

**1 Definitions**

- 1.1 "TML" shall mean Total Maritime Logistics Pty Ltd and/or associated trading entity Total Maritime Forwarding, and its successors and assigns or any person acting on behalf of and with the authority of Total Maritime Logistics Pty Ltd and/or associated trading entity Total Maritime Forwarding.
- 1.2 "Sub-Contractor" shall mean and include:
- (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 TML may arrange for the carriage or storage of any Goods the subject of the contract; or
  - (c) any other person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.2(a) and 1.2(b).
- 1.3 "Client" means any person/s requesting TML to provide the Services (or person/s acting on behalf of and with the authority of the Client) as specified in any invoice, document or order, and if there more than one person requesting the Services is a reference to each person jointly and severally.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of TML's Services.
- 1.5 "Services" shall mean all services supplied by TML to the Client (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.
- 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of TML's Services, or for storage by TML.
- 1.7 "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 agreement) 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.
- 1.8 "Price" shall mean the cost of the Services (plus any GST where applicable) as agreed between TML and the Client subject to clause 4 of this contract.
- 1.9 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

**2 Acceptance**

- 2.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by, TML.
- 2.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and TML.
- 2.3 These terms and conditions are to be read in conjunction with TML's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by TML to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 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.
- 2.5 None of TML's agents or representatives are authorised to make any representations, statements, promise, warranty, conditions or agreements not expressed by the manager of TML in writing, nor is TML bound by any such unauthorised statements.
- 2.6 Except under special arrangements previously made in writing, TML will not accept or deal with any:
- (a) Dangerous Goods. Any person delivering such Goods to TML, or causing TML to handle or deal with any such Goods, shall be liable for all loss or damage caused thereby and shall indemnify TML 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 TML (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 TML will not accept any liability whatsoever for any such Goods.

**3 Change in Control**

- 3.1 The Client shall give TML 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, or business practice). The Client shall be liable for any loss incurred by TML as a result of the Client's failure to comply with this clause.

**4 Price and Payment**

- 4.1 At TML's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by TML to the Client in respect of Services provided; or
  - (b) TML's quoted Price (subject to clause 4.2) which shall be binding upon TML provided that the Client shall accept in writing TML's quotation within thirty (30) days; and
  - (c) have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Client. TML 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.
- 4.2 TML reserves the right to change the Price:
- (a) if a variation to TML'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 TML, delivery times or date or otherwise, etc.);
  - (b) to reflect any increases to TML in the cost of providing the Services which are beyond the reasonable control of TML (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 4.3 At TML's sole discretion a non-refundable deposit may be required.
- 4.4 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by TML, which may be:

- (a) before delivery of the Goods;
  - (b) on delivery of the Goods;
  - (c) by way of instalments/progress payments in accordance with TML's payment schedule;
  - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
  - (e) the date specified on any invoice, consignment note, airway bill, manifest or other form as being the date for payment; or
  - (f) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Client by TML.
- 4.5 Payment may be made by cash, 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 TML.
- 4.6 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 TML nor to withhold payment of any invoice because part of that invoice is in dispute.
- 4.7 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to TML an amount equal to any GST TML must pay for any provision of Services by TML under this 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.
- 4.8 Receipt by TML 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 TML's ownership or rights in respect of the Services, and this agreement, shall continue.

## **5 Client's Responsibility**

- 5.1 The Client expressly warrants to TML 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 agreement, and by entering into this agreement 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 TML is authorised to sign and accept these terms and conditions;
  - (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 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.
- 5.2 The Client shall indemnify TML against any loss (including any fine, levy, charge or other monetary imposition to which TML may become liable incidental to the carriage) damage, death or injury, including loss or damage to TML's containers and/or equipment arising out of:
- (a) the Client's unreasonable detention of any vehicle container or other equipment of TML;
  - (b) any breach of the Client's warranties under clause 5.1, including the failure to comply with clause 5.1(e).
- 5.3 TML and the Client agree that the Client's obligations to TML for the provision the Services shall not cease until:
- (a) the Client has paid TML all amounts owing to TML; and
  - (b) the Client has met all other obligations due by the Client to TML in respect of all contracts between TML and the Client.

## **6 Provision of the Services**

- 6.1 Any time specified by TML for provision of the Services is an estimate only and TML 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 TML is unable to provide the Services as agreed solely due to any action or inaction of the Client then TML shall be entitled to charge a reasonable fee for re-providing the Services at a later time and date.
- 6.2 The Client authorises TML (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.
- 6.3 The Client acknowledges and agrees:
- (a) TML contracts with the Client both on its own behalf and on the behalf of TML'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;
  - (b) in respect of any clause herein which excludes, or in any way limits, the liability of TML in respect of the Services, TML, 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 TML arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this agreement 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, TML will hold the benefit of these terms and conditions for its employees and so any such person or company and their employees;
  - (c) the Client shall indemnify TML 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 TML, its servants, agents or subcontractors.
- 6.4 TML'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.

## **7 Freight Forwarding**

- 7.1 Except to the extent that any of the Services shall be actually performed by TML, they shall act as a forwarding agent only. TML:
- (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 TML may be necessary or desirable to the

performance of the Services. The Client hereby appoints TML the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as TML 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 TML may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, TML, 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 TML subject only to these conditions and TML 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.

## **8 Custom Brokerage**

- 8.1 The Client agrees that, by signing acceptance of these Terms and Conditions the Client duly authorises TML to act as their nominated Customs Broker under Section 181 (1) of the Customs Act 1901 (as Authorised Agents), to act on the Client's behalf, with TML then becoming the Client's duly nominated agent or sub-agent as appointed, in all matters involving the Australian Customs Service.
- 8.2 The Client acknowledges that TML 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 TML in relation to the Goods, and TML 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 TML concerning the Goods so as to enable TML properly to classify and compile the Goods and properly calculate the customs duty on the Goods.
- 8.3 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, TML shall not be responsible for failure to arrange, or delay in arranging such examination unless TML shall have been given sufficient written notice by the Client to enable it to arrange such examination.
- 8.4 TML 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.

## **9 Client-Packed Containers**

- 9.1 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.

## **10 Insurance**

- 10.1 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 TML subject to the usual exceptions and conditions or the policies of the insurance company or underwriters accepting the risk. TML shall not be under any obligation to effect separate insurance on each consignment but may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and TML 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 TML or paid to TML by the Client.

## **11 Delivery of the Goods**

- 11.1 TML is authorised to deliver the Goods at the address given to TML 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 TML's address;
- (b) it is expressly agreed that TML shall be taken to have delivered the Goods in accordance with this contract if at that address TML obtains from any person a receipt or a signed delivery docket for the Goods.
- 11.2 TML 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.
- 11.3 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.
- 11.4 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 TML'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 TML for delivery of the Goods. A communication from any agent or correspondent of TML to the effect that the Goods cannot be delivered for any reason shall be conclusive evidence of that fact.
- 11.5 Instructions to collect payment on delivery of the Goods (COD), in cash or otherwise, are accepted by TML upon the condition that TML in the matter of such collection will be liable for the exercise of reasonable diligence and care only.

## **12 Loss or Damage**

- 12.1 Subject to clause 16 and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, TML 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 TML and under its actual control, and/or is due to the wilful neglect or default of TML or its own servants;
- (b) any delay in delivery, forwarding or transit or failure to deliver the Goods;
- (c) any deterioration, contamination, evaporation or any consequential loss or loss of market, howsoever caused;
- (d) any failure to follow instructions given to it by, or on behalf of, the Client, whether or not such failure is wilful;
- (e) any damage or expense arising from, or in any way connected with, marks, numbers, brands, contents or quality of description of the Goods;
- (f) any loss or damage resulting from fire, water, explosion or theft, whether caused by negligence of TML's servants or otherwise.
- 12.2 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, Article 22(2) of Schedule 1 as amended by Schedule 2, or Article IV Rule 5(a) of Schedule 1 of the Carriage of Goods by Sea Act 1991, 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 with at Client's risk or other minimum charges unless express instructions in writing to the contrary are given by the Client.

**13 Indemnities**

- 13.1 The defences and exclusions of liability in these conditions (including clause 12) apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against TML even if it is resulted from an act or omission of TML done wilfully or recklessly with knowledge that damage would or would probably result.
- 13.2 Nothing whatsoever done or omitted to be done or other conduct by TML in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under any circumstances constitute either a breach going to the root of this agreement, or a deviation or departure therefrom or a repudiation thereof such as to have effect of disentitling TML from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other protections herein which shall continue to have full force and effect in any event whatsoever.
- 13.3 Subject to clause 16, but without prejudice to any other provision hereof, this agreement and any other agreement TML makes under its authority and any contract made by any person whom TML 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 4.

**14 Lien**

- 14.1 TML shall have a lien on any Goods owned by the Client and in the possession or control of TML (and any documents relating to those Goods) for all sums payable by the Client to TML, and TML shall have the right to sell such Goods or cargo by public auction or private treaty (subject to clause 11.3) after giving seven (7) days' notice to the Client. TML shall be entitled to retain the sums due to it, in addition to the charges incurred in detention (and/or unsuccessful delivery) and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect TML's right to recover from the Client any charges due or payable in respect of the carriage or such detention and sale.

**15 Claims**

- 15.1 Notwithstanding clauses 10 and 12, in the event that the Client believes that they have any claim against TML then they must lodge any notice of claim for consideration and determination by TML within three (3) days of the date of delivery, or for non-delivery within three (3) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 15.2 The failure to notify a claim within the time limits under clause 15.1 is evidence of satisfactory performance by TML of its obligations hereunder.

**16 The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts**

- 16.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).
- 16.2 TML acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 16.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, TML makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Services. TML's liability in respect of these warranties is limited to the fullest extent permitted by law.
- 16.4 If the Client is a consumer within the meaning of the CCA, TML's liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.5 If TML is required to rectify, re-provide, or pay the cost of re-providing the Services under this clause or the CCA, but is unable to do so, then TML 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.
- 16.6 If the Client is not a consumer within the meaning of the CCA, TML's liability for any defective Services is:
- (a) limited to the value of any express warranty or warranty card provided to the Client by TML at TML's sole discretion;
  - (b) otherwise negated absolutely.

**17 Cancellation**

- 17.1 Without prejudice to any other remedies TML may have, if at any time the Client is in breach of any obligation (including those relating to payment) TML may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. TML will not be liable to the Client for any loss or damage the Client suffers because TML exercised its rights under this clause.
- 17.2 TML may cancel any contract to which these terms and conditions apply or cancel the provision of the Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice TML shall repay to the Client any sums paid in respect of the Price. TML shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.3 In the event that the Client cancels the provision of the Services, then the Client shall be liable for any loss incurred by TML (including, but not limited to, any loss of profits) up to the time of cancellation.

**18 Default and Consequences of Default**

- 18.1 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 TML's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 18.2 If the Client owes TML any money the Client shall indemnify TML from and against all costs and disbursements incurred by TML in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, TML's contract default fees, and bank dishonour fees).
- 18.3 Further to any other rights or remedies TML may have under this contract, if a Client has made payment to TML, 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 TML under this clause 18 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this agreement.
- 18.4 Without prejudice to TML's other remedies at law TML 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 TML shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to TML becomes overdue, or in TML's opinion the Client will be unable to meet its payments as they fall due; or

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## Terms and Conditions of Trade

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- (b) 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
- (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

### 19 Personal Property Securities Act 2009 ("PPSA")

- 19.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 19.2 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 all:
  - (i) Goods that have previously been carried and any Goods that will be carried in the future by TML to the Client; and/or
  - (ii) collateral (account), being a monetary obligation of the Client to TML for Services that have previously been provided, and will be provided in the future by TML to the Client.
- 19.3 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 TML 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 19.3(a)(i) or 19.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, TML 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 TML;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or collateral (account) in favour of a third party without the prior written consent of TML.
- 19.4 TML 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.
- 19.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 19.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 19.7 Unless otherwise agreed to in writing by TML, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 19.8 The Client must unconditionally ratify any actions taken by TML under clauses 19.3 to 19.5.
- 19.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

### 20 Security and Charge

- 20.1 In consideration of TML agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 20.2 The Client indemnifies TML from and against all TML's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising TML's rights under this clause.
- 20.3 The Client irrevocably appoints TML and each director of TML as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 20 including, but not limited to, signing any document on the Client's behalf.

### 21 Privacy Act 1988

- 21.1 The Client agrees for TML to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by TML.
- 21.2 The Client agrees that TML 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.
- 21.3 The Client consents to TML being given a consumer credit report to collect overdue payment on commercial credit.
- 21.4 The Client agrees that personal credit information provided may be used and retained by TML for the following purposes (and for other agreed purposes or required by):
  - (a) the provision of Services; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; 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 Services.
- 21.5 TML 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.
- 21.6 The information given to the CRB may include:
  - (a) personal information as outlined in 21.1 above;
  - (b) name of the credit provider and that TML 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, 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 TML has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);

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## Terms and Conditions of Trade

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- (g) information that, in the opinion of TML, 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).
- 21.7 The Client shall have the right to request (by e-mail) from TML:
- (a) a copy of the information about the Client retained by TML and the right to request that TML correct any incorrect information; and
  - (b) that TML does not disclose any personal information about the Client for the purpose of direct marketing.
- 21.8 TML 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 agreement or is required to be maintained and/or stored in accordance with the law.
- 21.9 The Client can make a privacy complaint by contacting TML via e-mail. TML 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).
- 22 General**
- 22.1 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 the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 22.2 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 TML has its principal place of business, and are subject to the jurisdiction of the Sydney Courts in that state.
- 22.3 Subject to clause 16, TML shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by TML of these terms and conditions (alternatively TML's liability shall be limited to damages which under no circumstances shall exceed the Price).
- 22.4 The Client agrees that TML may amend these terms and conditions by notifying 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 TML to provide Services to the Client.
- 22.5 Where TML is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of TML, 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, etc. ("**Force Majeure**") to carry out any obligation under this agreement and TML 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 TML.
- 22.6 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.