

Ballarat Hire Pty Ltd T/A Regional Contractors – Terms & Conditions of Trade

- 1. Definitions**
- 1.1 "ACL" shall mean the Australian Consumer Law set out in a schedule to the *Competition and Consumer Act 2010 (Cth)*;
- 1.2 "Approved Credit Limit" shall mean the meaning given to that term in clause 4.4;
- 1.3 "Company" shall mean Ballarat Hire Pty Ltd T/A Regional Contractors, its successors and assigns or any person acting on behalf of and with the authority of Ballarat Hire Pty Ltd T/A Regional Contractors;
- 1.4 "Consumer Guarantee" shall mean the meaning given to that term in the *Competition and Consumer Act 2010 (Cth)*;
- 1.5 "Credit Account Application" shall mean any form accepted by the Company as an application for credit;
- 1.6 "Customer" shall mean the Customer (or any person acting on behalf of and with the authority of the Customer) as described on any quotation, work authorisation or other form as provided by the Company to the Customer;
- 1.7 "Guarantor" means that person (or persons) who agrees to be liable for the debts of the Customer on a principal debtor basis;
- 1.8 "Goods" shall mean all Goods supplied by the Company to the Customer (and where the context so permits shall include any supply of Services as hereinafter defined) and are as described on the invoices, quotation, work authorisation or any other forms as provided by the Company to the Customer;
- 1.9 "GST" shall mean the goods and services tax levied under the GST Act;
- 1.10 "GST Act" shall mean the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)* as amended;
- 1.11 "Services" shall mean all Services supplied by the Company to the Customer and includes any advice or recommendations (and where the context so permits shall include any supply of Goods as defined above);
- 1.12 "Personal/Director's Guarantee and Indemnity" shall mean any form accepted by the Company as a Guarantee and Indemnity;
- 1.13 "PPSA" shall mean the *Personal Property Securities Act 2009 (Cth)*; and
- 1.14 "Price" shall mean the Price payable for the Goods as agreed between the Company and the Customer in accordance with clause 3 of this contract.
- 2. Acceptance**
- 2.1 Any instructions received by the Company from the Customer for the supply of Goods and/or the Customer's acceptance of Goods supplied by the Company shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Customer has entered into this agreement, the Customers shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Customer the terms and conditions are binding and can only be amended with the written consent of the Company.
- 2.4 The Customer shall give the Company not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, or business practice).
- 2.5 The Customer shall inspect all Goods immediately upon delivery/completion and shall not make any claim in respect of the Goods unless the Goods are defective and the Customer provides written notice of any alleged defect to the Company (*defect notice*) within seven (7) days of delivery.
- 2.6 If the Customer fails to give a defect notice in accordance with this clause, then subject to any non-excludable condition implied by law, the Goods shall be deemed to have been accepted by the Customer.
- 2.7 If the Company accepts a defect notice, the Customer must permit the Company to have access for the purpose of attending to any agreed remedial work.
- 2.8 Goods are supplied by the Company only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Customer's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.
- 2.9 The Customer shall be liable for any loss incurred by the Company as a result of the Customer's failure to comply with this clause.
- 3. Price and Payment**
- 3.1 At the Company's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Company to the Customer in respect of Goods supplied; or
- (b) the Company's quoted Price (subject to clause 3.2) which shall be binding upon the Company provided that the Customer shall accept the Company's quotation in writing within thirty (30) days.
- 3.2 The Customer reserves the right to change the Price in the event of a variation to the Company's quotation. Any variation from the plan of scheduled works or specifications (including, but not limited to, any variation as a result of increases to the Company in the cost of materials and labour) will be charged for on the basis of the Company's quotation and will be shown as variations on the invoice. Payment for all variations must be made in full at their time of completion.
- 3.3 At the Company's sole discretion:
- (a) payment shall be due on delivery of the Goods; or
- (b) payment for approved Customers shall be due thirty (30) days following the date of the invoice in accordance with clause 4.
- 3.4 Time for payment for the Goods shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 3.5 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to three percent (3%) of the Price), or by direct credit, or by any other method as agreed to between the Customer and the Company.
- 3.6 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4. Credit**
- 4.1 The Company may, but is not obliged to, supply the Customer with the Goods on terms that do not require payment in full at the time of delivery. If it does so, this clause applies.
- 4.2 The Company may require the Customer to complete a Credit Account Application as a condition of extending credit.
- 4.3 The Company may withdraw, suspend or vary the conditions of credit at any time.
- 4.4 The Company may set and vary credit limits for the Customer from time to time (*Approved Credit Limit*).
- 4.5 The Company may:
- (a) vary the Customer's Approved Credit Limit at any time; and/or
- (b) require the Customer to make a payment on or prior to delivery at any time.
- 4.6 The Customer warrants and acknowledges that:
- (a) the Customer has read and understood the Credit Account Application and these terms and conditions;
- (b) all of the information provided by the Customer to the Company is true and correct in every particular;
- (c) the Customer can pay its debts as and when they fall due;
- (d) each person who submits a Credit Account Application and makes orders on behalf of the Customer is (or at the time of making each order will be) authorised to do each of those things on behalf of the Customer, and the Customer promises not to make any claim or seek to withhold any payment or avoid its obligations, in respect of any of the above matters.
- 4.7 If the Customer is a company, each director of the company must execute a Personal/Director's Guarantee and Indemnity (in the form required by the Company) as security for obligations and payments due by the Customer to the Company under these terms and conditions.
- 4.8 The Customer authorises and consents to the release to the Company of any information sought by the Company from any bank, financial institution, credit provider, credit reporting agency or register. If requested by the Company, the Customer must sign any document needed to enable the Company to obtain such information.
- 4.9 The Company may obtain, and the Customer must provide, further information from time to time.
- 4.10 The Company's rights under paragraphs 4.8 and 4.9 above extend to any person who has or is required to give a guarantee under this clause.
- 5. Delivery of Goods**
- 5.1 At the Company's sole discretion delivery of the Goods shall take place when:
- (a) the Customer takes possession of the Goods at the Company's address; or
- (b) the Customer takes possession of the Goods at the Customer's nominated address (in the event that the Goods are delivered by the Company or the Company's nominated carrier).
- 5.2 At the Company's sole discretion the costs of delivery are:
- (a) in addition to the Price; and
- (b) for the Customer's account.
- 5.3 The Customer shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Customer is unable to take delivery of the Goods as arranged then the Company shall be entitled to charge a reasonable fee for redelivery.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery to the Customer for the purposes of this agreement.
- 5.5 The failure of the Company to deliver shall not entitle either party to treat this contract as repudiated.
- 5.6 The Company shall not be liable for any loss or damage whatsoever due to failure by the Company to deliver the Goods (or any of them) promptly or at all, where due to circumstances beyond the control of the Company.
- 6. Risk**
- 6.1 If the Company retains ownership of the Goods nonetheless, all risk for the Goods passes to the Customer on delivery.
- 6.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, the Company is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by the Company is sufficient evidence of the Company's rights to receive the insurance proceeds without the need for any person dealing with the Company to make further enquiries.
- 6.3 Where the Customer expressly requests the Company to leave Goods outside the Company's premises for collection or to deliver the Goods to an unattended location then such Goods shall be left at the Customer's sole risk and it shall be the Customer's responsibility to ensure the Goods are insured adequately or at all.
- 7. Title**
- 7.1 The Company and the Customer agree that ownership of the Goods shall not pass until:
- (a) the Customer has paid the Company all amounts owing for the particular Goods; and
- (b) the Customer has met all other obligations due by the Customer to the Company in respect of all contracts between the Company and the Customer.
- 7.2 Receipt by the Company 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 the Company's ownership or rights in respect of the Goods shall continue.
- 7.3 It is further agreed that:
- (a) where practicable the Goods shall be kept separate and identifiable until the Company shall have received payment and all other obligations of the Customer are met; and
- (b) until such time as ownership of the Goods shall pass from the Company to the Customer the Company may give notice in writing to the Customer to return the Goods or any of them to the Company. Upon such notice the rights of the Customer to obtain ownership or any other interest in the Goods shall cease; and
- (c) the Company shall have the right of stopping the Goods in transit whether or not delivery has been made; and
- (d) if the Customer fails to return the Goods to the Company then the Company or the Company's agent may (as the invitee of the Customer) enter upon and into land and premises owned, occupied or used by the Customer, or any premises where the Goods are situated and take possession of the Goods; and
- (e) the Customer is only a bailee of the Goods and until such time as the Company has received payment in full for the Goods then the Customer shall hold any proceeds from the sale or disposal of the Goods, up to and including the amount the Customer owes to the Company for the Goods, on trust for the Company; and
- (f) the Customer shall not deal with the money of the Company in any way which may be adverse to the Company; and
- (g) the Customer shall not charge the Goods in any way nor grant nor otherwise give any interest in the Goods while they remain the property of the Company; and
- (h) the Company can issue proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods may not have passed to the Customer; and
- (i) until such time that ownership in the Goods passes to the Customer, if the Goods are converted into other products,
- the parties agree that the Company will be the owner of the end products.
- 8. Security Interest**
- 8.1 In this clause 8, terms which are defined in the PPSA have the meaning given to them in the PPSA.
- 8.2 The Customer agrees to grant the Company a security interest in all present and after-acquired goods and their proceeds, as security for the Customer's obligations to pay the Company.
- 8.3 At the request of the Company, the Customer agrees to promptly execute any documentation necessary, or to do anything else required by the Company, to ensure that the security interest created under these terms and conditions shall constitute a first ranking, perfected security interest over the Goods and their proceeds. This includes providing any information necessary for the Company to complete a financing statement or financing change statement.
- 8.4 The Customer waives the Customer's right to receive a copy of a verification statement under the PPSA.
- 8.5 The Customer agrees to reimburse the Company for all costs and charges incurred, expended or payable by the Company in relation to the filing of a financing statement or financing change statement in accordance with these terms and conditions.
- 9. Returns**
- 9.1 Returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 2.6; and
- (b) the Company has agreed in writing to accept the return of the Goods; and
- (c) the Goods are returned at the Customer's cost within seven (7) days of the delivery date; and
- (d) the Company will not be liable for Goods which have not been stored or used in a proper manner; and
- (e) the Goods are returned in the condition in which they were delivered and with all packaging material, brochures and instruction material in as new condition as is reasonably possible in the circumstances.
- 9.2 The Company may (at their sole discretion) accept the return of Goods for credit but this may incur a handling fee of up to twenty percent (20%) of the value of the returned Goods plus any freight costs.
- 10. Warranty**
- 10.1 For Goods not manufactured by the Company, the warranty shall be the current warranty provided by the manufacturer of the Goods. The Company shall not be bound by nor be responsible for any term, condition, representation or warranty other than that which is given by the manufacturer of the Goods.
- 10.2 To the extent permitted by statute, no warranty is given by the Company as to the quality or suitability of the Goods for any purpose and any implied warranty, is expressly excluded. The Company shall not be responsible for any loss or damage to the Goods, or caused by the Goods, or any part thereof however arising.
- 11. Consumer Guarantees**
- 11.1 Nothing in these terms and conditions purports to modify or exclude the Consumer Guarantees, or any other right available to the Customer under the *Competition and Consumer Act 2010 (Cth)* (including the ACL).
- 11.2 Except as expressly set out, the Company makes no express warranties or other representations under these terms and conditions.
- 12. Limitation**
- 12.1 The Company's liability in respect of the Consumer Guarantees and any other warranties is limited to the fullest extent permitted by law.
- 12.2 To the extent permitted by statute, the Consumer Guarantees and any other warranties or representations are void if the Customer or any other person:
- (a) attempts to modify, reverse engineer, decompile, create other works or products from, or disassemble any part of the information contained in or extrapolated or executed from the Goods;
- (b) interferes with, alters or removes any packaging or labelling of any of the Goods;
- (c) causes or permits any contamination of the Goods; or
- (d) fails to comply with manufacturer's instructions in relation to the use, application, storage and integrity of the Goods (including specifications and installation guidelines set out in any product manual).
- 12.3 To the extent permitted by law, the liability of the Company from the failure of any Goods to comply with the Consumer Guarantees or any other warranty or condition implied by law shall be limited to (at the Company's option):
- (a) the replacement or resupply of the Goods;
- (b) the cost of replacement or resupply of the Goods;
- (c) the repair of the Goods; or
- (d) the cost of the repair of the Goods.
- 13. Intellectual Property**
- 13.1 Where the Company has designed, drawn or written Goods for the Customer, then the copyright in those designs and drawings and documents shall remain vested in the Company, and shall only be used by the Customer at the Company's discretion.
- 14. Default and Consequences of Default**
- 14.1 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 a half percent (2.5%) per calendar month (and at the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 14.2 In the event that the Customer's payment is dishonoured for any reason the Customer shall be liable for any dishonour fees incurred by the Company.
- 14.3 If the Customer defaults in payment of any invoice when due, the Customer shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own Customer basis and the Company's collection agency costs.
- 14.4 Without prejudice to any other remedies the Company may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Company may suspend or terminate the supply of Goods to the Customer and any of its other obligations under the terms and conditions. The Company will not be liable to the Customer for any loss or damage the Customer suffers because the Company has exercised its rights under this clause.
- 14.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 14.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to

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- the Company shall, whether or not due for payment, become immediately payable in the event that:
- any money payable to the Company becomes overdue, or in the Company's opinion the Customer will be unable to meet its payments as they fall due; or
 - the Customer 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
 - a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.
- 15. Security and Charge**
- 15.1 Despite anything to the contrary contained herein or any other rights which the Company may have howsoever:
- where the Customer and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Company or the Company's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Customer and/or the Guarantor acknowledge and agree that the Company (or the Company's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
 - should the Company elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the Company from and against all the Company's costs and disbursements including legal costs on a solicitor and own client basis.
 - the Customer and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Company or the Company's nominee as the Customer's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 15.1.
- 16. Cancellation**
- 16.1 The Company may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Company shall repay to the Customer any sums paid in respect of the Price. The Company shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 16.2 No order may be cancelled except with the Company's written consent on terms which indemnify the Company against loss and damage occasioned by the cancellation.
- 17. Privacy Act 1988**
- 17.1 The Customer and/or the Guarantor/s (herein referred to as the Customer) agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Customer in relation to credit provided by the Company.
- 17.2 The Customer agrees that the Company may exchange information about the Customer with those credit providers either named as trade referees by the Customer or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- to assess an application by the Customer; and/or
 - to notify other credit providers of a default by the Customer; and/or
 - to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - to assess the creditworthiness of the Customer.
- The Customer understands that the information exchanged can include anything about the Customer's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 17.3 The Customer consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 17.4 The Customer agrees that personal credit information provided may be used and retained by the Company for the following purposes (and for other purposes as shall be agreed between the Customer and Company or required by law from time to time):
- the provision of Goods; and/or
 - the marketing of Goods by the Company, its agents or distributors; and/or
 - analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Goods; and/or
 - processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Goods.
- 17.5 The Company may give information about the Customer to a credit reporting agency for the following purposes:
- to obtain a consumer credit report about the Customer;
 - allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.
- 17.6 The information given to the credit reporting agency may include:
- personal particulars (the Customer's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
 - details concerning the Customer's application for credit or commercial credit and the amount requested;
 - advice that the Company is a current credit provider to the Customer;
 - advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - that the Customer's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - information that, in the opinion of the Company, the Customer has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Customer's credit obligations);
 - advice that cheques drawn by the Customer for one hundred dollars (\$100) or more, have been dishonoured more than once;
 - that credit provided to the Customer by the Company has been paid or otherwise discharged.
- 18. Unpaid Customer's Rights**
- 18.1 Where the Customer has left any item with the Company for repair, modification, exchange or for the Company to perform any

- other Service in relation to the item and the Company has not received or been tendered the whole of the Price, or the payment has been dishonoured, the Company shall have:
- a lien on the item;
 - the right to retain the item for the Price while the Company is in possession of the item;
 - a right to sell the item.
- 18.2 The lien of the Company shall continue despite the commencement of proceedings, or judgment for the Price having been obtained.
- 19. General**
- 19.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 19.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.
- 19.3 The Company shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by the Company of these terms and conditions.
- 19.4 In the event of any breach of this contract by the Company the remedies of the Customer shall be limited to damages which under no circumstances shall exceed the Price of the Goods.
- 19.5 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice because part of that invoice is in dispute.
- 19.6 The Company may license or sub-contract all or any part of its rights and obligations without the Customer's consent.
- 19.7 The Customer agrees that the Company may review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Company notifies the Customer of such change.
- 19.8 Where the Company provides Goods at a site controlled by or at the request of the Customer, the Customer must ensure that the site is safe and that the Customer complies with all applicable health & safety requirements. The Company agrees to comply with the Customer's reasonable directions regarding health & safety whilst on site. The Company reserve the right to refuse to enter and perform work at any site which it considers to be unsafe.
- 19.9 The Customer releases the Company from any claim, liability or responsibility concerning late delivery or failure to deliver Goods if this is due to strike, lockout, riot, industrial action, fire, storm, tempest, act of God, material shortage, government law or regulation or requirement or any other cause beyond the control of the Company and no such failure shall entitle the Customer to cancel and order or withhold payment.
- 19.10 If a dispute arises out of, or in any way in connection with, or otherwise relates to the supply of Goods, these terms and conditions or the breach, termination, validity or subject matter thereof, or as to any related claim at law, in equity or pursuant to any statute, the parties agree that they must not commence proceedings (other than for urgent interlocutory relief) in respect of such dispute until the parties first meet in good faith and use their best endeavours to resolve the dispute to their mutual satisfaction.
- 19.11 The failure by the Company to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Company's right to subsequently enforce that provision.

TERMS APPLICABLE TO TRANSPORTATION SERVICES ONLY

- 20. Definitions**
- 20.1 "Sub-Contractor" shall mean and include:
- railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - any other person, or entity with whom the Company may arrange for the transportation or storage of any Freight the subject of the contract; or
 - any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause (a) and (b).
- 20.2 "Freight" shall mean all vehicles or machinery together with any accessories, container(s), packaging, or pallet(s) to be transported from one place to another by the Company.
- 21. Acceptance**
- 21.1 The Customer acknowledges that in order for the Company to provide the required Services it may be necessary for the Company to transport Freight from its initial location to another site so that the Company can properly provide the Services. The Customer agrees that they shall be liable for all of the Company's charges in transporting the Freight from, and returning it to, its agreed destination including any storage costs where applicable.
- 21.2 These terms and conditions are to be read in conjunction with the Company's consignment note, agreement, airway bills, or manifests where applicable. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 22. Company Not Common Carrier**
- 22.1 The Company is not a Common Carrier and will accept no liability as such. All Freight carried or transported and all storage and other Services are provided by the Company subject only to these conditions and the Company 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.
- 23. Customer-Packed Containers**
- 23.1 Where a container has been packed by the Customer then the Company shall not be liable for the loss of, or damage to, the contents caused by:
- the manner in which the container has been stowed (unless stowed negligently by the Company); or
 - the unsuitability of the contents of the container for carriage or storage in such containers; or
 - the unsuitability or defective condition of the container.
- 24. Nomination Of Sub-Contractor**
- 24.1 The Customer hereby authorises the Company (if it should think fit to do so) to arrange with a Sub-Contractor for the transportation of any Freight that is the subject of this contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the Freight to the Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Company. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled, the Company shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

- 25. Company's Servants or Agents**
- 25.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of the Company which attempts to impose upon any of them any liability whatsoever in connection with the transportation of Freight and, if any such claim or allegation should nevertheless be made, to indemnify the Company and any such servant or agent against all consequences thereof.
- 26. Method Of Transport**
- 26.1 If the Customer instructs the Company to use a particular method of transportation whether by road, rail, sea or air the Company will give priority to the method designated but if that method cannot conveniently be adopted by the Company the Customer shall be deemed to authorise the Company to carry or have the Freight transported by another method or methods.
- 27. Route Deviation**
- 27.1 The Customer shall be deemed to authorise any deviation from the usual route or in the method of transportation of the Freight that may in the absolute discretion of the Company be deemed reasonable or necessary where required due to circumstances beyond the Company's control.
- 28. Demurrage**
- 28.1 The Customer will be and shall remain responsible to the Company for all its proper charges incurred for any reason. A charge may be made by the Company in respect of any delay in excess of thirty (30) minutes in loading or unloading where occurring due to circumstances beyond the Company's control. Such permissible delay period shall commence upon the Company reporting for loading or unloading the Freight. Time and labour to load or unload Freight shall be at the Customer's expense.
- 29. Dangerous Goods**
- 29.1 Unless otherwise agreed in advance in writing with the Company the Customer or his authorised agent shall not tender for transportation or for storage any explosive, inflammable or otherwise dangerous goods. The Customer shall be liable for and hereby indemnifies the Company for all loss or damage whatsoever caused by any dangerous goods.
- 30. Consignment Note**
- 30.1 It is agreed that the person handing over Freight to the Company for transportation is authorised to sign the consignment note for the Customer.
- 31. Customer's Responsibility**
- 31.1 The Customer expressly warrants to the Company that the Customer is either the owner or the authorised agent of the owner of any Freight that is the subject matter of this contract and by entering into this contract the Customer accepts these conditions of contract for themselves as well as for all other persons on whose behalf the Customer is acting.
- 32. Loss Or Damage**
- 32.1 Subject to any statutory provisions imposing liability in respect of the loss of, or damage to, the Freight:
- the Company shall not be under any liability for any damage to, loss, mis-delivery, delay in delivery or non-delivery of the Freight (whether the Freight is or has been in the possession of the Company or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Freight or any other thing or matter, nor for any consequential or indirect loss, loss of market, or consequences of delay; and
 - the Customer will indemnify the Company against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Company in connection with the transportation of the Freight.

33. Insurance

- 33.1 The Customer acknowledges that:
- Freight is transported and stored at the Customer's sole risk and not at the risk of the Company; and
 - the Company is under no obligation to arrange any insurance for the Freight and it remains the Customer's responsibility to ensure that the Freight is insured adequately or at all; and
 - under no circumstances will the Company be under any liability with respect to the arranging of any such insurance and no claim will be made against the Company for failure to arrange or ensure that the Freight is insured adequately or at all.