

**1. Definitions**

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting TCF to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
  - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using TCF’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **“Dangerous Goods”** means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this Contract) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in the legislation governing cartage by road or rail in the States and Territories of Australia.
- 1.7 **“Goods”** means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.8 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 **“Price”** means the Price payable for the Services (plus any GST where applicable) as agreed between TCF and the Client in accordance with clause 7 below.
- 1.10 **“Services”** means all services provided by TCF to the Client to facilitate the movement of Goods from one place to another by TCF as may be requested by the Client from time to time (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations.
- 1.11 **“Sub-Contractor”** means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
  - (b) any other person or entity with whom TCF may arrange for the carriage or storage of any Goods the subject of the Contract; or
  - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.12 **“TCF”** means TCF International Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of TCF International Pty Ltd.

**2. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)**

- 2.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.
- 2.3 Liability of TCF arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the CCA or howsoever arising, is limited to any of the following as determined by TCF:
- (a) rectifying the Services; or
  - (b) providing the Services again; or
  - (c) paying for the Services to be provided again.
- 2.4 If TCF is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.3 or the CCA, but is unable to do so, then TCF may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

**3. Acceptance**

- 3.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
  - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Services provided by TCF.
- 3.2 These terms and conditions are to be read in conjunction with TCF’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by TCF to the Client. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

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- 3.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with TCF and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Goods request exceeds the Client's credit limit and/or the account exceeds the payment terms, TCF reserves the right to refuse delivery.
- 3.6 The use of a Client's own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the agreement so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 3.7 Except under special arrangements previously made in writing, TCF will not accept or deal with any:
- (a) Dangerous Goods. Any person delivering such Goods to TCF, or causing TCF to handle or deal with any such Goods, shall be liable for all loss or damage caused thereby and shall indemnify TCF against all penalties claims damages costs and expenses arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the sole discretion of TCF (or any other person in whose custody they may be at the relevant time such Goods are accepted) if they become dangerous to other goods or property;
  - (b) bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants, and TCF will not accept any liability whatsoever for any such Goods.
- 3.8 These terms and conditions are meant to be read in conjunction with the Terms and Conditions posted on TCF's website. If there are any inconsistencies between the two documents then the terms and conditions contained in this document shall prevail.
- 3.9 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

### 4. Errors and Omissions

- 4.1 The Client acknowledges and accepts that TCF shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by TCF in the formation and/or administration of this Contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by TCF in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services ("**Client Error**"). The Client must pay for all Services it orders from TCF notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. TCF is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.

### 5. Change in Control

- 5.1 The Client shall give TCF not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss incurred by TCF as a result of the Client's failure to comply with this clause.

### 6. Credit Card Information

- 6.1 TCF will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by TCF;
  - (b) not disclose the Client's credit card details to any third party; and
  - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 25) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, TCF is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.

### 7. Price and Payment

- 7.1 At TCF's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by TCF to the Client upon placement of an order for the Services; or
  - (b) the Price as at the date of delivery of the Goods according to TCF's current price list, as previously disclosed to the Client upon the Client's placement of an order for the Services; or
  - (c) TCF's quoted Price (subject to clauses 7.3 and 7.2) which shall be binding upon TCF provided that the Client shall accept in writing TCF's quotation within thirty (30) days.
- 7.2 TCF may have the right to withdraw or revise any quotation where the quotation has been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of the Client. TCF may, at any time, open any container or any other package or unit in order to re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 7.3 TCF reserves the right to change the Price:
- (a) if a variation to TCF's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of TCF, delivery times or date or otherwise, etc.);
  - (b) to reflect any increases to TCF in the cost of providing the Services which are beyond the reasonable control of TCF (including, without limitation, increases in the cost of labour, materials, foreign exchange fluctuations, increases in taxes, customs duties, insurance premiums or warehousing costs).

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- 7.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by TCF, which may be:
- (a) on or before delivery of the Goods;
  - (b) for approved credit account holders, fourteen (14) days following the date of any invoice; or
  - (c) the date specified on any invoice or other form as being the date for payment; or
  - (d) failing any notice to the contrary, the date which is thirty (30) days (or seven (7) days for disbursements) following the date of any invoice given to the Client by TCF.
- 7.5 Payment may be made by cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and TCF.
- 7.6 Receipt by TCF of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then TCF's ownership or rights in respect of the Services shall continue.
- 7.7 The Client acknowledges and agrees that the Client's obligations to TCF for the supply of Services shall not cease until:
- (a) the Client has paid TCF all amounts owing for the particular Services; and
  - (b) the Client has met all other obligations due by the Client to TCF in respect of all contracts between TCF and the Client.
- 7.8 TCF may in its discretion allocate any payment received from the Client towards any invoice that TCF determines and may do so at the time of receipt or at any time afterwards. On any default by the Client TCF may re-allocate any payments previously received and allocated. In the absence of any payment allocation by TCF, payment will be deemed to be allocated in such manner as preserves the maximum value of TCF's Purchase Money Security Interest (as defined in the PPSA) in respect of the Services provided.
- 7.9 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by TCF nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify TCF in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as TCF investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in TCF placing the Client's account into default and subject to default interest in accordance with clause 21.1.
- 7.10 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TCF an amount equal to any GST TCF must pay for any provision of Services by TCF under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

### 8. Payment of Duties

- 8.1 Subject to clause 7.10, the Client authorises TCF, but with no obligation on the part of TCF, to advance any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods, and the Client shall be liable for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by TCF in connection therewith.

### 9. Client's Responsibility

- 9.1 The Client expressly warrants to TCF that:
- (a) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract, and by entering into this Contract the Client accepts these terms and conditions for the Consignee as well as for all other persons on whose behalf the Client is acting;
  - (b) the Goods are fit for carriage and are not Dangerous Goods;
  - (c) the person handing over the Goods to TCF is authorised to sign and accept these terms and conditions, the Client's letter of instruction or waybill;
  - (d) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
  - (e) any packaging, labelling, branding and/or marking by the Client accurately describes the Goods as to content, weight and method of handling or otherwise, complies with applicable Dangerous Goods Code, any other applicable laws and with any relevant Australian or international standards..
- 9.2 The Client shall indemnify TCF against any loss (including, any fines, levy, charges or other monetary imposition to which TCF may become liable incidental to the carriage) damage, death or injury, including loss or damage to TCF's containers and/or equipment arising out of:
- (a) the Client's unreasonable detention of any vehicle, container or other equipment of TCF;
  - (b) any breach of the Client's warranties under clause 9.1, including the failure to comply with clause 9.1(e).

### 10. Provision of the Services

- 10.1 Any time specified by TCF for provision of the Services is an estimate only and TCF will not be liable for any loss or damage incurred by the Client as a result of any delay. However both parties agree that they shall make every endeavour to enable the Services to be provided at the time and place as was arranged between both parties. In the event that TCF is unable to provide the Services as agreed solely due to any action or inaction of the Client then TCF shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 10.2 The Client authorises TCF (in its discretion at any time without notice to the Client) to:
- (a) license or sub-contract all or any part of its rights and/or obligations, including using the services of others where necessary to ensure compliance with lawful authority requirements, etc.;
  - (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever;
  - (c) comply with any order direction or recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.
- 10.3 The Client acknowledges and agrees:

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- (a) if the Client instructs TCF to use a particular method of carriage whether by road, rail, sea or air TCF will give priority to the method designated but if that method cannot conveniently be adopted by TCF the Client shall be deemed to authorise TCF to carry or have the Goods carried by another method or methods;
- (b) that TCF contracts with the Client both on its own behalf and on the behalf of TCF's servants, agents and subcontractors, and the Client undertakes that the Client will not make any claims against such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission by any of them;
- (c) in respect of any clause herein which excludes, or in any way limits, the liability of TCF in respect of the Services, TCF, in addition to acting for itself, is acting as an agent of, and trustee for, each of its employees and also any other person or company with whom TCF arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this Contract in so far as to the exclusions or indemnities that are contained herein are concerned and, in so far as may be necessary to give effect to this clause, TCF will hold the benefit of these terms and conditions for its employees and so any such person or company and their employees;
- (d) the Client shall indemnify TCF against:
  - (i) the consequences of such claim or allegation thereof;
  - (ii) all claims or demands whatsoever by whomsoever made in respect of any loss, damage, or injury howsoever caused whether or not by negligence or wilful act or omission of TCF, its servants, agents or subcontractors.

10.4 TCF's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Client's premises.

### 11. Freight Forwarding

11.1 Except to the extent that any of the Services shall be actually performed by TCF, they shall act as a forwarding agent only. TCF:

- (a) shall be entitled, to enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of TCF may be necessary or desirable to the performance of the Services. The Client hereby appoints TCF the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as TCF may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which TCF may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, TCF, or any other person;
- (b) 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 TCF subject only to these conditions and TCF reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

### 12. Custom Brokerage

- 12.1 The Client agrees that, by signing acceptance of these Terms and Conditions the Client duly authorises TCF to act as their nominated Customs Broker under Section 181 (1) of the Customs Act 1901 (Cth) (as Authorised Agents), to act on the Client's behalf, with TCF then becoming the Client's duly nominated agent or sub-agent as appointed, in all matters involving the Australian Customs Service.
- 12.2 The Client acknowledges that TCF will, for the purposes of customs duty, classify the Goods, compile the Goods for customs purposes and calculate the customs duty payable on the Goods based on the information provided by the Client to TCF in relation to the Goods, and TCF shall not be liable for any mistake in classification, or compiling of the Goods or calculation of customs duty resulting from the failure of the part of the Client to provide sufficient information to TCF concerning the Goods so as to enable TCF properly to classify and compile the Goods and properly calculate the customs duty on the Goods.
- 12.3 In the event that an examination of the Goods is required by any statutory authority, or other person authorised by the Client or entitled to examine the Goods, TCF shall not be responsible for failure to arrange, or delay in arranging such examination unless TCF shall have been given sufficient written notice by the Client to enable it to arrange such examination.
- 12.4 TCF is entitled to be paid, and retain, all brokerages, commissions, allowances and other remuneration's paid to, or retained by, ship forwarding agents (or freight forwarders) and/or insurance brokers.

### 13. Warehousing

- 13.1 The Goods may at any time be warehoused 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 TCF. In every case, whether warehousing is incidental or the primary service provided by TCF, such Services shall be provided at the Client's risk and expense as a primary charge(s) or a charge(s) incidental to or in connection with the carriage of the Goods or any other Services hereunder.
- 13.2 Notwithstanding clause 13.1, the Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from TCF to do so. In default, TCF shall provide the Client with written notice of TCF's intention to SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty within fourteen (14) days of such notice being issued, apply the net proceeds in satisfaction of any amount owing by the Client to TCF in accordance with the Storage Liens Act 1935.

### 14. Client-Packed Containers

- 14.1 Subject to any written special instructions to the contrary, the Client is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Client) through any such failure.

### 15. Insurance

- 15.1 No insurance will be effected except upon express instructions as to the risks to be insured against and the value or values to be declared in writing by the Client, and all insurances effected by TCF subject to the usual exceptions and conditions or the policies of the insurance company or underwriters accepting the risk. TCF shall not be under any obligation to effect separate insurance on each consignment but may declare it

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on any open or general policy. Should the insurer's dispute their liability for any reason the insured shall have recourse against the insurers only and TCF shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same rate as that charged by TCF or paid to TCF by the Client.

### 16. Delivery of the Goods

- 16.1 TCF is authorised to deliver the Goods at the address given to TCF by the Client for that purpose and:
- (a) the Client (or the nominated carrier of the Client) shall make all arrangements to necessary to take delivery of the Goods whenever they are tendered for delivery, or delivery shall be made to the Client at TCF's address;
  - (b) it is expressly agreed that TCF shall be taken to have delivered the Goods in accordance with this contract if at that address TCF obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 TCF may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 16.3 Perishable Goods, which are not taken up immediately upon arrival, or which are insufficiently addressed or marked or otherwise not identifiable, may be sold or otherwise disposed of without any notice to the Client, and payments or tender of the net proceeds of any sale after deduction of charges shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the Goods shall be paid by the Client.
- 16.4 Non-perishable Goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee, may be sold (as per clause 16.1) or returned at TCF's option at any time after expiration of twenty-one (21) days from a notice in writing sent to the address which the Client gave to TCF for delivery of the Goods. A communication from any agent or correspondent of TCF to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
- 16.5 Instructions to collect payment on delivery of the Goods (COD), in a payment method accepted by TCF upon the condition that TCF in the matter of such collection will be liable for the exercise of reasonable diligence and care only.

### 17. Loss or Damage

- 17.1 Subject to clause 2, and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, TCF shall not be under any liability for:
- (a) any loss of, or damage to, Goods, unless such loss or damage occurs whilst the Goods are in the actual custody of TCF and under its actual control, and/or is due to the wilful neglect or default of TCF or its own servants;
  - (b) any delay in delivery, forwarding or transit or failure to deliver the Goods;
  - (c) any loss, damage or delay caused by treatment of the Goods by any government authorities (including, but not limited to, any fumigation or decontamination or other treatment by the Australian Quarantine Inspection Service (AQIS) or other agency);
  - (d) any deterioration, contamination, evaporation or any consequential loss or loss of market, howsoever caused;
  - (e) any failure to follow instructions given to it by, or on behalf of the Client, whether or not such failure is wilful;
  - (f) any damage or expense arising from, or in any way connected with, marks, numbers, brands, contents or quality of description of the Goods;
  - (g) any loss or damage resulting from fire, water, explosion or theft, whether caused by negligence of TCF's servants or otherwise.
- 17.2 In the case of carriage by sea or air, no optional declaration of value to increase the carrier's liability under either the carriage by Civil Aviation (Carrier's Liability) Act 1959 (Cth), the Carriage of Goods by Sea Act 1991 (Cth), the Civil Aviation Act 1990 (NZ), or the Maritime Transport Act 1994 (NZ) will be made except upon express instructions given in writing to the Client. In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purposes of extending liability, and Goods will be forwarded or dealt at Client's risk or other minimum charges unless express instructions in writing to the contrary are given by the Client.

### 18. Indemnities

- 18.1 Subject to clause 2, but without prejudice to any other provision hereof, this Contract and any other agreement TCF makes under its authority and any contract made by any person whom TCF has delegated such authority, shall be made by the Client or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage thereof (including storage by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit). All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 7.

### 19. Claims

- 19.1 Notwithstanding clauses 15 and 17 in the event that the Client believes that they have any claim against TCF then they must lodge any notice of claim for consideration and determination by TCF within seven (7) days of the date of delivery, or for non-delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 19.2 The failure to notify a claim within the time limits under clause 19.1 is evidence of satisfactory performance by TCF of its obligations.

### 20. Compliance with Laws

- 20.1 The Client and TCF shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

### 21. Default and Consequences of Default

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at TCF's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes TCF any money the Client shall indemnify TCF from and against all costs and disbursements:

- (a) incurred; and/or
  - (b) which would be incurred and/or
  - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising TCF's rights under these terms and conditions, internal administration fees, TCF's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 21.3 Further to any other rights or remedies TCF may have under this Contract, if the Client has made payment to TCF, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by TCF under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 21.4 Without prejudice to TCF's other remedies at law TCF shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to TCF shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to TCF becomes overdue, or in TCF's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client has exceeded any applicable credit limit provided by TCF;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 22. Lien**
- 22.1 TCF shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of TCF (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to TCF (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and TCF shall have the right to sell such Goods or cargo by public auction or private treaty after giving written notice to the Client. TCF shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 22.2 Notwithstanding clause 22.1 nothing shall prejudice TCF's rights to use any of TCF's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 22.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.
- 23. Personal Property Securities Act 2009 ("PPSA")**
- 23.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 23.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by TCF, over which TCF invokes a lien; and
  - (b) all Services that will be supplied in the future by TCF to the Client; and
  - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to TCF for Services – that have previously been provided and that will be provided in the future by TCF to the Client.
- 23.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which TCF may reasonably require to:
    - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
    - (ii) register any other document required to be registered by the PPSA; or
    - (iii) correct a defect in a statement referred to in clause 23.3(a)(i) or 23.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, TCF for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of TCF;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of TCF.
- 23.4 TCF and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 23.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 23.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 23.7 Unless otherwise agreed to in writing by TCF, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 23.8 The Client shall unconditionally ratify any actions taken by TCF under clauses 23.3 to 23.5.
- 23.9 Subject to any express provisions to the contrary (including those contained in this clause 23), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 24. Security and Charge**
- 24.1 In consideration of TCF agreeing to provide its Services, the Client grants TCF a security interest by way of a floating charge (registerable by TCF pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this

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- Contract for provision of the Services under this Contract and/or permit TCF to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 24.2 The Client indemnifies TCF from and against all TCF's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TCF's rights under this clause.
- 24.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 7.7, 23.2 and 24.1 as applicable, is deemed insufficient by TCF to secure the repayment of monies owed by the Client to TCF, the Client hereby grants TCF a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 25. Privacy Policy**
- 25.1 All emails, documents, images or other recorded information held or used by TCF is Personal Information, as defined and referred to in clause 25.3, and therefore considered Confidential Information. TCF acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). TCF acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by TCF that may result in serious harm to the Client, TCF will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 25.2 Notwithstanding clause 25.1, privacy limitations will extend to TCF in respect of Cookies where the Client utilises TCF's website to make enquiries. TCF agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
  - (b) tracking website usage and traffic; and
  - (c) reports are available to TCF when TCF sends an email to the Client, so TCF may collect and review that information ("collectively Personal Information")
- If the Client consents to TCF's use of Cookies on TCF's website and later wishes to withdraw that consent, the Client may manage and control TCF's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.
- 25.3 The Client agrees for TCF to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by TCF.
- 25.4 The Client agrees that TCF may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 25.5 The Client consents to TCF being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 25.6 The Client agrees that personal credit information provided may be used and retained by TCF for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 25.7 TCF may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 25.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 25.3 above;
  - (b) name of the credit provider and that TCF is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults (provided TCF is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and TCF has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of TCF, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.9 The Client shall have the right to request (by e-mail) from TCF:

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- (a) a copy of the Personal Information about the Client retained by TCF and the right to request that TCF correct any incorrect Personal Information; and
- (b) that TCF does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 25.10 TCF will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 25.11 The Client can make a privacy complaint by contacting TCF via e-mail. TCF will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at [www.oaic.gov.au](http://www.oaic.gov.au).
- 26. Cancellation**
- 26.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("**the Breaching Party**") the other party may suspend or terminate the supply of the Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 26.2 If TCF, due to reasons beyond TCF's reasonable control, is unable to deliver any Services to the Client, TCF may cancel any Contract to which these terms and conditions apply or cancel delivery of the Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice TCF shall repay to the Client any money paid by the Client for the Services. TCF shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 26.3 The Client may cancel Delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 26.3, the Client will not be liable for the payment of any costs of TCF, except where a deposit is payable. Failure by the Client to otherwise accept Delivery of the Services shall place the Client in breach of this Contract.
- 27. Service of Notices**
- 27.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this Contract;
- (c) by sending it by registered post to the address of the other party as stated in this Contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.
- 27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 28. Trusts**
- 28.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not TCF may have notice of the Trust, the Client covenants with TCF as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
- (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
- (c) the Client will not during the term of the Contract without consent in writing of TCF (TCF will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
- (i) the removal, replacement or retirement of the Client as trustee of the Trust;
- (ii) any alteration to or variation of the terms of the Trust;
- (iii) any advancement or distribution of capital of the Trust; or
- (iv) any resettlement of the trust fund or trust property.
- 29. General**
- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which TCF has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 29.3 TCF may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 29.4 The Client cannot licence or assign without the written approval of TCF.
- 29.5 TCF may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of TCF's Sub-Contractors without the authority of TCF.
- 29.6 The Client agrees that TCF may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for TCF to provide Goods to the Client.



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- 29.7 Where TCF is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of TCF, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and TCF gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of TCF. This clause does not apply to a failure by the Client to make a payment to TCF, once the parties agree that the Force Majeure event has ceased.
- 29.8 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 29.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 29.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 29.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.