10 Every special instruction to the effect that the Price shall be paid by the Consignee shall be deemed to include a stipulation that if the Consignee does not pay the said charges within the specified date for payment, then the Client shall be liable for, and shall pay to the Supplier, the said charges, together with an account transfer fee.
6. **Provision of the Services**
- 6.1 All Goods are carried or transported, and any other services are performed, by the Supplier subject only to these conditions, and the Supplier reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods at its discretion.
- 6.2 The Client authorises the Supplier (in its discretion at any time without notice to the Client) to:
 - (a) license or sub-contract all or any part of its rights and/or obligations, entering into contracts and arrangements with any third party to perform or carry out the Services (or any part thereof). In so engaging such third parties, the Supplier has or will represent to such third parties that the terms of this contract, including the benefit of any terms conferred upon the Supplier, shall extend to such third parties in providing their goods and/or services;
 - (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever.
- 6.3 The Supplier's charges shall be considered earned as soon as the Goods are loaded and despatched.
- 6.4 The Supplier is not a "Common Carrier" and will accept no liability as such. All articles are carried or transported and all storage and other Services are performed by the Supplier subject only to these conditions and the Supplier 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.
7. **Client-Packed Containers**
 - 7.1 Subject to any written special instructions to the contrary:
 - (a) the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner of packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure;
 - (b) the Supplier is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.
8. **Dangerous Goods**
 - 8.1 Unless otherwise agreed in advance in writing with the Supplier the Client or their authorised agent shall not tender for carriage any Dangerous Goods, or anything which may encourage vermin or pests. The Client shall be liable for and hereby indemnifies the Supplier for all loss and damage and all additional charges and expenses incurred or sustained by the Supplier arising out of the carriage of the Goods, any false, misleading or inaccurate information or description of such Dangerous Goods, or any default or failure of the Client to declare the Goods and Dangerous Goods and provide full particulars thereof.
 - 8.2 Where Dangerous Goods and/or anything likely to encourage vermin or pests are accepted for carriage the Client warrants that the carriage thereof is not prohibited and they have fully disclosed in writing to the Supplier before the Supplier has taken possession of the Goods the full particulars and description of the Goods, the nature and value of the Goods, all requirements of lawful authorities for such carriage and all other relevant information.
 - 8.3 The Supplier may, at its discretion, at the Client's expense and without compensation thereto or to any other person with an interest in the Goods and without prejudice to its charges or any other rights hereunder:
 - (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Client or any other person with an interest thereto;
 - (b) dispose of or destroy or abandon or render harmless any Goods which the Supplier believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination, or any declared Dangerous Goods which are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or damaging nature.
9. **Client's Responsibility**
 - 9.1 The Client expressly warrants to the Supplier 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 Client is complying with such requirements or any other lawful requirements of any authority, other body or the company shall be at the Client's cost) and are not Dangerous Goods;
 - (c) the person handling over the Goods to the Supplier is authorised to sign and accept these terms and conditions;
 - (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 dangerous goods codes, any other applicable laws and with any relevant Australian or international standards;
 - (f) at the Supplier'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 Supplier, the Supplier 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.
- 9.2 Failure by the Client to comply with clause 9.1 shall render the Client liable for any loss or damage caused to, or by, the Goods, and acceptance of the Goods by the Supplier without discovery of any such defect or lack, shall not exclude or diminish any liability on the part of the Client.
10. **Insurance**
 - 10.1 The Supplier will not, without the Client's written instruction, insure the Goods, and:
 - (a) the Goods are carried and stored at the Client's sole risk and not at the risk of the Supplier;
 - (b) subject to sub-clause (c):
 - (i) the Supplier 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 Supplier be under any liability with respect to the arranging of any such insurance and no claim will be made against the Supplier 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 Supplier 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 expense 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 Supplier, detailed in the special instructions.
11. **Delivery of the Goods**
 - 11.1 The Supplier is authorised to deliver the Goods at the Client's nominated delivery address and it is expressly agreed that the Supplier shall be taken to have delivered the Goods in accordance with this contract:
 - (a) if at that address the Supplier obtains from any person a receipt or a signed delivery docket for the Goods; or
 - (b) that even if the Client is not present at the nominated delivery address, that it is deemed that delivery has occurred even without the Supplier obtaining a signed receipt or delivery docket.
 - 11.2 The Supplier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
 - 11.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this contract.
 - 11.4 Perishable Goods, which are not taken up immediately upon arrival, or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Client, and payments or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Client.
 - 11.5 Non-perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee, may be sold (as per clause 17 or returned at the Supplier's option at any time after expiration of twenty-one (21) days from a notice in writing sent to the address which the Client gave to the Supplier for delivery of the Goods. A communication from any agent or correspondent of the Supplier to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
 - 11.6 Instructions to collect payment on delivery of the Goods (COD), in cash or otherwise, are accepted by the Supplier upon the condition that the Supplier in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
12. **Loss or Damage**
 - 12.1 Subject to clause 17 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Supplier 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 or damage by order of any authority, or seizure under legal process;
 - (b) deterioration, 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 Supplier or not)
 - (c) 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; and
 - (d) 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.
13. **Conditions of Storage**
 - 13.1 The Supplier will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from the Supplier, then the inventory will be conclusive

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- 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 Supplier will be entitled to make a reasonable additional charge.
- 13.2 The Supplier is authorised to remove the Goods from one warehouse to another without cost to the Client. The Supplier will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 13.3 The Client is entitled upon giving the Supplier reasonable notice to inspect the Goods in store but a reasonable charge may be made by the Supplier for this service.
- 13.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving the Supplier not less than five (5) working days' notice. If the Client gives the Supplier less than the required notice the Supplier will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 13.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from the Supplier to do so. In default, the Supplier may sell any or all of the Goods as per clause 15.
- 14. Indemnities**
- 14.1 The defences and exclusions of liability in these conditions general including clause 12 apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against the Supplier even if it is resulted from an act or omission of the Supplier done willfully or recklessly with knowledge that damage would or would probably result.
- 14.2 Nothing whatsoever done or omitted to be done or other conduct by the Supplier in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under any circumstances constitute either a breach going to the root of this contract, or a deviation or departure therefrom or a repudiation thereof such as to have effect of disentitling the Supplier from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other protections herein which shall continue to have full force and effect in any event whatsoever.
- 14.3 Subject to clause 17, but without prejudice to any other provision hereof, this contract and any other contract the Supplier makes under its authority and any contract made by any person whom the Supplier has delegated such authority, shall be made by the Client or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage thereof (including storage by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit). All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 5.
- 15. Lien**
- 15.1 In addition to its rights under the Warehouseman's Liens Act 1935, the Supplier shall have and retain a general lien on any Goods submitted by the Client to the Supplier for the provision of Services by the Supplier (including where done so in the capacity of any sender, consignee, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents), and in the possession or control of the Supplier (and any documents relating to those Goods), for pecuniary obligations owing from time to time by the Client on any account whatsoever to the Supplier (including, but not limited, to payment of the Price), and the Supplier shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. The Supplier shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect the Supplier's right to recover from the Client any charges due or payable in respect of the carriage or such detention and sale.
- 16. Claims**
- 16.1 Notwithstanding clauses 10 and 12, in the event that the Client believes that they have any claim against the Supplier then they must lodge any notice of claim for consideration and determination by the Supplier within seven (7) days 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 Supplier of its obligations hereunder.
- 17. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts**
- 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 Supplier 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 Supplier makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. The Supplier'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 Supplier's liability is limited to the extent permitted by section 64A of Schedule 2.
- 17.5 If the Supplier 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, then the Supplier 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.
- 21.6 If the Client is not a consumer within the meaning of the CCA, the Supplier's liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by the Supplier at the Supplier's sole discretion;
- (b) otherwise negated absolutely.
- 18. Cancellation**
- 18.1 Without prejudice to any other remedies the Supplier may have, if at any time the Client is in breach of any obligation (including those relating to payment) the Supplier may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. The Supplier will not be liable to the Client for any loss or damage the Client suffers because the Supplier exercised its rights under this clause.
- 18.2 The Supplier may cancel any contract to which these terms and conditions apply or cancel the provision of the Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice the Supplier shall repay to the Client any sums paid in respect of the Price. The Supplier shall not be liable for any loss or damage whatever arising from such cancellation.
- 18.3 In the event that the Client cancels the provision of the Services, then the Client shall be liable for any loss incurred by the Supplier (including, but not limited to, any loss of profits) up to the time of cancellation.
- 19. Default and Consequences of Default**
- 19.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at the Supplier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 19.2 If the Client owes the Supplier any money the Client shall indemnify the Supplier from and against all costs and disbursements incurred by the Supplier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Supplier's contract default fees, and bank dishonour fees).
- 19.3 Without prejudice to the Supplier's other remedies at law the Supplier shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to the Supplier shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Supplier becomes overdue, or in the Supplier's opinion the Client will be unable to meet its payments as they fall due; or
- (b) the Client has exceeded any applicable credit limit provided by the Supplier;
- (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.
- 20. Personal Property Securities Act 2009 ("PPSA")**
- 20.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 20.2 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:
- (a) Goods that have previously been carried and any Goods that will be carried in the future by the Supplier to the Client; and/or
- (b) collateral (account), being a monetary obligation of the Client to the Supplier for Services that have previously been provided, and will be provided in the future by the Supplier to the Client.
- 20.3 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 Supplier 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 20.3(a)(i) or 20.3(a)(ii);
- (b) indemnify, and upon demand reimburse, the Supplier 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 registration made thereby;
- (c) not register a financing change statement in respect of a security interest without the prior written consent of the Supplier;
- (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 Supplier.
- 20.4 The Supplier 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.
- 20.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 20.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 20.7 Unless otherwise agreed to in writing by the Supplier, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 20.8 The Client must unconditionally ratify any actions taken by the Supplier under clauses 20.3 to 20.5.
- 20.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 21. Security and Charge**
- 21.1 In consideration of the Supplier agreeing to provide the Services, 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).
- 21.2 The Client indemnifies the Supplier from and against all the Supplier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Supplier's rights under this clause.
- 21.3 The Client irrevocably appoints the Supplier and each director of the Supplier as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 21 including, but not limited to, signing any document on the Client's behalf.
- 22. Privacy Act 1988**
- 22.1 The Client agrees for the Supplier to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by the Supplier.
- 22.2 The Client agrees that the Supplier 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 years.
- 22.3 The Client consents to the Supplier being given a consumer credit report to collect overdue payment on commercial credit.
- 22.4 The Client agrees that personal credit information provided may be used and retained by the Supplier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
- (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; 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 Services.
- 22.5 The Supplier 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.
- 22.6 The information given to the CRB may include:
- (a) personal information as outlined in 22.1 above;
- (b) name of the credit provider and that the Supplier 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 the Client no longer has any overdue accounts and the Supplier 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 Supplier, 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).
- 22.7 The Client shall have the right to request (by e-mail) from the Supplier:
- (a) a copy of the information about the Client retained by the Supplier and the right to request that the Supplier correct any incorrect information; and
- (b) that the Supplier does not disclose any personal information about the Client for the purpose of direct marketing.
- 22.8 The Supplier 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.
- 22.9 The Client can make a privacy complaint by contacting the Supplier via e-mail. The Supplier 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.
- 23. Service of Notices**
- 23.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 23.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 24. General**
- 24.1 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.
- 24.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which the Supplier has its principal place of business, and are subject to the jurisdiction of the Courts in that state.
- 24.3 Subject to clause 17, the Supplier 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 Supplier of these terms and conditions (alternatively the Supplier's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 24.4 The Client agrees that the Supplier may amend these terms and conditions by notifying 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 Supplier to provide Services to the Client.
- 24.5 Where the Supplier is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of the Supplier, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this contract and the Supplier gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that all Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of the Supplier.
- 24.6 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.