

# GQM LOGISTICS (AUST) PTY LTD

## STANDARD TRADING TERMS & CONDITIONS

All and any business undertaken by the Company shall be subject to the terms and conditions of this contract which are as follows:

### 1. Definitions

**'Company'** shall mean GQM LOGISTICS (AUST) Pty Ltd (ABN/ACN 66166316552), their employees, servants, agents, subsidiaries and associated companies.

**'Consequential Loss'** means any loss of profit, loss of revenue, loss of bargain, loss of contract with a third party, loss of anticipated profit, loss of anticipated savings, loss of opportunity, loss of goodwill, loss of reputation or loss of production but, for the avoidance of doubt, it excludes any amounts that are expressly stated as being payable under this contract;

**'Customer'** shall mean the shipper, consignor, the receiver, the consignee, the owner of the Goods, the bailor of the Goods or the person for whom any of the Services are performed.

**'Force Majeure Event'** means any event beyond the reasonable control of a party that occurs without the fault or negligence of that party and which could not have been reasonably prevented or overcome by that party, including fire, storm, flood, earthquake, explosion, accident, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, act (including laws, regulations, disapprovals or failure to approve) of any government or governmental agency whether national, municipal or otherwise.

**'Goods'** shall mean the chattels, articles or things tendered for carriage or bailment or other services by the Customer and shall include the container or containers, unit load devices or other packaging containing the same and any other pallet or pallets delivered with the same to the Company.

**'Services'** shall mean the carriage, transport, handling, movement, storage, customs clearance and/or any other service performed or arranged by the Company pursuant to, or ancillary to, this contract with the Customer.

**'Dangerous goods'** shall mean such of the Goods as shall be, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods or to any person or animals or to anything in which those goods are carried or stored.

**'Valuables'** shall mean bullion, coins, precious stones, jewellery, antiques, or works of art.

**'Perishable goods'** shall mean such of the Goods as shall be in fact or law liable to deteriorate in quality and/or value and shall include, but not be limited to, fruits, vegetables, dairy products, meat, etc.

**'Subcontractor'** shall mean and include: -

- (a) Any other person, firm or company with whom the Company may arrange to affect any Service in respect of the Goods which are the subject of this contract.
- (b) Any person, firm or company which is now or hereafter a servant, agent, employee or subcontractor of any of the persons or entities referred to in (i) above.

Words importing the singular include the plural and vice versa and words importing any gender include all genders and words importing a person include firm and corporation where appropriate.

### 2. Australian Consumer Law

For clarity, if the Customer is a consumer within the meaning of the "**Australian Consumer Law**" as set out in Schedule 2 of the *Competition and Consumer Act 2010* (Cth), nothing in this contract is intended to limit or exclude the Customer's rights and remedies under the Australian Consumer Law to the extent they cannot be legally contracted out of and/or reduced.

### **3. General**

- a) This contract should be read alongside the credit application form provided to each Customer. For the avoidance of doubt, the customer application form deals with payment terms applicable to the Customer.
- b) These terms (and the terms under the credit application form) apply in respect of each order and/or request placed by the Customer.
- c) If a Customer does not sign this contract and/or the credit application form but continues to engage the Company and/or use the Services, the Customer is nonetheless bound by these terms and conditions.
- d) The Customer acknowledges and agrees that the Company is not a common carrier and accepts no liability as such.
- e) Services are arranged or performed by the Company subject only to these conditions of contract which constitute the entire agreement between the Company and the Customer in relation to its subject matter and all the terms of this contract supersede and exclude any prior or collateral negotiation, understanding, communication, agreement, representation or warranty by or between the parties in relation to that subject matter or any term of that agreement.
- f) Neither party shall, after entry into this contract, be entitled, as against the other party or other officers of any party to bring suit on the basis of any verbal or written communications, representations, inducements, undertakings, agreements or arrangements except expressly as provided by this contract.
- g) No person has the authority of the Company to waive or vary these conditions and the Company reserves the right to refuse at its sole discretion the carriage of the Goods for any customer or any other Service whether before or after the carriage or Service has commenced. If the Company exercises this right, all costs and/or expenses involved will be solely borne by the Customer.
- h) The Company reserves the right to open and inspect all Goods at its discretion and at the Customer's expense where the Company reasonably suspects that the Goods are Dangerous Goods and/or illegal.

### **4. Agency and Sub-contracting**

- a) Subject to and in accordance with these terms and conditions and instructions contained in this contract, the Customer hereby employs and authorises the Company to contract with the Customer either in its own name as principal or with any Subcontractor as agent for the performance of any Service to be performed or arranged by the Company pursuant to, or ancillary to, this contract.
- b) Any such contract may be made on the terms of contract used by the Sub-contractor with whom the Company may contract for such Service and may be made upon the terms and subject to the conditions of any special contract which the Sub-contractor may in any particular case require, including in respect of the Sub-contractor employing any person, firm or company for performance of the Services. All Sub-contractors' terms are available from the Company upon request.
- c) The Company may delegate its authority hereunder to contract for the performance of any Service in respect of the Goods to such other Sub-contractor as it may think fit and if it thinks fit may, and is hereby expressly authorised by the Customer, to constitute the relationship of principal and agent between the Customer and Sub-contractor for the purpose of contracting for such Service.
- d) The Customer agrees that any exemption, limitation, condition herein contained and every right, exemption from liability, defence and immunity applicable to the Company or to which the Company is entitled shall be available and extend to protect all Sub-contractors, every agent or servant of the Company, every other person by whom the carriage or Services or any part thereof is performed and all persons who are or may be vicariously liable for the acts or omissions of any of the persons other than the Company mentioned herein.
- e) Similarly, the Customer agrees that every right, exemption from liability, defence and/or immunity applicable to any Subcontractor shall be available and extend to protect the Company. Throughout the term of the contract, the Company shall be deemed to be acting as agent or servant on behalf of all such persons who shall to this extent be deemed to be the parties to this contract.

### **5. Warranties and Indemnities by the Customer**

- a) The Customer warrants that it is either the owner of, or in control of, the Goods and/or entitled at law to deal with the Goods.
- b) The Customer warrants that the Goods are not subject to pre-existing damage and are free from any defects (unless previously notified in writing to the Company).
- c) The Customer warrants that the Goods are not Dangerous Goods or Goods which would endanger the health and welfare of the Company's employees and/or the public.
- d) The Customer warrants that the person delivering the Goods to the Company is authorised to sign

- the Customer's letter of instruction or waybill which includes these conditions and warrants that he has the authority of the person owning or having an interest in the Goods or any part thereof.
- e) Without prejudice to the foregoing warranty, the Customer indemnifies the Company in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part thereof.
  - f) The Customer warrants the accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished to the Company for the carriage, customs, consular and any other purposes and indemnifies the Company against all loss, damage, expenses and fines arising from any inaccuracy or omission in this respect.
  - g) The Customer warrants that the performance of any Service provided or arranged by the Company to effect the instructions of the Customer in respect of the Goods shall not be in breach of any law.
  - h) The Customer has obtained or had a reasonable opportunity to obtain independent legal advice regarding this contract.

## 6. Customer Acknowledgements

- a) The Customer is solely responsible for ensuring that its Goods are adequately packaged and protected from damage during loading, unloading and/or transit.
- b) The Customer acknowledges that steel is a sensitive material and capable of being easily damaged during transit and whilst the Company will use its best endeavours to protect steel Goods from being damaged, the Company cannot guarantee that steel Goods will be free of any damage upon delivery to the Customer.
- c) Risk in the Goods and the Company's obligations and responsibilities with respect to the Customer and the Goods will cease to exist once the Goods are delivered to the relevant address specified by the Customer.
- d) The Customer will use its best endeavours to mitigate any loss or damage it may suffer or incur.
- e) Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into this contract, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this contract are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer and not in respect of personal, domestic or household purposes.
- f) If the carriage of Goods involves an ultimate destination or stop in a country other than the country of departure, the Warsaw Convention (1929) or the Warsaw Convention as Amended at the Hague (1955) (as ratified in the *Civil Aviation (Carrier's Liability) Act (Cth) 1959*) may be applicable and may govern and in most cases limit the liability of the Carrier in respect of loss, damage or delay to cargo, unless a higher value is declared in advance by the Customer and a supplementary charge paid if required.

## 7. Release

Subject to clause 8)d) and to the fullest extent permitted by law, the Customer releases the Company from liability whether arising at common law, under statute, in equity, under contract or otherwise for:

- a) any loss, injury or damage to the Goods in transit whether by way of destruction, fire, theft, store flood, tempest or water;
- b) any loss, injury, or damage suffered by the Customer or a third party, as a result of the non-delivery or delayed delivery of the Goods;
- c) any loss, injury or damage suffered by the Customer or any third party resulting from, or contributed by contact with or proximity to other goods, leakage, breakage, shrinkage, deterioration, wasting, contamination, strikes, lockouts, shortage of labour, defects in or breakdown of plant or premises; or resulting from, or contributed to by, any circumstances beyond the reasonable control of the Company;
- d) any loss, injury or damage caused or contributed to by the Company failing to use labour, machinery or plant, the use of which in the Company's absolute discretion it considers might precipitate, cause, or aggravate a strike or entail risk to the Goods or business of the Company, or to any one or more of its Customers including whether caused by the negligence or alleged negligence of, or any act or omission of the Company, its servants or agents; or
- e) any loss or damage suffered by the Customer or any other person as a result of a failure or inability of the Company or Subcontractor to collect or receive C.O.D. payments from any consignees or their agents whether caused by the negligence of the Company's servants, agents, employees, Subcontractors or otherwise.

## 8. Limitation and Exclusion of Liability

To the fullest extent permitted by law:

- a) The value of the Goods will not be declared so as to extend the Company's liability as provided for in this contract or under any other mandatorily applicable law (including the *Carriage of Goods by Sea Act (Cth)* 1991 or the *Civil Aviation (Carrier's Liability) Act (Cth)* 1959 or any of the international conventions referred to therein or otherwise compulsorily applicable except on express written instructions given by the Customer to the Company.
- b) In all other cases where there is a choice of rates according to the extent of liability assumed by the Company, carrier, warehouseman and/or other Service provider or other company or entity, no declaration will be made for the purpose of extending liability and the Goods will be forwarded or dealt with at the Customer's or owner's risk unless express written instructions to the contrary are given by the Customer.
- c) Subject to the terms and conditions in this contract, the Company shall not be liable for any loss or damage suffered by the Customer or any other person, howsoever caused or arising, whether caused by the negligence and/or recklessness of the Company's servants, agents, employees, subcontractors or otherwise, nor from any loss or damage resulting from or attributable to any quotation, statement, representation or information, oral or written, made or given on behalf of the Company or its servants, agents, employees or subcontractors as to the classification of, liability for, amount, scale or rate of customs duty, excise duty or other impost or tax applicable to any goods in carriage or subject of any Service.
- d) Nothing in this contract shall exclude or limit the liability of the Company for:
  - i) fraud committed by the Company (including fraudulent misrepresentation);
  - ii) the Company or its servants, agents, employees or subcontractors engaging in wilful misconduct or acts or omissions involving gross negligence; or
  - iii) any other matter which it would be illegal, or in breach of any statutory provision, for the Company to exclude or attempt to exclude its liability for.
- e) The liability of the Company for breach of any condition or warranty for Goods or Services is limited to any one or more of the following as determined by the Company at its absolute discretion and in accordance with Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*:
  - i) replacing or repairing the Goods;
  - ii) reimbursing the Customer for replacing or repairing the Goods;
  - iii) re-supplying the Services;
  - iv) reimbursing the Customer for paying someone else to resupply the Services.
- f) Subject to sub-clause (e), the Company's aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation or otherwise, arising in connection with the performance or contemplated performance of this contract shall be limited to the lesser of:
  - i) the value of the relevant component of the Services which the Company has been engaged to provide to the Customer (including without limitation wharf cartage, importing of cargo, exporting of cargo, unpacking or delivery); or
  - ii) the value of the Goods the subject of the contract at the time the Goods were received by the Company.
- g) To the fullest extent permitted by law, it is hereby agreed between the Customer and the Company that the Customer's right to compensation for any claim for loss or damage will only be maintained provided the following is strictly adhered to:
  - i) any claim for damage to Goods must be lodged in writing to the Company within 7 days of delivery of the Goods or the date Services are completed, whichever date occurs first; and
  - ii) any claim for loss/non-delivery of Goods must be notified in writing to the Company within 60 days from the date the Goods should have been delivered or the Services should have been completed, whichever date occurs first.
- h) It is specifically agreed that all rights, immunities and limitations of liability granted to the Company by the provisions set forth in this contract shall continue to have their full force and effect in all circumstances and notwithstanding any breach of the contract or any condition hereof by the Company.

- i) All warranties, conditions and other terms implied by statute or common law or otherwise are, to the fullest extent permitted by law, excluded from this contract.
- j) Subject to sub-clause (d) and to the fullest extent permitted by law, the Company shall not be liable to the Customer for:
  - i) any, indirect, special or Consequential Loss, damage, costs, expenses or other claims whatsoever; or
  - ii) any loss, damage or liability to the extent caused by the negligence, wilful misconduct or other fault of the Customer, its employees, agents or contractors or a breach by the Customer of this contract,

in each case howsoever caused, including without limitation negligence or breach of statutory duty or misrepresentation, arising out of or in connection with this contract.

- k) For clarity, the foregoing is not intended to limit and / or exclude any rights and remedies that either party may have under this contract and in respect of claiming Consequential Loss under the Australian Consumer Law (where applicable).

## **9. Loading and Unloading on and from Transportation Vehicle**

- a) The Customer shall be responsible for the cost of and arranging for the loading and unloading of the Goods on and from the relevant transportation vehicle.
- b) In the event the Customer requests that the Company is responsible for the loading and unloading of the Goods on and from the relevant transportation vehicle, the Customer releases the Company from any potential liability that could arise in accordance with clause 7.
- c) In the event that there is a delay in the loading or unloading of the Goods by reason other than the default of the Company, the Customer shall be liable for the Company's expenses incurred by reason of the delay, including demurrage costs as notified by the Company orally or in writing from time to time or available upon request.
- d) The Customer shall provide adequate and suitable facilities and equipment for loading and unloading the Goods from the relevant transportation vehicle. The Customer also warrants that the Goods will be suitable for carriage in such vehicle.
- e) The Customer has the right to inspect the transportation vehicle before the loading of the Goods. Absent any inspection or complaint, the transportation vehicle will be deemed to be in adequate and suitable condition for the carriage of the Goods. Thereafter, to the fullest extent permitted by law, the Customer shall have no rights against the Company with respect to the condition of the vehicle and the Company will have no liability in respect of any loss or damage caused by the inadequate or unsound condition of the vehicle.

## **10. Warehousing**

- a) The Goods may at any time be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held at the sole discretion of the Company and in every case at the Customer's risk and expense as a charge or charges of and incidental to or in connection with the carriage of the Goods or any Service hereunder.
- b) The Company agrees to promptly notify the Customer if a relocation under this clause 10 occurs.

## **11. Customer's Indemnity**

- a) The Customer shall indemnify the Company in respect of any claim, loss, damage, payment, fine, expense, duty, tax, impost or other outlay whatsoever or howsoever caused, whether arising directly or indirectly from any Service arranged or performed by the Company in respect of Goods and/or in respect of any such cost incurred as a result of any breach of the terms, conditions or warranties in this contract by the Customer.
- b) Without limiting the generality of the foregoing, the Customer shall remain responsible to the Company for all charges (C.O.D. or otherwise) paid by the Company to any of its agents or Subcontractor which are not subsequently paid to the Company by the consignee.
- c) The Customer shall indemnify the Company in respect of any loss or damage arising from any inherent defect, quality or vice of the Goods.
- d) The Customer hereby exempts the Company from all or any liability in respect of any indirect Consequential Loss or damage arising from the Services performed in respect of the Goods including loss of market, loss or profit or loss of contracts howsoever caused.
- e) For the avoidance of all doubt, the Customer's indemnity under this clause 11 is limited to the

relevant component of the Services the Company has been engaged to provide the Customer.

## 12. Insurance

- a) Customer is advised to seek its own insurance cover generally at its own expense.
- b) No insurance will be effected by the Company except on express written instructions from the Customer (including in respect of the contents and value of the Goods to be insured) and any insurances so effected will be solely at the Customer's expense and subject to the usual exceptions and conditions of policies of the insurance company or underwriters taking the risk and the Company shall not be under any obligation to effect separate insurance on each consignment but may declare it on any general policy.
- c) Should such insurers dispute liability for any reason, the Customer as insured shall have no recourse against the Company whatsoever and any recourse by the Customer shall be against the insurers.

## 13. Quotations

- a) The Customer acknowledges and agrees that a quote is just an estimate and is subject to amendment by the Company with notice to the Customer.

## 14. Routes and Procedures

- a) Subject to the express written instructions of the Customer, the Company reserves the right to choose or vary the means, route and procedure to be followed in respect of the carriage or the Services performed in respect of the Goods.
- b) The Customer hereby authorises the Company to complete the carriage or Services with reasonable dispatch and to substitute alternate carriers or Service providers at the Customer's expense with prior written notice to the Customer and with due regard to the interests of the Customer substitute other means of transport or Service.

## 15. Brokerage and Commission

- a) The Customer agrees that the Company is entitled to retain all allowances, brokerages and commissions paid by the shipping and forwarding agents, insurance brokers, airlines and any other persons with whom the Company deals pursuant to this contract.

## 16. Payment of duties

- a) The Customer authorises the Company, but with no obligation on the part of the Company, to advance any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the shipper, owner and consignee shall be jointly and severally liable for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection therewith.

## 17. Responsibility for Charges

- a) The Customer shall remain responsible to the Company for all charges incurred for any reason for the Services performed in respect of the Goods and such charges shall be deemed fully earned as soon as the Goods are loaded and dispatched from the Customer's premises or otherwise delivered by the Customer to the Company and shall be immediately payable and non-refundable.
- b) The Customer agrees that it shall not defer or withhold payment or deduct any amount from the account of the Company by reason of any claim it alleges against the Company.

## 18. Lien

- a) **Name of Act:** This Act may be cited as the Storage Liens Act 1935.
- b) **Definitions In this Act:** unless the context otherwise requires:
  - i) **Goods** shall include personal property of every description that may be deposited with a Storer as bailee.
  - ii) **Storer** shall mean a person lawfully engaged in the business of storing goods as a bailee for hire.

- c) **Declaration of storer's lien** (1) Subject to the provisions of section 5 of the Act, every storer shall have a lien on goods deposited with him or her for storage, whether deposited by the owner of the goods or by his or her authority, or by any person entrusted with the possession of the goods by the owner or by his or her authority. (2) A storer's lien over property has priority over any other interest in the property and may be enforced accordingly. (3) Section 73 (2) of the *Personal Property Securities Act 2009* (Cth) is declared to apply to a storer's lien.
- d) **Charges covered by lien:** The lien shall be for the amount of the storer's charges, that is to say: (a) all lawful charges for storage and preservation of the goods, and (b) all lawful claims for money advanced, interest, insurance, transportation, labour, weighing, cooping, and other expenses in relation to the goods, and (c) all reasonable charges for any notice required to be given under the provisions of this Act, and for notice and advertisement of sale, and for sale of the goods where default is made in satisfying the storer's lien.
- e) The Company shall have a particular and general lien on the goods or cargo of the Customer and any documents relating thereto and on any other goods or cargo of the Customer in the possession of the Company or any documents relating thereto and on any other goods or cargo of the Customer which may come into the possession of the Company or any documents relating thereto for all sums payable by the Customer to the Company and for that purpose the Company shall have the right to sell any such goods by public auction or private treaty without further notice to the Customer.
- f) By signing this contract, the Customer consents to the granting of a lien in favour of the Company in accordance with this clause 18.

## 19. Valuables, Dangerous goods, Perishable goods, Livestock, etc.

- a) Except as agreed in writing, the Company will not accept Valuables, Perishable goods, livestock or plants for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, to the fullest extent permitted by law, the Customer shall be liable for any loss or damage thereto or consequent thereon whether direct or indirect and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- b) Except as agreed in writing, the Company shall not accept business relating to Dangerous goods for Services arranged or performed by the Company. Should the Customer nevertheless deliver any such goods to the Company or cause the Company to handle or deal with any such goods otherwise than as agreed in writing, to the fullest extent permitted by law, the Customer shall be liable for all loss or damage thereto or consequent thereon whether direct or indirect and howsoever caused and the Customer shall indemnify the Company from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.
- c) Any such Valuables, Dangerous goods, Perishable goods, livestock or plants may be destroyed in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. If such Valuables, Dangerous goods, Perishable goods, livestock or plants are accepted pursuant to a written agreement, they may nevertheless be destroyed or dealt with if deemed necessary in the sole and absolute discretion of the Company or any other person in whose custody they may be at the relevant time. To the fullest extent permitted by law, in the event that the Goods are destroyed or otherwise dealt with as aforesaid, the Company shall bear no liability therefore and the Customer shall indemnify the Company from and against all costs and expenses with respect thereto.
- d) The Customer undertakes that any of the goods referred to in (a) above (including their covering, packaging, containers and other devices they are carried in) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a manner adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify the Company against all claims, losses, damages or expenses arising in consequence of any breach of this provision.
- e) The Customer's compliance with (d) above in no way reduces or limits those rights afforded to the Company under (a) of this clause.

## 20. Delivery

- a) The Company (Subcontractors included) is authorised to deliver the Goods to the consignee or his agent at the address nominated to the Company by either the Customer, the Company, the consignee or their agents and it is expressly agreed that the Company shall be deemed to have delivered the Goods in accordance with this contract if it obtains a receipt or signed delivery docket for the Goods from any person at that address.
- b) If the nominated place of delivery shall be unattended or if delivery cannot otherwise be effected, the Company (or Subcontractor) in its sole discretion may at its option either deposit the Goods at

the nominated place or store the Goods at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Contract.

- c) Dates specified for completion of carriage or any other Service are estimates only and the Company (or Subcontractor) shall not be liable for failure to complete carriage or any other Service on such date or dates.

## **21. Sale and Disposal of Goods**

To the fullest extent permitted by law, after the Company has provided the Customer prior written notice of its intention to sell or dispose of the following Goods and provided the Customer an opportunity to collect the Goods in the first instance, the Company and its Subcontractors shall be entitled at the cost and expense of the Customer, to sell or dispose of:

- a) Goods which in the opinion of the Company or Subcontractor cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Consignee or for any other reason, and
- b) any Perishable goods which in the opinion of the Company or the Subcontractor appear to be deteriorating, if the Customer fails to adequately instruct the Company with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

## **22. Regulation Compliance**

- a) The Customer shall comply with all applicable laws and Government regulations of any country to, from, through or over which the Goods may be carried, including those relating to the packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations.
- b) To the fullest extent permitted by law, the Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision.

## **23. Governing Law and Jurisdiction**

- (a) Any dispute arising under this Contract shall be governed by the applicable federal laws of Australia and the applicable state laws of New South Wales and shall be determined exclusively by the state and federal courts located in New South Wales.

## **24. Severance**

- (a) Any term that is unenforceable will be severed unless the term is unenforceable because it is declared to be an unfair contract term, in which case it shall, at the Company's election, be deemed to be amended to the minimum extent required to prevent it from being an unfair contract term. Such term will not affect the operation or interpretation of any other term and condition contained in this contract.

## **25. Customer's Own Terms and Conditions**

- (a) Subject to clause 2)b), the use of the Customer's own terms and conditions is no derogation to these conditions of contract.

## **26. Force Majeure**

If a Force Majeure Event occurs:

- a) the obligations of a party under these Terms will be suspended to the extent that it is wholly or partially precluded from complying with its obligations under these Terms as a result of the Force Majeure Event;
- b) a party affected by a Force Majeure Event must notify the other party as soon as practicable of the event and the extent to which that party is unable to comply with its obligations; and
- c) if the Force Majeure Event continues for a period of at least 90 days, either party may terminate this contract.



**27. Inconsistency**

In the event of any discrepancy, ambiguity, conflict or inconsistency between this contract, any credit application, terms and conditions of a Subcontractor or any other document relating to the parties, the terms of this contract shall prevail to the extent of an inconsistency.

**Name of Applicant (S):**

1. \_\_\_\_\_  
(Please print name in full)                      \_\_\_\_\_  
(Position/Title)    \_\_\_\_\_  
Signature
  
2. \_\_\_\_\_  
(Please print name in full)                      \_\_\_\_\_  
(Position/Title)    \_\_\_\_\_  
Signature
  
3. \_\_\_\_\_  
DATE    \_\_\_\_\_  
DATE    \_\_\_\_\_