EPL INTERNATIONAL PTY LTD - TRADING TERMS

These Terms apply to any and all business transacted with the Company and services provided by it. By providing instructions to the Company in relation to any goods or services or receiving any goods or services from the Company, the Customer agrees to be bound solely by these Terms. Customers should read these Terms carefully as they determine and affect their rights in respect of the Company and the services provided by it.

Definitions

1. In these Terms, unless otherwise expressly specified:

Agent means, in relation to a party, anyone acting for or on behalf of that party in any capacity, including without limitation agents, contractors and representatives, and in relation to the Company includes Subcontractors and Carriers engaged by the Company.

Carrier means any person or entity that carries, forwards or undertakes to carry or forward Goods in any manner (including sea, air, land).

Company means EPL International Pty Ltd (ACN 104 153 700).

Container means anything containing the Goods including without limitation their container and packaging.

Customer means any person or entity engaging or instructing the Company in relation to any Goods or Services and/or to whom the Company provides services and/or who pays the Company for Services and/or owning or entitled to the possession of the Goods, including without limitation the Goods' consignor, consignee, shipper, receiver, storer or their Agents, as the case may be.

Dangerous Goods means Goods that are, or are defined or deemed by law as, dangerous, hazardous, explosive, inflammable, radioactive, noxious, likely to harbour or encourage vermin or other pests or otherwise capable of causing harm, injury or damage to any person, animal or thing (including their packaging, Container, any property or the environment).

Disbursements means any and all disbursements, charges, costs and expenses (including Duties) paid or payable in relation to the Goods or Services at any time in any place for any reason.

Duties means any and all freight, wharfage, railage, carriage or other duties, charges, tariff, outlays, imposts, levies, taxes, fines, penalties or mandatory payments of similar nature imposed or payable in relation to the Goods or Services at any time in any place for any reason.

Fees means any and all fees, rates, charges and amounts charged by the Company or payable by the Customer to the Company in relation to the Goods or the Services (including services provided by Company's Agents).

Goods means any goods, things and items (including their Container) the subject of or subject to the Services or in relation to which Services are provided, in whole or in part.

Insolvent means, in relation to a party, when the party fails to pay its debts as and when they fall due, ceases to conduct business for more than 30 days, seeks protection from its creditors or an agreement with them in relation to the arrangement of its debts or takes or any steps are taken for the party's winding up, liquidation, deregistration, insolvency, bankruptcy, dissolution or the appointment of a receiver, administrator, controller or similar officer to the party's business or assets, in whole or in part, or any similar action or event taking place.

Law means any international or national law, legislation, regulations, by-laws, statutory instruments or conventions, if and to the extent applicable.

Loss means any loss, damage, cost, expense or liability of any kind, direct or indirect, however caused, suffered, incurred or arising on whatever legal grounds, including as a result of claims or demands made by any third parties on any account, whether under statute or contract or based in torts (including negligence), common law or equity, and including in connection with the payment of any Duty.

Non Perishable Goods means Goods that are not Perishable Goods.

Perishable Goods means Goods that by nature deteriorate in quality, quantity or value over time, or are deemed by law to be such Goods, including without limitation fruit, vegetables, meat and dairy products.

Services means any services provided to or arranged by the Company for a Customer, directly or through Agents, including without limitation freight forwarding, carriage, transport, storage, warehousing, packaging, custom clearance, Container hire, management or repositioning and any ancillary or related services.

Special Goods means Dangerous Goods, Perishable Goods, livestock, plants, Valuables, Goods requiring special care (including temperature control) and any Goods of similar nature.

Subcontractor means any third party (person or entity) engaged by the Company to perform, or to whom the Company delegates the performance of, any Services or obligations the Company is required to provide or perform, including without limitation Carriers, stevedores, warehousemen, port, terminal road and rail transport operators and their Agents.

Terms means the terms and conditions set out in this document and in any Quotation provided by the Company to the Customer.

Quotation means any tariff, rate schedule or quote of Fees or Disbursements including any included or related terms, provided by or on behalf of the Company to the Customer at any time in any form or medium in relation to Goods or the Services, including any services to be provided by Company's Agents.

Valuables means Goods of special value including without limitation coins, bullion, precious stones, jewellery, antiques and works of art.

Interpretation

2. In these Terms, unless the context requires otherwise:

(a) Headings are for convenience only and do not affect interpretation.

(b) The singular includes the plural and conversely and a gender includes all genders.

(c) A reference to a person includes any incorporated or unincorporated entity and conversely.

(d) A reference to a clause or schedule is to a clause or schedule of these Terms.

(e) A reference to any party includes that party's successors and permitted assigns.

(f) A reference to any Law in whole or in part includes any amendment, consolidation or replacement of it and all regulations, proclamations, by-laws and statutory instruments issued under it.

(g) A reference to a conduct includes, without limitation, any omission, statement or undertaking.

(h) An agreement, representation or warranty on the part of two or more persons binds them jointly and severally.

(i) The term "at the risk, cost and expense of the Customer" means that the Customer must pay for all costs and expenses incurred and solely bears all risk in connection with the act or thing being at the risk, cost and expense of the Customer.

(j) No provision of the Terms will be construed adversely to a party on the grounds that the party is responsible for its preparation.

Terms application

3. These Terms apply to any and all business transacted with the Company and Services provided by the Company (directly or through Agents), to the fullest extent permitted by Law. By engaging the Company's Services and/or providing instructions to the Company in relation to any Goods or Services, the Customer agrees to be bound solely and exclusively by these Terms.

4. These Terms will prevail over any terms and conditions presented or used by or on behalf of the Customer or included in any document relating to the Goods or the Services issued by or on behalf of the Customer.

5. Where the Company accepts Goods for carriage under the terms and conditions of a bill of lading, seaway bill or airway bill issued by the Company as a carrier, forwarder and/or consolidator, the terms and conditions of that bill of lading, seaway bill or airway bill will prevail over these Terms to the extent of any inconsistency and for such carriage only.

6. The Company may amend these Terms from time to time and the Customer will be bound by the amended Terms once provided to the Customer (including by email) or posted on the Company's website, whichever the earlier. Other than as above the Terms can not be waived, varied or amended without the express written consent of the Company executed by the Company's managing director.

Not a Common Carrier

7. The Company carries on business as a customs and forwarding agent only. **THE COMPANY IS NOT A COMMON CARRIER** and accepts no liability as such. The Company may at its sole and absolute discretion at any time and without specifying a reason refuse to provide Services in whole or in part to, or refuse to accept any Goods for carriage, transport or any other purpose from, any person or entity.

Subcontractors

8. Subject to these Terms, the Customer authorises the Company to engage Subcontractors to perform, or to delegate to Subcontractors the performance of or the authority to engage a third party to perform, any Services or obligations the Company is required to provide or perform.

9. The Company may contract with Subcontractors either as a principal in its own name or as an agent of the Customer, on any terms and conditions used or required by the Subcontractor or that the Company otherwise at its sole and absolute discretion deems fit, and the Customer agrees to be bound by such terms. The Customer authorises the Company to constitute the relations of principal and agent between the Customer and any Subcontractor for the purpose of any contract entered into by the Subcontractor (with the Company or any third party engaged by the Subcontractor).

10. To the fullest extent permitted by Law, any Company Agent or other person or entity who in any capacity provides any Services or performs any obligations the Company is required to provide or perform (including anyone who may be vicariously liable for their acts or omissions) will have the benefit of these Terms as if they were expressly for their benefit and will benefit from any right, exemption, defence, limitation of liability and immunity applicable or available to the Company or to which the Company is entitled as if the Company was acting as their agent, and any right, exemption, defence, limitation of liability or immunity applicable or available to such Company Agent, person or entity will be available and extend to protect the Company.

Instructions relating to Services

11. All instructions provided to the Company in connection with the Services, Goods, these Terms or otherwise must be, and the Company is not bound by any instructions relating to the Services or the Goods unless they are, expressly provided to the Company in writing, their receipt is acknowledged in writing by an authorised representative of the Company and there is sufficient time for the Company in the relevant circumstances to be able to follow the instructions.

12. Standing or general instructions, instructions given late or instructions which the Company did not acknowledge their receipt will not be binding upon the Company. If the Company chooses to adopt standing or general instructions, or instructions given late, in relation to a specific transaction, they will apply to that specific transaction only and will not be valid in relation to any other transactions. No attempt by the Company to follow standing, general or late instructions will constitute an acceptance by the Company of such instructions or make them valid.

13. An acknowledgement by the Company that Goods were physically received by the Company or its Agents for any purpose does not constitute an acknowledgement of receipt of any instructions or an acknowledgment of any obligation of the Company or of any fact or information relating to the Goods (including without limitation relating to their nature, description, content, condition, quality, quantity, value, weight, volume and dimensions).

Company's discretion in providing Services

14. The Company at its sole and absolute discretion reserves the right to choose, determine and vary the manner in which to perform the Services, including without limitation the means, method, route, timing and procedure to be followed in relation to Goods' uploading, unloading, carriage, transport, storage, warehousing and packaging, the Carriers to be engaged and the services to be performed in relation to the Goods. The Company may at any time without notice to the Customer change the manner in which the Services are provided (including means, method, route, timing and procedure) or any Service component including without limitation replacing Subcontractors.
15. To the extent practicable, the Company will follow instructions in relation to the Services and the manner in which to perform them (including means, method, route or procedure) if the instructions are duly provided in writing by the Customer, the Company acknowledges their receipt in accordance with these Terms, and the Company at its sole discretion determines that it is reasonably able to follow them in the relevant circumstances. If the Company cannot reasonably follow the instructions or at the Company's discretion they may affect other Company services, the Customer will be deemed to have authorised the Company to act and provide the Services as the Company deems appropriate.
16. Pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places or transferred from a place in which they were warehoused or held to another place to be warehoused or held, all at the sole discretion of the Company at the Customer's risk, cost and expense.
17. The Company or its Agents are entitled (but not obliged to) at any time and in any location as they deem fit in connection with the Services at the Customer's risk, cost and expense, to open the Goods' Container or packaging, inspect the Goods, repack the Goods, replace the Container or packaging, transfer the Goods in whole or in part to another Container, combine the Goods in whole or in part with any other cargo, divide the Goods between different Containers and/or otherwise handle the Goods.
18. The Company will have no obligation to take any action in respect of any Goods which may be recognisable as belonging to the Customer unless express written instructions in relation to the Goods and requested action (together with all documents required) are duly provided by the Customer, their receipt is acknowledged by the Company in accordance with these Terms, and the Company at its sole discretion agrees to follow all or some of the instructions. Without limiting the above, and in particular, the Company will not be obliged to notify the Customer of the existence or whereabouts of the Goods or to examine or take any action in relation to the Goods (even if the they are landed in a damaged or pillaged condition) or to take any steps for the identification, protection or preservation of the Goods or for the preservation of any claim by the Customer or any other party against any third party.

Customer Warranties

19. The Customer warrants to and covenants with the Company that:
    (a) the Customer is either the owner or entitled to the possession of the Goods or the authorised agent of the owner or person or entity entitled to the possession of the Goods, and the Customer accepts these Terms both on its own behalf as well as on behalf of any third party for whom the Customer is acting.
    (b) the person delivering the Goods to the Company is duly authorised by the Customer to deliver them to the Company.
    (c) the person instructing the Company in relation to the Goods or Services is duly authorised by the Customer to do so and to do and sign anything required in relation to engaging the Company's Services in accordance with these Terms, providing instructions in relation to the Goods and Services and carrying them out.
    (d) the Goods are packed to withstand all ordinary risks associated with the Services (including the Goods' handling, storage, carriage, loading and unloading), having regard to the nature and condition of the Goods and the requirement of any applicable Law.
    (e) The Goods are not of illegal nature or content and the services required and any instructions provided by the Customer in relation to the Goods or Services are not in breach of any applicable Law or agreement in any jurisdiction.
    (f) the Customer has complied with and will continue to comply with any applicable Law as required in connection with the Goods, the Services and the instructions given by the Customer in relation to them having regards to the Goods' nature and condition, including without limitation in relation to the Goods' packaging, labelling, marking, handling, storage, loading, unloading and carriage.
    (g) All Services the Company is requested by the Customer to supply are for the purpose of a business, trade, profession or occupation carried on or engaged by the Customer and not for personal, domestic or household purposes, unless otherwise expressly notified in writing by the Customer to the Company.
20. The Customer will be solely liable for, and must indemnify and hold harmless the Company from and against any Loss suffered by the Company in connection with, any breach of any warranty provided by the Customer in these Terms or otherwise.

Customer provided Information

21. The Customer acknowledges that the Company, its Agents and any third parties involved in the provision of the Services or liaised with in connection with the Services (including government, custom and consular bodies or agencies) are relying solely on the information provided by the Customer or its Agents or on their behalf in relation to the Goods and the Services and assume such information is correct, complete and accurate.
22. The Customer is bound by, and warrants the accuracy, completeness and correctness of, any and all information (including without limitation information in relation to the Goods' nature, description, content, condition, quality, quantity, value, weight, volume and dimensions) in any form or medium (tangible, electronic or other, including on labels, markings and packages) provided by the Customer, its Agents or on their behalf in connection with the Services or the Goods for any purpose whatsoever including in connection with the Goods' packaging, Container, storage, transport, loading, unloading, carriage, custom clearance, quarantine or consular. The Customer is solely liable for any Duty or payment of whatever nature levied or imposed at any time or place in relation to the Goods or the Services, and must indemnify and hold harmless the Company from and against any Loss suffered by the Company in connection with such Duty or payment or any information provided by the Customer, its Agents or on their behalf, its inaccuracy or any omission from it (whether caused intentionally, by negligence or otherwise).
23. Where a declaration of the value of the Goods is required or made for the purpose of any Services (in any carriage or other document), no value must be declared which may increase or extend the liability of the Company or its Agents as provided for under these Terms, any contract or any applicable Law, unless express written instructions to the contrary are duly provided by the Customer and the Company acknowledges their receipt in accordance with these Terms and agrees to this at its sole discretion.
24. Where there is a choice of rates or charges in relation to any service according to the extent of liability assumed by the service provider (the Company or its Agents), no declaration of value will be made which may extend liability and the Goods will be carried, forwarded, warehoused and dealt with at the Customer's risk for minimum charges, unless express written instructions to the contrary are duly provided by the Customer to the Company and the Company acknowledges their receipt in accordance with these Terms and agrees to this at its sole discretion.

Insurance

25. The Company will not effect insurance on the Goods unless and to the extent the Customer duly provides the Company express written instructions requesting the Company to do so together with the Customer's written declaration as to the value of the Goods to be insured, and the Company acknowledges receipt of such instructions in accordance with these Terms. Any insurance effected by the Company is subject to the conditions and exceptions included in the policies of the insurers or underwriters taking the risk. The Company is not obliged to effect separate insurance for each consignment and may declare and include it in any general or open insurance policy. At the discretion of the Company an insurance policy may name the Customer or owner as insured.
26. In the event of any dispute arising for any reason whatsoever in relation to any insurance policy or the insurer's liability under it, the Customer or other insured will have recourse against the insurer or underwriter only and the Company will have no liability or responsibility in relation to any insurance policy, notwithstanding that the premium rate payable in relation to the policy is not the same as the rate charged by the Company or paid by the Customer to the Company. The Company will under no circumstances be regarded as an insurer of the Goods.

Collection on delivery (COD)

27. The Company may in its absolute discretion refuse instructions to collect on delivery (COD) in cash or otherwise. Where the Company does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection. The company is not liable for any loss, damage, cost, expense or liability arising in connection with carrying out instructions to collect on delivery, or such collection, however caused (whether by negligence or otherwise).

Special Goods

28. Except as otherwise expressly agreed in writing in advance between the Customer and the Company, the Company will not accept for carriage or any other purpose or otherwise deal with Special Goods, and the Customer warrants to the Company that the Goods are not Special Goods.
29. If the Customer delivers to the Company or causes the Company to accept for carriage or any other purpose or otherwise deal with Special Goods other than as expressly agreed in writing by the Company, the Customer will solely be liable for, and must indemnify and hold harmless the Company from and against any Loss suffered by the Company in connection with this matter.
30. If the Customer delivers to the Company or causes the Company to accept for carriage or any other purpose or otherwise deal with Special Goods, whether pursuant to an express written agreement between the Company and the Customer or not, or if any Goods at the sole discretion of the Company become or are likely to become Dangerous Goods, such Special Goods or Dangerous Goods (as the case may be) may at any time as deemed necessary to prevent or mitigate any loss, damage or injury to any person, thing or the environment at the sole discretion of the Company or anyone having custody of the Goods, be unloaded, abandoned, destroyed or otherwise dealt with, at the Customer's risk, cost and expense and with no liability on behalf of the Company, and the Customer will be solely liable for, and must indemnify and hold harmless the Company from and against, any Loss suffered by the Company in connection with the handling, destruction or other dealing with such Goods.
31. The Customer must clearly identify and distinctly mark all Special Goods (including their covering, packaging and Container) as such, and must ensure the Special Goods are packed and labelled, having regard to their nature and condition, as required by any applicable Law. The Customer must indemnify and hold harmless the Company from and against any Loss suffered by the Company in connection with the breach of the Customer's obligations under this clause.
32. The Company will be under no obligation to make any declaration to, or to seek any special protection or cover from, any air, rail, sea or road transport authority or agency or any other government or regulatory body in any place in respect of any Goods defined or deemed by that body as Dangerous Goods or other Special Goods or Goods liable to be stored in the open, unless express written instructions to that effect are duly provided by the Customer to the Company and their receipt is acknowledged by the Company in accordance with these Terms.

Delivery

33. Any date specified by the Company or its Agents in connection with the delivery or otherwise in connection with the Services is an estimate only and the Company will not be liable for failing to complete delivery or any Service on the specified date for any reason.
34. Failure of the Customer to take delivery of the Goods as instructed by the Company or its Agents and/or to mitigate any loss or damage thereto will constitute a waiver by the Customer of any claim whatsoever in relation to the Goods, the Services or the Company.

Storage, sale, disposal and return of Goods

35. Where the Goods can not be delivered for any reason, including without limitation because they are not taken up, accepted or collected immediately upon arrival or as requested by the Company or its Agents, or can not be delivered within a reasonable time having regard to their condition or nature, or are insufficiently or incorrectly addressed or marked or are otherwise not identifiable, then they may, in whole or in part, at the sole discretion of the Company or its Agents at the risk, cost and expense of the Customer, without affecting the Company's right to any Fees and with no liability to the Company:

(a) if they are Perishable Goods, be sold, abandoned or otherwise disposed of with or without notice to the Customer, and payment or tender to the Customer of the net proceeds of any such sale or disposal after deduction of all costs, expenses and charges incurred by the Company and its Agents in connection with such sale or disposal (including any related handling and storage of the Goods) will be equivalent to delivery; and

(b) if they are Non Perishable Goods:

(i) at the discretion of the Company be stored until collected or removed by the Customer or its Agents, and such storage will be equivalent to delivery; if the Customer fails to collect or remove the Goods from storage upon being required in writing to do so, such Goods may be sold, abandoned or returned in accordance with clause 35(b)(ii); and/or

(ii) be sold, abandoned or returned at any time after the expiration of 21 days from the date a notice in writing is sent to the Customer at the address which the Customer gave to the Company on delivery of the Goods. All costs, charges and expenses incurred by the Company and its Agents in connection with such sale, abandonment or return of the Goods (including any related handling and storage of the Goods) will be paid by the Customer.

36. In selling or disposing the Goods in accordance with clause 35 the Company and its Agents act as a principal and not as an agent or a trustee of the power of sale, and the Company's only obligation to the Customer in relation to such sale or disposal is to use reasonable skill and care.

37. Any communication from the Company or its Agents to the Customer to the effect that the Goods cannot be delivered for any reason will be a conclusive evidence of that fact.

Containers

38. The Customer must ensure that the empty Container is returned to the place and on the time nominated in writing by the Company or its Agents (in the delivery order or otherwise) for the return of the Container, in a clean and undamaged condition free of any residues, chemicals, dangerous goods or fumigation labels, stowage aids or lashing.

39. If the Container is not returned on the date nominated in writing by the Company (whether on expiry of a free period, a paid hire period or otherwise), the Customer must pay the Company the fees charged by it for container hire and use from the date nominated by the Company for the return of the Container until the date of the actual return of the Container to the Company or the payment to the Company of its replacement value (Container Hire Charges), in addition to any detention charges and other amounts payable by the Customer to the Company in connection with the Container or its return under these Terms or otherwise.

40. The Customer will be liable for, and agrees to indemnify the Company from and against, all Loss incurred by the Company in connection with any failure to return the Container in the required condition and/or to the place and/or on the time nominated in writing by the Company or its Agents, including without limitation all Container recovery, repair and cleaning costs, the Container replacement costs if applicable (based on the value recorded in the Company's books), Duties and detention charges, the Container Hire Charges and all related legal and administration costs plus interest.

41. The Company gives no warranties in respect of the Container's condition or its suitability for any purpose.

42. The Customer will be solely liable for any loss, damage, injury or death caused by or in connection with the Container while the Container is in the possession or control of the Customer, its Agents or their nominees (including due to any incidents involving the Container which result in property loss or damage or personal injury or death).

Quotations, Fees and Commissions

43. The terms and conditions of any Quotation provided by or on behalf of the Company to the Customer are incorporated into these Terms and form an integral part of them.

44. Quotations are given on the basis of immediate acceptance only and they are subject to withdrawal or revision at the Company's sole discretion at any time without notice. If any changes occur in Fees or Disbursements related or applicable to the Services or the Goods, whether charged by the Company or its Agents, including without limitation freights, carriage, transport, warehousing, handling, packaging, Container hire maintenance or management or other rates or Fees, insurance premiums or statutory charges, the Quotations may be revised accordingly by the Company.

45. The Company may charge by weight, measurement, value, time, task, any combination of them or on any other basis, and may at any time reweigh, remeasure or revalue the Goods (or request same) at the risk, cost and expense of the Customer and charge additional Fees accordingly.

46. Unless otherwise stated, all Quotations, Fees and Disbursements are exclusive of any and all taxes that apply to the sales or provision of services (including without limitation GST or VAT) and any other applicable taxes. The Customer is solely liable for all GST or VAT and other taxes applicable in relation to the Services provided by the Company and its Agents at any time or place, and must pay all such taxes as required by any applicable Law or otherwise as specified in the applicable invoice. The Company will provide the Customer with a valid tax invoice in relation to all amounts paid or payable to the Company as required by Law.

47. The Company is entitled to retain and be paid all brokerages, commissions, allowances and other remunerations customarily retained by or paid to international trade facilitators, shipping and forwarding agents, carriers and customs brokers and (where the Company accepts specific instructions to effect insurance in accordance with these Terms) insurance brokers whether declared or otherwise, and no such brokerage, commission, allowance or other remuneration will be payable or allowable to the Customer or its Agents.

48. The Company will have no liability or responsibility by virtue of the fact that there may be a change in any rates of any Duty or Fee before or after the performance by the company of an act involving a less favourable rate of Duty or Fee, or by virtue of the fact that a saving may have been effected had any act been performed at a different time or in a different way or been avoided or a different act had been performed, whether due to the negligence of the company or its Agents or otherwise.

49. The Company will under no circumstances be precluded from raising a debit in respect of any Fees or Disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.

Payment of Fees and Disbursements

50. All Fees will be deemed to be fully earned by the Company and the Company will be entitled to a non refundable payment of the Fees upon receipt of the Goods by the Company or its Agents.

51. The Customer must pay the Company all Fees charged by the Company in connection with the Services and/or the Goods immediately upon receipt of the Company's invoice in the manner and currency specified in the Company's invoice, unless otherwise expressly specified in writing by the Company in the invoice or otherwise. All Fees paid are non refundable except where the Company at its sole discretion specifies in writing otherwise.

52. The Company is under no obligation to pay any Disbursement or incur any debt on behalf of the Customer unless the Customer provides the Company in advance with the funds required for such payment. The Customer authorises the Company to advance Disbursements if the Company at its sole discretion elects to do so and the Customer must reimburse the Company for any Disbursements paid or incurred by the Company on behalf of the Customer immediately upon receipt of the Company's invoice for such Disbursements. The Customer must indemnify the Company from and against any Loss suffered by the Company in connection with the Customer's breach of its obligations under this clause 52.

53. The Customer must pay all Fees and Disbursements to the Company on their due date as specified by the Company in writing (in the applicable invoice or otherwise), in accordance with these Terms, without deferring or withholding any payment and without any deduction or set off of any amounts for any reason on any account.

54. Despite any acceptance by the Company of instructions to collect Fees or Disbursements, from any specific person or entity, the Customer remains fully liable to the Company for payment of all Fees and Disbursements and must pay them to the Company upon demand.

55. All amounts payable by the Customer to the Company on any account will become immediately due and payable in the event that the Customer becomes Insolvent or breaches any of its obligations under these Terms and at the Company's sole discretion the breach can not be remedied or the Customer fails to remedy such breach within 7 days of being requested in writing by the Company to do so.

56. Without derogating from or limiting any right or remedy available to the Company under any Law, contract, these Terms, in common law, equity or otherwise, if the Customer fails to pay the Company in full any amount due or payable to the Company in accordance with these Terms, the Company may, at its sole and absolute discretion, take and/or cause its Agents to take any one or more of the following actions (whether in relation to Goods or Services for which the payment is due or in relation to other Goods or Services) without any penalty or liability to the Customer or its Agents:

(a) Charge the Customer, and the Customer must pay the Company, interest on any overdue unpaid amount at a monthly rate of 2% (two per cent) with such interest accruing on a daily basis from the due date of payment until the date of actual payment;

(b) Cease and suspend the provision and performance of any Services to the Customer, including without limitation services provided by Company Agents;

(c) defer any carriage or delivery of Goods requested by the Customer;

(d) retain possession or control of any Goods owned by the Customer or to which the Customer has any right, title or interest for so long as any amount remains overdue;

(e) refuse to accept any further instructions from the Customer;

(f) deduct from any money already paid by the Customer to the Company, on any account, any money owed by the Customer to the Company on any account and the Company will not be obliged to act upon the Customer's instructions until the Customer pays the Company all amounts owed by it to the Company on any account;

(g) Exercise any lien available to the Company under these Terms or otherwise.

Heavy Vehicle National Law - Chain of Responsibility

57. The Company is committed to taking all steps, so far as is reasonably practicable, to ensure that carriage of Goods by a heavy vehicle on road that is performed as part of the Services is performed safely in accordance with the applicable Heavy Vehicle National Law and its Chain of Responsibility provisions (CoR Laws). The Company will not comply with any direction or instruction by, for or on behalf of the Customer that might have the effect of causing, encouraging or contributing to a breach of the CoR Laws, or preventing the Company from taking all steps it deems necessary to prevent any breach of the CoR Laws, or otherwise to comply with its duties under the CoR Laws.

58. The Company will not, under any circumstances or to any extent, be liable to the Customer or any other person for any Loss whatsoever arising from any action or inaction of the Company, its officers, employees or Agents undertaken to comply or ensure compliance with the CoR Laws.

59. In the event of a breach of CoR Laws caused or contributed to by the Customer, or its Agents, the Company may refuse to comply with the Customer's directions or instructions in whole or in part or cease the provision of further Services to the Customer and may withhold any payment due to the Customer or its Agents in connection with the conduct giving rise to such breach.

Lien

60. The Company will have a special and general lien on any Goods, cargo and property of the Customer that are in and that may come into the possession or control of the Company or its Agents and any documents relating to such Goods for any and all moneys and amounts (Fees, Disbursements and other) payable, due or owing by the Customer or its Agents to the Company or its Agents on any account whatsoever (whether in connection with the specific Goods or Services for which money is owed or any other goods, services or transaction), and for all costs and expenses incurred by the Company and its Agents in enforcing the lien. The Company may exercise the lien at any time and place at its sole discretion, and for such purpose may sell (directly or through Agents) the Goods whether by public or private sale or auction without notice to the Customer, and apply the proceeds of such sale towards the discharge of the lien. The Company will not be liable to the Customer or any person for any loss, damage, cost, expense or liability of any kind incurred or suffered by them in connection for the exercise by the Company of its rights under the lien, and the Customer must indemnify the Company from and against any Loss suffered by the Company in connection with the exercise of its rights under the lien.

Limitation of Liability

61. All Services are provided, and all Goods are carried, transported, loaded, unloaded, stored and otherwise handled, entirely at the sole risk of the Customer.
62. To the fullest extent permitted by Law, the Company will not be liable (whether under statute, contract, in torts including negligence, common law or otherwise) for any loss, damage, cost, expense or liability of any kind whatsoever suffered or incurred by the Customer, its Agents or any third party directly or indirectly (including as a result of any third party claim) in connection with the Goods, the Services, any act or omission of the Company or its Agents (negligent, wilful or other) or otherwise, however and whenever suffered, incurred, caused or arising, including without limitation in connection with:
    (a) Any loss, non delivery, mistaken delivery or delay in delivery of the Goods;
    (b) Any loss, damage, destruction, contamination, evaporation, breakage, leakage, wasting, decay, depreciation or deterioration of the Goods or a decrease in the Goods' quantity, quality or value for any reason (including due to fire, explosion, fraud, theft, storm, flood or any Container related reason);
    (c) Any quotation, statement, advice, representation, forecast, estimate or information made or given in writing or otherwise by or on behalf of the Company or its Agents in relation to any classification, application, liability, scale, rate or amount of any Duty or Fee relating to the Goods or the Services;
    (d) The performance or failure or delay in performing any Services;
    (e) The Carrying out or failure or delay in carrying out the Customer's instructions;
    (f) Any Failure or inability to collect or receive on delivery in cash or otherwise;
    (g) The Goods' condition (including any inherent vice or defect), nature, description, content, quality, quantity, value, weight, volume or dimensions;
    (h) The Goods' packaging, Container, marking, labelling, loading, unloading, transport, carriage, storage or handling;
    (i) Any strike, lockout, stoppage or restraint of labour;
    (j) Any act or omission of any government body or regulatory authority (including without limitation fumigation, decontamination and other AQIS treatments);
    (k) Any act of god, nature, war, terror or similar force majeure event; or
    (l) Any act or omission of the Customer or its Agents.
63. To the fullest extent permitted by Law:
    (a) All warranties, terms and conditions that are not expressly and specifically included in these Terms (statutory, common law or other) are excluded.
    (b) The Company will not be liable (whether under statute, contract, in torts (including negligence), common law or otherwise) for any:
        (i) Special, consequential, incidental or indirect loss, damage, cost, expense or liability arising in connection with the Services or the Goods (including without limitation any loss of profit, reputation or goodwill);
        (ii) Loss due to fair wear and tear of the Goods; or
        (iii) Loss arising due to circumstances of force majeure or circumstances beyond the control of the Company.
64. Where the Company's liability can not be excluded in accordance with these Terms, such liability will be limited to the following, without derogating from or limiting the Company's right to any Fees or Disbursements that must be paid by the Customer to the Company pursuant to these Terms:
    (a) if any applicable Law provisions (terms, conditions or warranties) that can not be excluded prescribe the relevant scope of liability, to the minimum amount or scope of liability permitted by them;
    (b) if the value of the Goods has to be determined for this purpose, that value will be the lesser of the actual cost of the Goods to the shipper or their market value at the time of agreed delivery;
    (c) if the Competition and Consumer Act 2010 applies and a consumer guarantee or a similar provision that can not be excluded under that Act is breached, to the supply of the Services again or the payment of the cost of having the Services supplied again, at the option of the Company;
    (d) In any other case, the Company's liability will be limited to the lesser of $US100 or the total amount received by the Company from the Customer in relation to the Services giving rise to the liability,

    and the Company will have the full benefit of all defences, exemptions, immunities, limitations of liability and other rights and remedies available under any applicable Law.

Claims

65. The Customer agrees that any claim of the Customer against the Company that is not notified to the Company in writing within the time limits specified below will, to the fullest extent permitted by Law, be deemed to be completely and irrevocably waived and barred:
    (a) Any claim for damage to the Goods – must be lodged in writing with the Company within 7 days of the delivery of the Goods;
    (b) Any claim for non delivery, delay in delivery or loss of the Goods must be lodged in writing with the Company within 90 days of the estimated delivery date of the Goods (as provided by the Carrier);
    (c) Any other claim must be lodged in writing with the Company within 14 days of the event giving rise to the claim.
66. To the fullest extent permitted by Law, the Company will be discharged from all liability whatsoever in connection with the Services and/or the Goods unless an action or proceedings are commenced against the Company within nine months from the date of completion of the Services or delivery of the Goods or the estimated delivery date of the Goods (as provided by the Carrier), whichever occurs first.
67. The Customer must not, and must procure that the Customer's Agents will not, raise or make any claims on any grounds whatsoever against the Company's Agents or anyone that has provided all or any part of the Services, and the Customer must indemnify all parties against whom such claims are made from and against any direct and indirect loss, damage, cost, expense or liability of any kind suffered or incurred by them on any grounds as a result of such claims, and must indemnify the Company for any Loss suffered by it in connection with such claims.
68. All defences, exemptions, immunities, limitations of liability, rights and remedies conferred on the Company by these Terms will remain valid and in full force and effect whether or not the Services were completed, the Goods were delivered or these Terms were breached by the Company.

Indemnity

69. Without limiting any obligation of the Customer to indemnify the Company under these Terms, any applicable Law or otherwise, the Customer must indemnify, keep indemnified and hold harmless the Company from and against any Loss suffered or incurred by the Company in connection with:
    (a) Any Service performed or arranged by the Company for or at the request of the Customer or in relation to the Goods;
    (b) Carrying out the Customer's instructions;
    (c) The Goods' condition (including any inherent vice or defect), nature or content;
    (d) The Goods' packaging, Container, marking, labelling, loading, unloading, transport, carriage, storage or handling by the Customer or its Agents;
    (e) Any relationship established by the Company for or on behalf of the Customer or in connection with the Services (with Agents or others);
    (f) Any breach of a warranty, term or condition of these Terms by the Customer or its Agents;
    (g) Any act or omission of the Customer or its Agents.
70. Each indemnity obligation of the Customer under these Terms is an independent, severable continuing obligations and it will remain valid and in full force and effect whether or not the Services were completed, the Goods were delivered or these Terms were breached by the Company.

Notices

71. Notwithstanding any prior dealings between the Company and the Customer and to the fullest extent permitted by Law, anything (including without limitation contracts, documents, cash, cheque, bank drafts and other remittances) sent to the Company through the post will be deemed not to have been received by the Company unless and until actually delivered to the Company's offices or placed in the Company's post office box, if so addressed.
72. The Company may serve a notice in writing to the Customer or its Agents and that notice will be deemed to have been received by them if it was delivered personally or sent by post to their last known address or, if their address is unknown to the Company, if an advertisement was published at least once a week for two weeks in a daily newspaper circulating generally throughout the state in which the Customer or other person was last known to reside.

Law and Jurisdiction

73. These Terms, their interpretation, implementation and any matter arising in connection with them, will be governed by and construed in accordance with the Laws of the State of NSW, Australia and the Customer and the Company irrevocably and unconditionally submit to the exclusive jurisdiction of the authorised courts in the State of NSW, Australia.
74. If certain Law provisions, terms or conditions (national or international, including conventions) that can not be excluded prevent the application of the exclusive law and jurisdiction specified in these Terms above, then to the extent any choice of law and/or jurisdiction is available under such provisions, terms or conditions, such choice will be made by the Company at its sole discretion.

General

75. These Terms constitute and embody the entire agreement between the Customer and the Company in relation to any dealing between them including the Services, and they supersede and replace any previous agreement, arrangement, understanding or communication between the Customer and the Company in relation to the Services, unless otherwise expressly agreed in writing between the Company and the Customer.
76. Any right, power or remedy granted to a party under the Terms is in addition to and without derogating from any other right, power or remedy conferred upon that party by any applicable Law, agreement, common law, equity or otherwise.
77. Any waiver of any right, power or remedy granted to a party under these Terms must be in writing signed by that party. No other conduct of a party (including without limitation a failure or delay in exercising the right, power or remedy) operates as a waiver of or otherwise prevents the exercise of the right, power or remedy.
78. If any provision of these Terms is held by any competent legal authority to be invalid or unenforceable in whole or in part in any jurisdiction, that provision will be construed and modified to the extent required to make it enforceable in that jurisdiction, and if not possible it will be severed from these Terms without affecting the validity and enforceability of the other provisions in that jurisdiction and of that provision in any other jurisdiction.