

Please read all the following conditions carefully. You will be bound by these conditions if we provide services at your request or on your behalf. Please note that:

- Our services are priced based on the exclusions and limitations set out in these conditions;
- To the extent permitted by law, we will not be liable for any loss of or damage to goods during transit, unless you prove that the loss or damage was caused by our negligence or wilful misconduct;
- The conditions provide for various exclusions of liability and limits on our liability for loss of or damage to goods. These exclusions and limits are set out in clause 7;
- The general effect of these provisions is that, even if you prove we have been negligent, you may not be able to recover the full value of any lost or damaged goods;
- Because of these considerations, we recommend that any goods are covered by an appropriate insurance policy taken out by you, or by the owner of the goods; and
- If we store goods for you, you **must** take out a policy of insurance over those goods (see clause 15).

## TRADING CONDITIONS

### 1. DEFINITIONS AND INTERPRETATION

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#### 1.1 In these conditions:

**Additional Charges** include minimum pickup fees, provision of proofs of delivery, futile delivery charges, manual handling charges, redelivery fees, over-dimensional, tailgate and Dangerous Goods surcharges, quarantine charges, underbond charges, pickups outside ordinary business hours and handload charges as published on the Service Provider's website from time to time, or otherwise notified in writing to the Consignor.

**Associated Entity** means any associated entity of the Service Provider in accordance with the meaning given to that term in the *Corporations Act 2001* (Cth).

**Australian Port** means an Australian seaport container operation where shipping containers are delivered for shipping to other ports and discharged from ships for pickup by domestic freight carriers.

**Authority** includes any legal or administrative authority exercising any jurisdiction within an Australian state or territory.

**Business Day** means a day other than:

- (a) a Saturday, Sunday or public holiday in Brisbane, Queensland; or
- (b) a day on which any empty container park situated in Brisbane, Queensland is not open, or fails to remain open throughout all usual business hours.

**Chain of Responsibility Law** means the Heavy Vehicle National Law as enacted in any Australian state, the *Road Traffic (Administration) Act 2008* (WA) and the *Road Traffic (Vehicles) Act 2012* (WA) and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

**Consequential Loss** means any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in



connection with the performance of Services and whether or not foreseeable at the time of entering into any agreement incorporating these conditions.

**Consignor** means the person engaging the Service Provider.

**Container** includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods.

**Crane** includes any machine used for lifting Goods, including a sideloader.

**Damage** means physical damage and includes deterioration, evaporation and contamination.

**Dangerous Goods** means Goods that are or may become noxious, dangerous, flammable or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property whatsoever and includes Regulated Waste.

**Enforcement Costs** means any fees, costs and expenses, including legal expenses on an indemnity basis, incurred by the Service Provider in connection with any default under or enforcement or attempted enforcement of these conditions.

**Force Majeure Event** means acts of God, lightning, earthquakes, cyclones, floods, landslides, storms, explosions, fires and any natural disaster, acts of war, acts of public enemies, terrorism, public disorder, riots, civil commotion, malicious damage, vandalism, sabotage, explosions, nuclear accidents, strikes, epidemics, pandemics, labour disputes and other industrial disturbances, any border or road closure or congestion of roads, any quarantine or customs restriction, any interruption of power supply or scarcity of fuel or any accident, collision or breakdown of a vehicle, Crane, machinery or equipment.

**Goods** means the property accepted by the Service Provider from, or at the request of, the Consignor for the provision of Services and includes any Container or packaging supplied by or on behalf of the Consignor.

**Interest** means an amount calculated on any Outstanding Amount at the rate of 1.0% per calendar month, compounded annually.

**Law** includes:

- (c) principles of law or equity established by binding court decisions, and
- (d) applicable statutes, regulations, proclamations, orders, bylaws, requirements and approvals.

**Outstanding Amount** means any amount which remains unpaid upon the expiry of the credit terms extended by the Service Provider or for which the Consignor is otherwise liable, pursuant to these conditions, to the Service Provider.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**Regulated Waste** means 'regulated waste' under the *Environmental Protection Regulation 2008* (Qld) and any other commercial or industrial waste (whether or not it has been immobilised or treated) where dealings with that waste are regulated by any Law.

**Service Provider** means the entity engaged by the Consignor being one or more of South East Qld Hauliers Pty Ltd (ABN 37 077 532 775), Rogco Pty Limited (ABN 48 110 975 203), SEQH Transport Pty Ltd (ABN 18 126 609 774) or Bayside Landscape Supplies Pty Ltd (ABN 23 079 296 978) and their respective officers, employees, agents and Subcontractors.

**Services** means any operations or services undertaken by or on behalf of the Service Provider (whether gratuitously or not), in any way connected with Goods including loading, unloading, packing, unpacking, handling, weighing, transporting and storage of Goods, steam

cleaning/washing and fumigation services, quarantine services, completing documents and the provision of any advice.

**Storage** means receiving Goods into a storage location operated by or on behalf of the Service Provider including confirmation of quantities and batch numbers, storing Goods and handling inbound and outbound Goods at the storage location.

**Subcontractor** includes any person who pursuant to a contract or arrangement with any other person (whether or not the Service Provider) performs or agrees to perform the Services or any part of them.

1.2 In these conditions:

- (a) a reference to a person is to be construed as a reference to an individual, body corporate, unincorporated association, partnership, joint venture or government body;
- (b) headings are included for convenience only and do not affect the interpretation of these conditions;
- (c) words importing the singular include the plural and vice versa and words importing a gender include other genders;
- (d) where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings;
- (e) wherever 'include' or any form of that word is used, it will be construed as if it were followed by '(without being limited to)';
- (f) terms used have the same meaning as under the PPSA; and
- (g) all indemnities survive the termination or expiration of any agreement incorporating these conditions.

## **2. NEGATION OF LIABILITY AS A COMMON CARRIER**

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The Service Provider is not a common carrier and will accept no liability as such. All Goods are carried and all Services are performed by the Service Provider subject only to these conditions and the Service Provider reserves the right to refuse, in its discretion, to provide Services in respect of any goods.

## **3. SERVICE PROVIDER'S OBLIGATIONS**

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The Service Provider will:

- (a) take reasonable care to protect and safeguard the Goods and to follow any special handling requirements notified to the Service Provider by the Consignor;
- (b) provide the Services exercising the degree of skill, care and efficiency that would be expected from a competent provider of Services;
- (c) at its own expense, hold all licences as may be required by Law in connection with the Services;
- (d) to the extent the Services comprise Storage, account for all Goods received and use modes of Storage appropriate to the nature of those Goods, which may include storage of Goods outside and not under cover;
- (e) use reasonable endeavours to deliver the Goods to the address nominated by the Consignor and to effect delivery at the date and time requested by the Consignor (subject to compliance with all Law, including Chain of Responsibility Law); and

- (f) use reasonable endeavours to comply with the Consignor's reasonable and lawful directions.

#### **4. ASSOCIATED ENTITIES**

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- 4.1 The Consignor acknowledges and agrees that the Service Provider enters into any agreement incorporating these conditions for the benefit of itself and for any Associated Entity and that each Associated Entity is entitled to all rights and privileges under these conditions as if each reference to the Service Provider were to the relevant Associated Entity.
- 4.2 The Consignor acknowledges and agrees that:
- (a) the Service Provider holds the rights and privileges under these conditions on trust for its own benefit and for the benefit of each Associated Entity, and the Service Provider may enforce these conditions on behalf of any Associated Entity; and
  - (b) any breach of these conditions, or any negligence or other actionable acts or omissions by the Consignor may result in Associated Entities suffering loss or damage.
- 4.3 The Service Provider is entitled to recover from the Consignor any loss or damage suffered or incurred by an Associated Entity in connection with the provision of Services by the Service Provider or any Associated Entity to the same extent that the Associated Entity would have been entitled to, if the Associated Entity had been a party to any agreement incorporating these conditions and all indemnities in these conditions will apply for the benefit of each Associated Entity.

#### **5. OBLIGATIONS AND WARRANTIES**

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- 5.1 The Consignor must:
- (a) where the Goods require temperature control, provide written notice to the Service Provider of the nature of the Goods and the temperature setting to be maintained;
  - (b) where the Goods are Dangerous Goods, provide written notice to the Service Provider and otherwise comply with clause 19;
  - (c) advise the Service Provider of any Goods that must be held for biosecurity or underbond purposes;
  - (d) ensure that the loading of the Goods onto the Service Provider's vehicle will not cause the vehicle to exceed any dimension or mass limits under Chain of Responsibility Law;
  - (e) where the Goods require special treatment or handling, provide written notice to the Service Provider of the special treatment required;
  - (f) where required by Law, provide an accurate container weight declaration that complies with any Order made under the *Navigation Act 2012* (Cth); and
  - (g) provide all documents, information and assistance necessary to allow the Service Provider to comply with the requirements of any Authority.
- 5.2 The Consignor warrants that:
- (a) the Goods are in a fit state to allow the Services to be performed and are packed in a manner adequate to withstand the ordinary risks associated with the Services;
  - (b) the Goods within any Container are adequately restrained in accordance with the Load Restraint Guide published by the National Transport Commission;

- (c) if Goods within a Container are not evenly distributed, the Consignor will provide a load plan of the contents of the Container before requesting the Service Provider to provide Services;
- (d) no Container will have a weight imbalance front to rear or side to side of more than 10%;
- (e) where Goods are to be transported or stored in a temperature-controlled Container:
  - (i) the Container has been properly pre-cooled or pre-heated, to the temperature required; and
  - (ii) the Goods have been properly stuffed/packed in the Container;
- (f) it is authorised by all persons owning or having any interest in the Goods (including the consignee) to accept these conditions on their behalf;
- (g) all details supplied with respect to the Goods, including the details of description, items, pallet space, quantity, weight, volume, quality, value and measurements, are correct;
- (h) there is a suitable and safe road and approach for the Service Provider's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;
- (i) safe and adequate commercial loading/unloading facilities and equipment will be available at any place from which any Goods are to be collected and to which any Goods are to be delivered; and
- (j) Services are supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by the Consignor.

5.3 The Service Provider relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Consignor but does not admit their accuracy.

## **6. SUBCONTRACTING**

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- 6.1 The Service Provider, at its discretion, may subcontract on any terms the whole or any part of the Services.
- 6.2 The Consignor agrees that no claim or allegation may be made against any employee, agent, or Subcontractor that imposes or attempts to impose upon such person any liability whatsoever arising out of or in any way connected with the Goods or the Services, whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Service Provider against all consequences of any such claim or allegation.
- 6.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, limitation, defence and immunity applicable to the Service Provider or to which the Service Provider is entitled under these conditions will also be available to and will extend to protect:
  - (a) all Subcontractors;
  - (b) every employee or agent of the Service Provider or of a Subcontractor;
  - (c) every other person (other than the Service Provider) by whom the Services or any part of them is undertaken; and
  - (d) all persons who are liable for the acts or omissions of any person falling within clauses 6.3(a), 6.3(b) or 6.3(c).

- 6.4 For the purposes of clause 6.3 the Service Provider is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and each of them and all such persons and each of them will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

## **7. LIABILITY OF SERVICE PROVIDER**

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- 7.1 The Goods are at the risk of the Consignor. Neither the Service Provider nor any Subcontractor nor any other person who undertakes the Services will, under any circumstances, (except where any legislation otherwise requires) be under any liability whatsoever (whether in contract, tort, bailment or otherwise) for any:

- (a) loss of the Goods;
- (b) Damage to the Goods; or
- (c) mis-delivery, delay in delivery or non-delivery of the Goods,

whether in the course of Services or otherwise, unless the Consignor proves that such loss, Damage, mis-delivery, delay in delivery or non-delivery was caused by the negligence or wilful default of the Service Provider.

- 7.2 Any liability of the Service Provider under clause 7.1 will be reduced proportionately to represent the extent to which the Consignor (or any other person)'s negligent or wrongful act or omission caused the loss, Damage, mis-delivery, delay in delivery or non-delivery of the Goods.

- 7.3 Notwithstanding any other provision of these conditions, the Service Provider will not be liable for any:

- (a) loss of or Damage to Goods caused by:
  - (i) a Force Majeure Event;
  - (ii) the negligent setting or management of the temperature of any refrigerated Container by the Service Provider or by any other person;
  - (iii) the Service Provider following the Consignor's instructions;
  - (iv) the Goods becoming infected or contaminated with any virus, bacteria, fungi, pathogen, disease, mould, vermin or like condition;
  - (v) vibration, road conditions, weather or weather events of any kind whatsoever;
  - (vi) the Goods being inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without Damage;
  - (vii) inherent vice or the nature of the Goods;
  - (viii) a decline in value, or loss of value as a result of the Goods becoming past their 'use by' or expiry date;
  - (ix) insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary risks associated with the Services; or
- (b) loss of or Damage to Goods comprising electrical or mechanical derangement, shrinkage or ordinary wear and tear;

- (c) any loss or damage suffered in connection with delay in the delivery or collection of Goods;  
or
  - (d) any loss of or Damage to Goods where the loss of or Damage to the Goods occurs during Storage.
- 7.4 Notwithstanding any other provision of these conditions, the Service Provider will not be liable, under any circumstances, for Consequential Loss.
- 7.5 Notwithstanding any other provision of these conditions, the Service Provider's liability arising from any loss of Goods, Damage to Goods or mis-delivery or non-delivery of Goods (including any liability arising from breach of a warranty, guarantee or term imposed by Law) is limited, at the option of the Service Provider, to:
- (a) supplying the Services that were supplied with respect to the lost, Damaged or mis/non-delivered Goods, again; or
  - (b) payment of the cost of having the Services that were supplied with respect to the lost, Damaged or mis/non-delivered Goods, supplied again.

## **8. SERVICE GUARANTEE FOR RETURN OF SHIPPING CONTAINERS**

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- 8.1 The Service Provider publishes various guarantees of timely pickup and returns of shipping containers to and from Australian Ports on its website at [www.seqh.com.au](http://www.seqh.com.au). If the Service Provider is unable to meet such a guarantee, other than as a result of a Force Majeure Event or limitations on the Service Provider's ability to pick up or receive shipping containers (such as empty container park closures), then, subject to the conditions and limits set out in this clause, the Service Provider will be responsible for demurrage/detention charges for those shipping containers picked up or returned outside the guaranteed period.
- 8.2 If import Goods are being transported from an Australian Port, the Service Provider must be given two clear Business Days' notice in writing to [conops@seqh.com.au](mailto:conops@seqh.com.au) that the shipping containers are empty and ready to be collected and returned.
- 8.3 If export Goods are being transported by the Service Provider to an Australian Port, the Consignor:
- (a) must ensure that the shipping containers to be used are made available in 'Container Chain' and are within the contractual free time period;
  - (b) must provide the Service Provider with a minimum of five Business Days' advance notice in writing of the required export pickup and delivery times;
  - (c) authorises the Service Provider to collect the empty export shipping containers for packing; and
  - (d) must ensure any export shipping containers are delivered, packed and made available to the Service Provider a minimum of three Business Days prior to the notified shipping line cut-off date.
- 8.4 The Consignor must cross check the available business records of the entity from whom any shipping container is hired at least once each Business Day in order to confirm the hire/dehire of any shipping container and so as to detect any administrative errors and minimise any demurrage/detention charges associated with any shipping container. The Consignor must promptly notify the Service Provider if the records of the entity from whom any shipping container is hired indicate that a shipping container is accruing detention or demurrage charges.
- 8.5 The Service Provider is authorised to triangulate shipping containers:

- (a) to meet export bookings, provided the booking is available in 'Container Chain' (or the empty container park if the booking is not in 'Container Chain'); or
- (b) to complete any import booking.

8.6 The Service Provider's guarantee referred to in clause 8.1 does not apply if the Consignor fails to comply with clause 8.2, 8.3 or 8.4.

8.7 The Service Provider's liability for breach of the guarantee set out in clause 8.1 is limited to payment of shipping container detention/demurrage charges for a period of seven days. Any detention or demurrage charges beyond a seven day period will be the responsibility of the Consignor.

## **9. CONTAINERS AND PALLETS**

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Subject to clause 8.1, the Consignor:

- (a) acknowledges that the Service Provider has no liability or responsibility in relation to any hire charge or demurrage charge associated with any Container or pallet; and
- (b) must ensure that any pallets are transferred to and from any relevant hire accounts and that any necessary documentation is provided to relevant pallet hire businesses.

## **10. ROUTE AND DEVIATION**

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10.1 The Consignor authorises any deviation from the usual route for transportation or manner of provision of Services that may, in the absolute discretion of the Service Provider, be considered desirable or necessary in the circumstances.

10.2 If the Consignor expressly or impliedly instructs the Service Provider to use, or it is expressly or impliedly agreed that the Service Provider will use a particular method of providing or performing the Services, the Service Provider will give priority to that method but if it cannot conveniently be adopted by the Service Provider, the Consignor authorises the Service Provider to provide the Services using another method.

## **11. INSPECTION**

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11.1 The Service Provider may (but is not obliged to) inspect the Goods (including opening any shipping container that is not sealed) to determine the nature or condition of the Goods or for any other purpose which the Service Provider considers reasonably necessary. If a shipping container is sealed, the Service Provider will only break the seal if required to do so by Law, or where the Consignor has given its consent.

11.2 If, under Law, a Container must be opened, the Service Provider will not be liable for any loss, Damage or delay incurred as a result of any opening, unpacking, inspection or repacking and the Consignor agrees to pay the Service Provider's charge for the cost of any such opening, unpacking, inspection or repacking.

## **12. DELIVERY**

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12.1 The Service Provider is authorised to deliver the Goods at the address nominated to the Service Provider for that purpose. The Service Provider will be deemed to have delivered the Goods if, at that address, it obtains from any person a receipt or signed delivery docket for the Goods.

12.2 If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by the Service Provider, the Service Provider may, at its option, deposit the Goods at that place (which will



be conclusively presumed to be due delivery under these conditions), store the Goods or redeliver the Goods to the Consignor at the Consignor's expense.

12.3 If the Goods are stored by the Service Provider pursuant to clause 12.2:

- (a) the Consignor will pay or indemnify the Service Provider for all costs and expenses incurred with respect to such storage; and
- (b) the Service Provider may, at any time, redeliver the Goods to the Consignor at the Consignor's expense.

## **13. CRANE SERVICES**

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13.1 Where the Service Provider provides Crane services:

- (a) the Consignor warrants that:
  - (i) the road surfaces, access and egress to the site and the site itself are stable, adequate to support the Crane, clear of obstacles and of a gradient to allow the Crane to be operated safely;
  - (ii) sufficient clearance will be afforded in respect of all overhead wires; and
  - (iii) the specifications and size of the Crane are suitable for the site and for the Consignor's purpose; and
- (b) the Consignor must supply lifting points and a safe work method statement.

13.2 The Consignor warrants that the weight of the Goods to be lifted in any one lift and the radius of the proposed lift, measured from the radial point of the Crane, will not exceed the limits of the Crane.

13.3 Without limiting clause 16, the Consignor will indemnify the Service Provider in respect of any damage to property, vehicles, the Crane, equipment or the Goods arising from a breach by the Consignor of clause 13.1 or 13.2.

13.4 The Service Provider will supply a standard selection of slings, lugs and chains but accepts no responsibility for loss or delay if any slings, lugs or chains are found to be unsuitable for the Consignor's purpose.

## **14. STORAGE**

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14.1 Where Goods are stored by the Service Provider at the request of the Consignor, the Consignor will provide:

- (a) an address to which notices will be sent; and
- (b) an inventory of the Goods to be stored.

14.2 The Service Provider may remove the Goods from a place of storage to another place of storage at its discretion.

14.3 Storage charges do not include removing, packing, unpacking, inspecting, stocktaking, stowing or delivering.

14.4 The Consignor must give 48 hours' notice to the Service Provider of its intention to remove Goods from storage.

- 14.5 The Service Provider will not be obliged to allow an inspection of the Goods or to deliver up any Goods in storage:
- (a) to any person other than the Consignor or a person authorised in writing by the Consignor; or
  - (b) in circumstances where any amount is due by the Consignor to the Service Provider on any account whatsoever.
- 14.6 The Consignor will remove its Goods from storage within seven days of receipt of written notice from the Service Provider.

## 15. INSURANCE

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The Consignor must:

- (a) effect and maintain an insurance policy in its own name that covers loss of or Damage to the Goods while the Service Provider is providing Storage with respect to the Goods and that includes a waiver by the insurer of all rights of subrogation against the Service Provider; and
- (b) provide a certificate of currency in respect of the policy referred to in clause 15(a), within seven days of receiving a request from the Service Provider.

## 16. INDEMNITIES

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The Consignor will indemnify the Service Provider:

- (a) in respect of any liability whatsoever in respect of the Goods to any person (other than the Consignor) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods; and
- (b) against all losses, damages, expenses, claims, fines, duty, tax, demands, actions and proceedings or any other liability suffered or incurred by, or made or instituted against, the Service Provider as a result of:
  - (i) a breach of the Consignor's obligations under any agreement incorporating these conditions;
  - (ii) any material inaccuracies in Safety Data Sheets; or
  - (iii) any negligence, wilful misconduct or recklessness of the Consignor.

## 17. LIEN

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- 17.1 The Goods are accepted subject to a general lien for all charges due or that may become due to the Service Provider by the Consignor on any account whatsoever, whether in respect of the Goods or in respect of any other goods in respect of which the Service Provider or any Associated Entity provides or has provided Services.
- 17.2 Without prejudice to any other rights the Service Provider may have under Law, if charges are not paid when due, or the Goods are not collected when required or designated, the Service Provider may:
- (a) remove all or any of the Goods and store them as the Service Provider thinks fit, at the Consignor's risk and expense; or

- (b) without notice and immediately in the case of perishable Goods, or otherwise on the provision of 14 days' notice, open and sell all or any of the Goods as the Service Provider thinks fit (whether by private treaty or public auction, including auction on an internet based platform) and apply the proceeds to discharge the lien and costs of sale without being liable to any person for any loss caused.
- 17.3 The parties agree that the lien arising under these conditions:
- (a) attaches to the Goods when the Goods are accepted by the Service Provider; and
  - (b) is a security interest.
- 17.4 On request by the Service Provider, the Consignor must promptly do anything for the purposes of ensuring that any security interest created under, or provided for by, these conditions is enforceable, perfected (including perfection by registration), maintained and is otherwise effective. Anything that is required to be done under this clause will be done at the Consignor's expense. The Consignor agrees to reimburse the Service Provider's costs in connection with any action taken by the Service Provider under or in connection with this clause.
- 17.5 The parties agree that, to the extent permitted by the PPSA:
- (a) sections 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 142 and 143 of the PPSA do not apply (unless the Consignor is otherwise notified in writing by the Service Provider); and
  - (b) any right to receive a notice, statement or verification statement under sections 129, 130, 132, 134, 135 or 157 of the PPSA is waived.

## **18. SERVICE PROVIDER'S CHARGES**

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- 18.1 The Service Provider's charges will be deemed fully earned on receipt of the Goods by the Service Provider and are non-refundable in any event. The Consignor agrees to pay all sums due to the Service Provider without any deduction, counterclaim or set-off.
- 18.2 The Service Provider's Charges are due within the credit terms agreed in writing between the Consignor and the Service Provider. If the Service Provider has not agreed to any credit terms, the Charges are payable in advance. If the Consignor defaults in making any payment in accordance with these conditions, then all amounts owed to the Service Provider will immediately become due and payable.
- 18.3 In addition to any other charges contemplated under these conditions, the Consignor is liable to pay:
- (a) any Additional Charges;
  - (b) Enforcement Costs;
  - (c) Interest on any Outstanding Amount;
  - (d) all storage, handling, stocktaking and reporting charges and any charges associated with loading or unloading Goods;
  - (e) any fuel levy imposed, which may be adjusted by the Service Provider at any time on reasonable grounds to reflect fuel price movements;
  - (f) any additional costs arising from heavy or over-dimensional transport including costs associated with permits, escorts, pilots, equipment, bridge/road works and detours; and

- (g) all charges imposed by Law including customs charges and excises and associated fines and penalties.
- 18.4 The Service Provider may charge the Consignor, in accordance with its schedule of rates, in respect of any delay in loading or unloading occurring other than from the default of the Service Provider. Such permissible delay period will commence upon the Service Provider reporting for loading or unloading.
- 18.5 If the Consignor instructs the Service Provider that the Service Provider's charges will be paid by the consignee or any other third party and the consignee or third party does not pay the Service Provider's charges within seven days of the date of delivery or attempted delivery of the Goods, the Consignor must pay such charges.
- 18.6 Where the Service Provider stores Goods for the Consignor, the Consignor must:
- (a) pay the Service Provider's expenses and charges to comply with any Law including any customs, excise, biosecurity or warehouse charges;
  - (b) supply or pay for labour or machinery, or both, to load or unload the Goods;
  - (c) compensate the Service Provider for any cost, expense or loss to any property caused by the nature of the Goods; and
  - (d) if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.

## **19. DANGEROUS GOODS**

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- 19.1 If the Service Provider agrees to provide Services with respect to Dangerous Goods:
- (a) such Goods must be accompanied by a written declaration disclosing the nature of such Goods and all documentation and information required under the *Australian Code for the Transport of Dangerous Goods by Road & Rail*; and
  - (b) the Consignor must comply with all Law with respect to Dangerous Goods, including the *Australian Code for the Transport of Dangerous Goods by Road & Rail*.
- 19.2 If, in the opinion of the Service Provider, acting reasonably, the Goods are or are liable to become of a dangerous or flammable or damaging nature and pose a threat of property damage or personal injury, the Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Consignor and without prejudice to the Service Provider's right to charge for any Services.

## **20. FORCE MAJEURE EVENT**

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- 20.1 If, because of a Force Majeure Event, the Service Provider is unable to carry out an obligation under any agreement incorporating these conditions:
- (a) the Service Provider must give the Consignor prompt written notice and reasonable particulars of the Force Majeure Event and, so far as is known, the probable extent that the Service Provider will be unable to perform or be delayed in performing its obligation; and
  - (b) the relevant obligations of the Service Provider and the Consignor (other than any obligation of the Consignor to pay money), so far as they are affected by the Force Majeure Event, will be suspended during the continuance of the Force Majeure Event.

- 20.2 If the Service Provider gives a notice under clause 20.1, the parties must meet promptly and, in any event within 14 days, and each use reasonable endeavours to reach a mutually acceptable solution to alleviate any hardship or unfairness caused to either party as a result of the Force Majeure Event.

## **21. NOTIFICATION OF CLAIM**

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- 21.1 Notwithstanding any other provision of these conditions (other than clause 22), the Service Provider will, in any event, be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Service Provider:
- (a) in the case of Goods allegedly lost or Damaged in the course of loading, unloading or transit within seven (7) days from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; or
  - (b) in the case of Goods allegedly lost or Damaged during Storage, within seven (7) days of the date of removal or attempted removal of the Goods from Storage.
- 21.2 The Service Provider will, in any event, be discharged from all liability whatsoever in respect of the Goods unless legal proceedings are commenced:
- (a) in the case of Goods allegedly lost or Damaged in the course of loading, unloading or transit, within twelve months of their delivery or of the date on which, in the ordinary course of business, they should have been delivered; or
  - (b) in the case of Goods allegedly lost or Damaged during Storage, within twelve months of the date of removal or attempted removal of the Goods from Storage.

## **22. APPLICABLE LEGISLATION**

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- 22.1 Notwithstanding anything contained in these conditions, the Service Provider will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.
- 22.2 The Service Provider, Consignor and consignee must comply with all Law, including Chain of Responsibility Law.
- 22.3 The Consignor must not impose any requirement on the Service Provider that would directly or indirectly encourage or require the Service Provider or any person on behalf of the Service Provider to speed, drive while fatigued or otherwise perform the Services in an unsafe manner or in breach of Law.

## **23. ENTIRE AGREEMENT**

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- 23.1 The entire agreement between the parties is contained in these conditions and there are no other understandings, representations or agreements between the parties that are not set out in these conditions.
- 23.2 The Service Provider will not be bound by any agreement purporting to vary these conditions unless such agreement is in writing and signed on behalf of the Service Provider by an authorised officer of the Service Provider.

## 24. GENERAL

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- 24.1 This agreement will be construed in accordance with the Law in force in Queensland and the parties irrevocably and unconditionally submit to the non-exclusive jurisdiction of the courts of Queensland and courts entitled to hear appeals from those courts.
- 24.2 The failure of a party to take action to enforce its rights under any agreement incorporating these conditions or the granting of any time or indulgence will not be construed as a waiver of the provision nor as a waiver of the right of the party at a later time to enforce its rights under any agreement incorporating these conditions.
- 24.3 Where the Consignor or consignee comprise two or more persons, an agreement or obligation to be performed or observed by the Consignor or consignee binds those persons jointly and severally.
- 24.4 If any provision of these conditions is invalid, illegal or unenforceable, that provision will, to the extent that it is invalid, illegal or unenforceable, be treated as severed from this agreement, without affecting the validity and enforceability of the remaining provisions.

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