



TERMS AND CONDITIONS OF TRADE

1. DEFINITIONS

- 1.1 **"Carrier"** means Lawson Port Logistics Pty Ltd ACN 127 440 242 trading as "Lawson Port Logistics" ABN 88 127 440 242 and its 'related bodies corporate' (as that term is defined in the *Corporations Act 2001* (Cth)) and its successors and assigns.
- 1.2 **"Sub-Contractor"** shall mean and include:
 - 1.2.1 Railways or airways operated by the Commonwealth or any State or any other country or by any corporation; or
 - 1.2.2 Any other person, firm or carrier with whom the Carrier may arrange for the carriage of any Goods that are the subject of the contract; or
 - 1.2.3 Any person who is now or hereafter a servant, agent, employees or sub-contractor of any of the persons referred to in clause 1.2.1 or 1.2.2.
- 1.3 **"Containers"** means any shipping or transport container used or intended to be used for the movement of the Customer Goods.
- 1.4 **"Customer"** means the entity that has contracted with the Carrier to buy Goods and/or Services.
- 1.5 **"Customer Goods"** means any goods or cargo together with any container, packaging, or pallet(s) supplied by the Customer to the Carrier for the purposes of movement from one place to another by way of the Carrier's Services (and where the context so permits shall include any supply of Services).
- 1.6 **"Goods"** means any goods supplied by the Carrier to the Customer, to the extent there are any (or ordered by the Customer but not yet supplied) from time to time.
- 1.7 **"Services"** means any and all freight, carrier and related services supplied by the Carrier to the Customer and includes any advice or recommendations (and where the context to permits shall include any supply of Goods).
- 1.8 **"Price"** shall mean the costs of the Services as agreed between the Carrier and the Customer subject to clause 6.
- 1.9 **"Terms"** means these Terms and Conditions of Trade.

2. ACCEPTANCE

- 2.1 Any instructions received by the Carrier from the Customer for the supply of Services shall constitute acceptance of the terms and conditions contained herein (**Terms**).
- 2.2 Upon acceptance of these Terms by the Customer the Terms are irrevocable and can only be rescinded in accordance with these Terms or with the written consent of the manager of the Carrier.
- 2.3 None of the Carrier's agents, contractors or representatives are authorised to make any representations, statements, conditions or agreements not expressed by the manager of the Carrier in writing not is the Carrier bound by any such unauthorised statements.
- 2.4 These Terms are to be read in conjunction with the Carrier's consignment note, agreement, airway bills, manifests, or any other forms as provided by the Carrier to the Customer.

3. PRECEDENCE

- 3.1 The Customer acknowledges that these Terms take precedence over any terms and conditions contained in any document provided by the Customer including in respect with any documents referred in clause 2.4.

4. CREDIT FOR BUSINESS PURPOSES ONLY

- 4.1 The Customer expressly warrants and acknowledges that any credit provided to the Customer by the Carrier is to be used for wholly (or predominantly) business purposes.

5. PRIVACY POLICY AND CREDIT REPORTING POLICY NOTIFICATION

- 5.1 The Carrier collects personal information about the Customer (if a sole trader, individual trustee, or partnership of individuals) for the purposes set out in its Privacy Policy and its Credit Reporting Policy. Both of these policies may be located at lawsonportlog.com.au. A hardcopy of these policies can also be provided to the Customer free of charge, upon request.
 - 5.1.1 The Privacy Policy sets out: the personal information that the Carrier collects; how the Carrier collects and uses this information; how the Customer may access or correct it; and how the Customer may make a complaint in respect of Carrier's management of the information;
 - 5.1.2 The Credit Reporting Policy sets out: the types of credit related personal information the Carrier collects; how it is collected, why it is collected; how the Carrier may use and disclose the credit-related personal information, including the credit reporting bodies to which Carrier is likely to disclose the Customer's credit related personal information to; and how a complaint may be made in respect of the Carrier's management of the credit related personal information.

- 5.2 By the Customer completing the Application for Commercial Credit or providing orders to the Carrier for the supply of Services, the Customer is consenting to the Carrier collecting, handling, using, disclosing and otherwise dealing with the Customer's personal information (including credit-related personal information) in accordance with the terms of the Carrier's Privacy Policy, its Credit Reporting Policy and in accordance with Australia's privacy laws.

6. PRICE

- 6.1 The Price shall be:
 - 6.1.1 if the Carrier has provided a quotation for the relevant Services, as stated on any relevant quotation (subject to clause 12);
 - 6.1.2 as agreed to (in writing) by the Carrier; or
 - 6.1.3 pursuant to the Carrier's current price list (if no quotation has been provided by the Carrier or there has been no agreement by the Carrier (in writing) in respect of the Price).
 - 6.1.4 The Carrier may, by giving prior written notice of thirty (30) days to the Customer, increase the Price of the Services to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier (including, without limitation, foreign exchange fluctuations, increases in fuel prices, terminal fees, taxes, customs duties, insurance premiums or warehousing costs). Should the Customer not wish to continue trading pursuant to any such increase in Price, the Customer can terminate this Agreement with thirty (30) days' notice.
 - 6.1.5 The Price shall also be increased by the amount of any GST and other taxes and duties that may be applicable, except to the extent those taxes are expressly included in any quotation given by the Carrier.

7. PAYMENT

- 7.1 Subject to clause 7.2, payment of the Price is on any of the follow dates (as determined by the Carrier) which may be:
 - 7.1.1 on delivery of the Customer Goods, the Goods and/or supply of the Services;
 - 7.1.2 before delivery of the Customer Goods, the Goods and/or supply of the Services, including payment of any deposit with any order;
 - 7.1.3 upon request in respect of any progress payments requested by the Carrier;
 - 7.1.4 the due date specified on the Carrier's invoice;
 - 7.1.5 in the absence of any notification of the due date by the Carrier, it shall be due 30 days from the end of the month in which the relevant delivery of the Customer Goods, the Goods and/or Services is provided.
- 7.2 Payment for any amount outstanding shall be deemed immediately due and payable in any of the following circumstances:
 - 7.2.1 there is non-payment of any sum by the due date;
 - 7.2.2 the Customer is bankrupted or enters administration, liquidation or receivership;
 - 7.2.3 there is a change in the financial position of the Customer which materially adversely affects its ability to pay for Goods and/or Services.
- 7.3 Unless prohibited by law, all payments to be made by the Customer to Carrier shall be made without set-off (whether arising at law or in equity) or counterclaim (whether arising at law or in equity) and free and clear of any withholding or deduction whatsoever.
- 7.4 Receipt of a cheque, bill of exchange, or other negotiable instrument shall not constitute payment until it results in the Carrier receiving cleared funds for the entire amount of the negotiable instrument. In respect of cheques, the Carrier will present the cheques within a reasonable time.
- 7.5 The Carrier reserves the right to not accept payment by credit card (including Mastercard, Visa, Diners Club or American Express) as credit card providers will charge the Carrier a merchant fee that is deducted from the payment.
- 7.6 In the event the Carrier does accept payment by credit card, the Customer agrees that it shall be liable to pay the Carrier a surcharge to cover the merchant fees incurred by the Carrier and/or deducted from the payment by the credit card company (**Surcharge**).
- 7.7 The Carrier may invoice the Customer for any Surcharge separately to the delivery of the Customer Goods, Goods and/or Services.

8. CARRIER NOT COMMON CARRIER

8.1 The Carrier 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 Carrier subject only to these Terms and the Carrier reserves the right to refuse the carriage or transport of articles for any person corporation or carrier and the carriage or transport of any class of articles at its discretion.

9. CUSTOMER-PACKED CONTAINERS

9.1 If a Container/s has not been stowed by or on behalf of the Carrier the Carrier shall not be liable for loss of, or damage to, the Customer Goods caused by:

9.1.1 The manner in which the Container has been stowed; or

9.1.2 The unsuitability of the Customer Goods for carriage in the Container/s; or

9.1.3 The unsuitability or defective condition of the Container/s.

10. NOMINATION OF SUB-CONTRACTOR

10.1 The Customer hereby authorises the Carrier (if it should see fit to do so) to arrange with a Sub-Contractor for the Carrier of any Customer Goods or provision of any Goods and/or Services which are the subject of any agreement between the Carrier and the Customer. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Customer Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these Terms to the same extent as the Carrier. Insofar as may be necessary to ensure that such Sub-Contractor shall be so entitled, the Carrier shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

11. DEFAULT, INTEREST AND COSTS

11.1 Interest accrues on any amount owing after the due date at the rate of two and a half percent (2.5%) per calendar month, calculated daily from the first day overdue until full payment is received by the Carrier.

11.2 In the event that the Customer breaches any of these Terms, the Customer shall pay (on a full indemnity basis) any and all expenses, disbursements, collection and legal costs which the Carrier incurs or is liable to pay (including contingently liable to pay), in connection with the enforcement of any and all rights and/or preservation of any and all rights contained in this contract.

11.3 Without prejudice to any other remedies the Carrier may have, if at any time the Customer is in breach of any obligation (including those relating to payment), the Carrier may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. The Carrier will not be liable to the Customer for any loss or damage the Customer suffers because the Carrier be exercised its rights under this clause.

11.4 For the purposes of clause 11.2, the Customer acknowledges that collection agents' costs may be calculated on a commission basis at a percentage rate of up to 20% of the overdue debt and be contingent upon payment of the Customer's overdue debt (or any portion thereof), irrespective of the amount of work performed by the collection agent before the payment is made. The Customer agrees that it will pay any such commission or fees as liquidated damages on demand when making any payment of the overdue debt or part thereof.

11.5 All unpaid charges shall be paid in full and without any offset, counter claim or deduction, in Australian dollars.

11.6 In the event that:

11.6.1 any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Customer will be unable to meet its payments as they fall due; or

11.6.2 the Customer becomes insolvent, convenes a meeting with its creditors, or makes an assignment for the benefit of its creditors; or

11.6.3 a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer, then without prejudice to the customer's other remedies at law,

the Carrier shall be entitled to cancel all or any part of any order or delivery of Services for the Customer which remain unperformed in addition to and without prejudice to any other remedies, and all amounts owing to the Carrier shall, whether or not due for payment, immediately become due and payable.

12. QUOTATION

12.1 Where a quotation is given by the Carrier for Services:

12.1.1 unless otherwise agreed in writing, the quotation shall be valid for no longer than 28 days from the date of issue;

12.1.2 all quotations are treated as estimates only and the Carrier reserves the right, until the quotation is accepted, to alter, withdraw or correct the quotation for any reason and or because of circumstances beyond its control, including and in no way limited to, increases in the price charged by its Carriers for products, services, freight and/or insurance.

12.1.3 Any quotation may make allowance for building or development applications or fees payable to a Council or relevant approval authority required for the installation and use of the Goods as required by any codes, statutes, regulations or by-laws. Responsibility to obtain any such approvals rests solely with the Customer and no obligation, liability or responsibility is borne by the Carrier in respect of same.

13. TRANSPORT METHOD, DEVIATION AND RISK TO GOODS AND DELIVERY

13.1 If the Customer instructs the Carrier to use a particular method of carriage whether by road, rail, sea or air the Carrier will give priority to the method designated but if that method cannot conveniently be adopted by the Carrier the Customer shall be deemed to authorise them to carry or have the Customer Goods carried by another method or methods.

13.2 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Customer Goods that may in the absolute discretion of the Carrier be deemed reasonable or necessary in the circumstances.

13.3 The Customer agrees and acknowledges that in the event that there is no representative of the Customer present to receive the Customer Goods between the hours of 8:30am and 5:30pm local time (**Office Hours**), under no circumstances shall the Carrier be liable for losses, damages, expenses or liabilities occasioned by the delivery of Customer Goods being made to the delivery address, whether or not any representative of the Customer is absent when Customer Goods are delivered to the nominated delivery address.

13.4 The Customer expressly acknowledges and agrees that any delivery date given by the Carrier as the delivery date for Customer Goods is an estimate only and not a constitute contractual term or legally binding representation, since the Carrier may be reliant upon third parties to deliver the Customer Goods by any nominated delivery date. Accordingly, the Carrier shall not be liable for any loss or damage (howsoever arising) to the Customer or any third party if the Customer Goods are not delivered by a nominated delivery date.

13.5 The Customer is responsible for unloading the Customer Goods at the point of delivery.

13.6 The Carrier may charge a reasonable storage fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the Customer Goods at the time the Carrier seeks to deliver them.

14. INSURANCE

14.1 The Carrier will not arrange insurance for the Customer Goods, which shall be at the Customer's cost and risk in all respects.

15. WAITING TIME AND UNLOADING

15.1 A charge (the amount of which is to be determined by the Carrier in its absolute discretion) may be incurred and passed on to the Customer in respect of any delay in excess of thirty (30) minutes in loading or unloading of the Customer Goods occurring other than from the default of the Carrier.

15.2 Such permissible delay period shall commence upon the Carrier reporting for loading or unloading of the Customer Goods at the Customer's nominated delivery address.

15.3 All labour costs for the loading or unloading of any containers shall be the responsibility of the Customer or their consignee.

16. EMPTY CONTAINER DEHIRING, DEMURRAGE AND DETENTION FEES

16.1 The Customer shall notify the Carrier in writing AFTER a Container has been unpacked and is ready for collection (**Empty Notification**).

16.2 The Carrier requires a minimum of three (3) clear business days after the Empty Notification to collect the empty Container for dehiring and is not responsible for any demurrage incurred prior to the expiry of this period.

16.3 Any Empty Notification/s received after 2pm on a business day will be deemed as notified the following business day. If notification is received on the day of delivery, this will be deemed as empty the following business day.

16.4 The Carrier is not responsible for any demurrage or delays due to unavailability of dehire booking slots, empty yard availability, unusual traffic or road conditions or other delays beyond the Carrier's control.

16.5 The Carrier's liability for demurrage and detention charges is limited to AUD\$50 per twenty (20) foot container or AUD\$100 per forty (40) foot container, per business day, irrespective of the shipping line or equipment type and shall not exceed seventy-five percent (75%) of the base delivery charge excluding fees and levies.

16.6 The Carrier is not liable for demurrage charges incurred for weekends, public holidays or any other day when the empty yard is not open.

16.7 The Carrier is not liable for any demurrage or late charges incurred in relation to containers dehiired directly to the stevedore terminals.

17. DANGEROUS GOODS

17.1 The Customer or their authorised agent shall not tender for carriage any explosive, inflammable or otherwise dangerous Customer Goods without presenting full description of those Customer Goods and without the full consent of the Carrier to take carriage of such dangerous Customer Goods so described.

17.2 In default of clause 17.1 the Customer shall be so liable for all loss and damage caused by their non-notification of description of any such dangerous Customer Goods.

18. CUSTOMER WARRANTIES AND RESPONSIBILITY

18.1 The customer expressly warrants and agrees that any person delivering any Customer Goods to the Carrier for carriage or forwarding is authorised to sign the consignment note on behalf of the Customer.

18.2 The Customer expressly warrants that the Customer is either the owner of or an authorised agent of the owner of any Customer Goods or property the subject matter of this agreement for cartage and by entering into this

agreement the Customer accepts these Terms for the Consignee as well as for all other persons on whose behalf the Customer is acting with respect to such Customer Goods.

- 18.3 The Customer or its Consignee agree to and shall ensure that any point of delivery has the space and height to receive delivery of containers and that the Carrier is not liable for damage to floors, roofs or roller doors at the point of delivery that may occur as a result of the Carrier's delivery of Customer Goods within any Container/s.
- 18.4 The Customer further agrees to ensure any site requiring sideloader delivery shall ensure space for the swinging action of the delivery of Customer Goods from the sideloaded vehicle (as varying from time to time).

19. TITLE, RIGHTS TO DISPOSE, AND PERSONAL PROPERTY SECURITIES ACT 2009 (PPSA)

Goods and Customer Goods

- 19.1 Legal and beneficial title in the Goods (to the extent any Goods are supplied by the Carrier) shall vest and remain with the Carrier until it has received payment in full for all monies owed by the Customer.
- 19.2 Until the Carrier has received payment in full for all monies owed by the Customer, the Carrier further reserves the following rights:
- 19.2.1 legal and beneficial ownership of the Goods supplied by the Carrier;
- 19.2.2 the right to enter the Customer's premises (as the Customer's invitee) to retake possession of the Goods, in addition to the right to retake Customer Goods as security for moneys owed for Goods and/or Services provided;
- 19.2.3 the right to keep or resell any Customer Goods and/or Goods under sub-clause 19.2.19.2.2; and
- 19.2.4 any other rights it may have at law or under the PPSA.
- 19.3 Where, pursuant to sub-clause 19.2.3:
- 19.3.1 the Carrier resells the Customer Goods or the Goods repossessed, it is agreed that the Carrier shall credit the Customer's account with the net proceeds of sale (after deduction of all repossession, storage, selling and other costs); or
- 19.3.2 the Carrier retains possession of the repossessed Customer Goods or Goods, it is agreed that the Carrier shall credit the Customer's account with the invoice value less such sum as the Carrier reasonably determines on account of wear and tear, depreciation, obsolescence, loss of profit and costs.
- 19.4 The Carrier shall not be liable for any costs, damages, expenses or losses incurred by the Customer or any third party as a result of any action taken to repossess the Customer Goods and/or Goods (unless the action taken to repossess the Customer Goods or Goods was grossly negligent or constituted wilful misconduct).
- 19.5 If the Customer Goods or the Goods are mixed (or commingled) with other property so as to be part of or a constituent of any new product, title to these products shall be deemed to be assigned to the Carrier as security for the full satisfaction by the Customer of the full amount owing between the Carrier and the Customer.
- 19.6 Until the Carrier receives payment for any amounts owing by the Customer in full, the Customer acknowledges that the Carrier has a Purchase Money Security Interest (PMSI) which attaches over the Goods and their proceeds and a Security Interest in relation to other amounts owed by the Customer to the Carrier which attaches to the Customer Goods in addition to the Goods.

General

- 19.7 Upon assenting to these Terms, the Customer acknowledges and agrees that these Terms constitute a Security Agreement for the purposes of the PPSA.
- 19.8 The Customer undertakes to do anything (such as obtaining consents, producing documents, producing receipts and getting documents completed and signed) which the Carrier asks and considers reasonably necessary for the purposes of:
- 19.8.1 ensuring that a PMSI and/or Security Interest is enforceable, perfected and effective;
- 19.8.2 enabling the Carrier to apply for any registration, or give any notification, in connection with the Security Interest created under this Agreement so that the PMSI and/or Security Interest has the priority required by the Carrier.
- 19.9 To the extent permitted by law, the Customer irrevocably waives its right to:
- 19.9.1 receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;
- 19.9.2 redeem the Goods under section 142 of the PPSA;
- 19.9.3 reinstate this Agreement under section 143 of the PPSA;
- 19.9.4 receive a Verification Statement.
- 19.10 Nothing in clause 19 prevents the Carrier from taking collection or legal action against the Customer to recover any monies owed from time to time.

20. DISPUTES, LIMITATION OF LIABILITY & INDEMNITY

- 20.1 All implied conditions, warranties and undertakings other than manufacturer's warranty and the statutory guarantees set out in Schedule 2 of the Competition and Consumer Act 2010 ("CCA") are expressly excluded to the extent permitted by law.

- 20.2 Where the Goods are of a kind other than goods ordinarily acquired for personal, domestic or household use, then the Carrier's liability is limited, at its option, to any one or more of the following:

- 20.2.1 repairing the Goods
- 20.2.2 the costs of repairing the Goods;
- 20.2.3 the replacement or supply of the equivalent of the Goods; or
- 20.2.4 the payment of the costs of replacing the Goods or acquiring their equivalent.

- 20.3 Where the Services are of a kind other than services ordinarily acquired for personal, domestic or household use, then the Carrier's liability is limited at its option to:

- 20.3.1 supplying the Services again; or
- 20.3.2 the payment of the costs of supplying the Services again.

- 20.4 In the event a complaint is made, the Customer must, upon request of the Carrier, allow the Carrier's nominated representative to attend the premises where the Customer Goods were delivered or, in the case of Services, where the Services were carried out, in order to inspect the Customer Goods, the Goods and/or the workmanship of the Services (as the case may be).

- 20.5 Subject to the Customer's rights under Schedule 2 of the CCA:

- 20.5.1 the Carrier shall not be liable for any loss or damage of any kind whatsoever, arising from the delivery of the Customer Goods, the Goods and/or Services, including consequential loss whether suffered or incurred by the Customer or another person and whether in contract or tort (including negligence) or otherwise and irrespective of whether such loss or damage arises directly or indirectly from the Customer Goods, the Goods and/or Services, their misdelivery or failure of the Carrier to deliver, or delay of the Carrier in delivery of Customer Goods including chilled, frozen, refrigerated or perishable Customer Goods, either in transit or storage, unless:

- 20.5.1.1. the Customer provides written notice of the alleged complaint and loss to the Carrier seven (7) days after the delivery of the Customer Goods or in the case where the Customer Goods and such alleged loss is accepted, in whole or in part, by the Carrier; or

- 20.5.1.2. in the case where the Customer Goods have been lost in transit, the Customer shall be required to provide written notice detailing the alleged loss within fourteen (14) days of the date of the dispatch of the Customer Goods, and such alleged loss is accepted, in whole or in part, by the Carrier.

- 20.5.2 the Customer shall indemnify the Carrier against all claims and loss of any kind whatsoever however caused or arising and without limiting the generality of the foregoing of this clause whether caused or arising as a result of the negligence of the Carrier or otherwise, brought by any person in connection with any matter, act, omission, or error by the Carrier, its agents or employees in connection with the Customer Goods, the Goods and/or Services.

- 20.5.3 In addition to and without prejudice to any conditions contained within these Terms, the Customer undertakes that it shall indemnify the Carrier against all liabilities suffered or incurred by the Carrier arising directly or indirectly from or in connection with the Customer's instructions or their implementation of the Goods, and in particular, the Customer shall indemnify the Carrier in respect of any liability it may be under to any servant, agent or subcontractor, or any haulier, carrier, warehouseman, or other person whatsoever at any time involved with the Goods arising out of any claim made directly or indirectly against any such party by the Customer or by any sender, consignee or owner of the Goods or by any person interested in the Goods or by any other person whatsoever.

21. CANCELLATION OF ORDERS

- 21.1 Subject to clause 21.2, orders placed with the Carrier cannot be cancelled by the Customer without written approval of the Carrier, which it may refuse in its absolute discretion. In the event that the Carrier accepts the cancellation of any order placed, the Customer agrees to indemnify the Carrier against all loss arising out of the order or any part of the order being cancelled by the Customer including cartage, bank charges and other incidental expenses.

- 21.2 Where the Customer orders any out-of-stock Goods from the Carrier that the Carrier orders from a third party (known as a "Special Order"), the order is non-cancellable by the Customer, unless the third party itself is prepared to credit the Carrier for the cancelled Special Order in which case the Carrier shall credit the Customer's account with the invoice value (as rendered to the Customer) less any transport handling, loss of profit and costs, depreciation, obsolescence plus restocking charges of 20% of the price of the Goods.

22. CARRIER NOT OBLIGED TO SELL ON CREDIT TERMS

- 22.1 The Carrier is not obliged to sell on credit terms and reserves the right to require cash on delivery before the Goods and/or Services are provided.

23. SECURITY AND CHARGES

- 23.1 The Customer hereby charges in favour of the Carrier all of the Customer's estate and interest in any real property (whether held in its own right or in the capacity as trustee) that the Customer now has, or which it may later acquire any such interest in, with payment of all moneys owed by the Customer to the

Carrier now and in the future and hereby consents to the Carrier lodging a caveat or caveats which note the Carrier's interest.

23.2 The Customer also charges all of its present and after-acquired personal property with payment of all moneys owed by the Customer to the Carrier now and in the future.

23.3 To give effect to the provisions of this clause 23 the Customer hereby irrevocably nominates and appoints the Carrier or the Carrier's nominee as the Customer's true and lawful attorney to execute mortgages and charges (whether registrable or otherwise) including such other terms and conditions as the Carrier and/or the Carrier's nominee shall think fit in their absolute discretion against the interest of the Customer in any land, realty or asset in favour of the Carrier and in the Customer's name as may be necessary to secure the Customer's obligations and indebtedness of the Carrier and further to do and perform all necessary and other acts including instituting any necessary legal proceedings and executing all or any documents in the Carrier's discretion which may be necessary or advantageous to give effect to the provisions of this clause 23.

23.4 Where the Customer has previously granted a charge, mortgage and/or other security interest to the Carrier in any previous agreement, that charge, mortgage and/or security interest will continue, and shall be in addition to and separate from the charges and security interests created in this agreement, they and shall secure all indebtedness and obligations of the Customer under this Agreement.

23.5 The Carrier will not seek to enforce the charges in clause 23.1, 23.2 and 23.4 unless it reasonably holds the view that there will still be a shortfall on recovery under its retention of title and disposal rights in clause 19.

24. JURISDICTION

24.1 These terms and conditions and all matters concerning the business relationship between the Carrier and the Customer shall be governed by the laws of the State of Victoria and the parties submit to the non-exclusive jurisdiction of the Courts of that State for the conduct of any litigation.

24.2 The parties agree that any contract between the Customer and the Carrier is formed at the Carrier's address.

25. FORCE MAJEURE

25.1 The Carrier is not liable for delay in performance, or non-performance, of its obligations under this agreement caused by unforeseeable circumstances beyond the Carrier's reasonable control (including, without limitation, acts of

God, civil or military authority, accident, earthquakes, strikes, the elements, labour disputes, shortage of suitable parts or components or other materials, mechanical breakdown, fire, flood, tempest and war) and in such circumstances the Carrier will be entitled to a reasonable extension of time, in all cases, for the performance of any of its obligations.

26. MISCELLANEOUS

26.1 This agreement constitutes the entire agreement between the parties relating to its subject matter. All previous negotiations, representations and understandings are merged into this agreement. No oral representation or information provided by the Carrier constitutes a legally binding representation, contractual term or collateral agreement.

26.2 The Customer must keep confidential all information, including this agreement, the Price as relates to the supply of Goods and Services, and any information which the Carrier may reasonably consider is confidential, unless the Customer is required by law to disclose such information, where the information has become public information, or with prior written consent of the Carrier.

26.3 Failure by the Carrier to enforce any of the terms and conditions contained in this contract shall not be deemed to be a waiver of any of its rights or obligations under this agreement.

26.4 If any provision of this contract shall be invalid, void or illegal or unenforceable, the validity, existence, legality and enforceability of the remaining provisions shall not be affected.

26.5 Any variation to the Terms must be agreed to in writing to have any legal effect.

26.6 If an order is placed as an agent of a principal (whether disclosed or undisclosed) both the agent and the principal shall be joint and severally liable to pay for the Goods and/or Services and the relevant contracts shall be governed by these Terms.