



CENTURION

GENERAL TERMS & CONDITIONS

1. DEFINITIONS

In this Agreement, unless the contrary intention appears or the context otherwise requires:

Agreement means:

- (a) these 'General Terms & Conditions'; plus
- (b) the Transport Terms,

and any purchase order, consignment note, Supplier quotation or similar document reasonably ancillary to the above (**Ancillary Documents**), of which the terms of the Ancillary Documents have the highest precedence and the terms of the other documents have precedence in the order set out above;

Applicant means person with whom the Supplier contracts to provide the Services;

Claim includes any claim, notice, demand, costs (including legal costs and expenses), debts, dues, liabilities, damages, losses, taxes, duties, fees, suits, action, demands, proceeding, litigation, judgment, however it arises;

Goods means any goods accepted from the Applicant, or its Personnel together with any containers, packaging or pallets supplied by or on behalf of the Applicant and to be carried or transported in the provision of the Services;

GST has the same meaning as in the GST Act and includes any replacement or subsequent similar tax;

GST Act means *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*;

Jurisdiction means Perth, Western Australia;

Personnel means, in relation to a party, any of its officers, employees, agents, contractors, consultants or representatives;

PPS Act means the Personal Property Securities Act 2009 (Cth);

PPSR means the Personal Property Securities Register established under the PPS Act;

Privacy Act means *Privacy Act 1988 (Cth)*;

Services means any services to be supplied by the Supplier to the Applicant and in the case of transport

services, includes collection, loading, unloading, carriage, transportation, delivery and storage of Goods;

Transport Terms means the 'Transport Terms' attached to this Agreement.

2. INTERPRETATION

In this Agreement, unless the context otherwise requires:

- (a) the singular includes the plural, and vice versa;
- (b) the word "person" includes a natural person, firm, corporation, government authority or other body or organisation;
- (c) headings are for convenience only and do not affected the interpretation of this Agreement;
- (d) references to a party includes that party's executors, administrators, successors, substitutes and permitted assigns;
- (e) references to any law are references to that law as amended, consolidated, supplemented or replaced and includes references to regulations and other instruments under it;
- (f) references to time are to time in the Jurisdiction;
- (g) "including" and similar expressions are not words of limitation;
- (h) references to money and currency are to Australian dollars;
- (i) if a payment or other act (but for this clause) be made or done on a day which is not a Business Day, then it must be made or done on the previous Business Day;
- (j) a warranty, representation, covenant, liability, obligation or agreement given or entered into by more than one person binds them jointly and severally;
- (k) a reference to a document includes the document as modified, supplemented or replaced from time to time;
- (l) the words "in writing" include any communication sent by letter, facsimile transmission or email.

3. ORDERS

No order for Services submitted by the Applicant is deemed to be accepted by the Supplier unless and until confirmed in writing by an authorised representative of the Supplier.

No order which has been accepted by the Supplier may be cancelled by the Applicant.

The Supplier reserves the right to accept or reject (in whole or in part), in its absolute discretion, any order for Services received by it from the Applicant and the Supplier does not accept any liability for any losses the Applicant may suffer as a result of any acceptance or rejection.

Unless otherwise agreed between the Supplier and the Applicant in writing:

- (a) the content of any marketing materials of the Supplier;
- (b) the content of other printed materials of the Supplier (not forming part of the Agreement) or the Supplier's website; and
- (c) any general terms and conditions the Applicant or its Personnel propose will apply to the Services and this Agreement,

are not binding on the Supplier and are excluded from this Agreement.

4. PAYMENT

Subject to any statutory rights the Applicant may have as a consumer, all payments accepted by the Supplier are non-refundable.

Any payments tendered by the Applicant to the Supplier shall be applied in the following order:

- (a) in payment of any interest charged;
- (b) in payment of any storage fees charged; and
- (c) in satisfaction of any other amounts payable under this Agreement, including under any indemnity.

If there is any underpayment of the price by way of any mistake or omission on the part of the Supplier, the difference between the price agreed in the contract and the price paid by the Applicant is a debt due from the Applicant to the Supplier.

If the Applicant fails to pay the contract price and other amounts (and without prejudice to any other rights of the Supplier under this Agreement) the Applicant must pay to the Supplier interest on all unpaid amounts from the date when due until payment at the rate of 2% above the maximum overdraft rate charged by the Supplier's bankers from time to time being in force.

Time is of the essence in respect of the Applicant's obligation to make payment for Services provided by the Supplier to the Applicant.

5. INDEMNITY

The Applicant fully indemnifies and releases the Supplier, its directors, employees, servants agents and representatives (**Indemnified Parties**) from all Liability and Claims (including legal costs on a full indemnity basis), whether caused by the negligence of the Indemnified Parties, or otherwise in relation to:

- (a) breach by the Applicant of any of its obligations under this Agreement;
- (b) the provision of Services;
- (c) cancellation of orders;
- (d) the Supplier exercising its right of entry;
- (e) any unplanned storage and redelivery of Goods or consignment;
- (f) any issue arising from dangerous or hazardous Goods or consignments; and
- (g) disposal, destruction, abandonment or rendering harmless any Goods or consignments,

and acknowledges that the Applicant will be liable for all Claims to the maximum extent allowable by law, regardless of the existence of an insurance policy which may cover all or partially any liability. The Applicant will pay on demand all costs indemnified against under this indemnity.

6. CLAIM FOR DAMAGE

Where by express written agreement the Supplier becomes responsible for a Claim, no Claim will be allowed unless the Claim is lodged in writing within 72 hours and the Applicant substantiates the Claim.

Failure to Claim within 72 hours is evidence of satisfactory performance. Time is of the essence in this clause.

7. INSURANCE

Subject to agreement between the parties in writing:

- (a) the Supplier may at any time arrange reasonably required insurance, for an additional fee, over the Goods, which the Applicant agrees to pay; or
- (b) the Applicant may take out its own insurance cover for the Goods at the request of the Supplier.

Should 7(b) above apply, the Applicant will make the Supplier a co-insured to the Applicant's insurance policy.

8. TRUSTEE PURCHASER

In the case where the Applicant enters into the Agreement as the trustee of a trust, it is acknowledged that the Applicant will be liable under this Agreement both as trustee of the trust and in the Applicant's own right and that in addition the assets of the trust will be available to satisfy the Applicant's liabilities under this Agreement.

9. SECURITY

The Applicant grants to the Supplier a security interest in:

- (a) all Goods; and
- (b) all other present and after-acquired property of the Applicant of any kind,

and all proceeds relating to the same (**Collateral**) to secure the payment of all monies owing by the Applicant from time to time to the Supplier and the performance of all the Applicant's obligations under this Agreement.

The Applicant acknowledges and agrees that this Agreement constitutes a security agreement for the purposes of the PPS Act and is in addition to any other contractual lien or lien arising under common law or other relevant law.

The Applicant consents to the Supplier perfecting the security interest in the Collateral by registration on the PPSR.

The Applicant undertakes to:

- (a) do all things that the Supplier may require from time to time to perfect, preserve, maintain or otherwise give full effect to the security interest in the Collateral; and
- (b) indemnify, and on demand reimburse, the Supplier for all expenses incurred by the Supplier in registering one or more financing statements or any financing change statement on the PPSR in relation to the security interest in the Collateral.

To the extent the law permits:

- (a) for the purposes of section 115(1) and 115(7) of the PPS Act:
 - (i) the Supplier need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4); and
 - (ii) sections 142 and 143 are excluded;
- (b) for the purposes of section 115(7) of the PPS Act, the Supplier need not comply with sections 132 and 137(3);

- (c) if the PPS Act is amended after the date of the Application for Trading Account (or otherwise this Agreement) to permit the Applicant and the Supplier to agree to not comply with or to exclude other provisions of the PPS Act, the Supplier may notify the Applicant that any of these provisions is excluded, or that the Supplier need not comply with any of these provisions; and
- (d) the Applicant will not exercise its rights to make any request of the Supplier under section 275 of the PPS Act, to authorise the disclosure of any information under that section or to waive any duty of confidence that would otherwise permit non-disclosure under that section.

To the extent the law permits, the Applicant waives:

- (e) its rights to receive any notice that is required by:
 - (i) any provision of the PPS Act (including notice of a verification statement); or
 - (ii) any other law before a secured party exercises a right, power or remedy; and

any time period that must otherwise lapse under any law before a secured party exercises a right, power or remedy.

Terms defined in the PPS Act have the same meaning in this clause unless otherwise defined in these General Terms & Conditions.

10. FORCE MAJEURE

If the Supplier is prevented or delayed (directly or indirectly) from carrying out an obligation or making delivery of the Goods or Services or any part thereof, either in whole or in part by reason of force majeure or any cause outside its control or by reason of strike, lockout, labour dispute or shortage, trade dispute, fire, breakdown, flood, serious inclement weather, cyclone, natural disaster, earthquake, lightning, explosion, accident, road or rail closure, rail derailment, wharf delays, act or omission of air traffic control, act of god, acts of war, acts of public enemies, terrorist acts, sabotage, epidemic, quarantine restriction, riots or civil commotion, the Supplier's obligations will be suspended and the Supplier will be under no liability whatsoever to the Applicant and the Supplier is entitled at its option either to cancel the contract or to extend the time for its performance of the contract.

11. TERMINATION

The Supplier may terminate this Agreement at any time by giving the Applicant 7 days' notice in writing.

The Supplier may terminate this Agreement immediately by written notice to the other party if the Applicant:

- (a) is in default under the terms of this Agreement and, if the default is capable of remedy but the Applicant does not remedy that default within 14 days of notice requiring it to do so; or
- (b) goes into liquidation or provisional liquidation, has an administrator or controller appointed to it or any of its property, fails to comply with a statutory demand, is unable to pay its debts or otherwise becomes insolvent.

On termination or expiry of this Agreement the Applicant must immediately pay all outstanding amounts due to the Supplier.

12. NOTICES

A notice under this Agreement must be signed by or on behalf of the party giving it, addressed to the party to whom it is to be given and:

- (a) delivered by hand to that party's address;
- (b) sent by pre-paid mail to that party's address; or
- (c) sent by email to that party's email address.

A notice given to a party in accordance with this clause is treated as having been given and received if:

- (d) delivered to a party's physical or email address, on the day of delivery if a Business Day, otherwise on the next Business Day; or
- (e) sent by pre-paid mail, on the third Business Day after posting.

For the purposes of this clause the addresses and email addresses of a party are those set out in the 'Application for Trading Account', or another address of which a party may from time to time give by Notice to any other party.

13. GST

To the extent that a party makes a Taxable Supply under or in connection with this Agreement, the consideration payable by a party under or in connection with this Agreement represents the value of the Taxable Supply for which payment is to be made and on which GST is to be calculated.

If a party makes a Taxable Supply under or in connection with this Agreement for a consideration, which represents its value, then the party liable to pay for the taxable supply must also pay at the same time and in the same manner as the value is otherwise payable, the amount of any GST payable in respect of the taxable supply.

The right of a party to payment under this clause is subject to a Tax Invoice being issued and delivered by the supplier of the taxable supply to the recipient.

14. GENERAL

The Applicant is required to comply with all applicable laws especially safety laws and those relating to the carriage of dangerous Goods.

The Supplier may have 1 or more sub-contractors perform all or any part of the Services. The Supplier will act as the agent and trustee for sub-contractors who have the benefit of these conditions as if this contract was entered into by the sub-contractor.

This Agreement may only be amended in writing and signed by all parties.

The Applicant must not assign or deal with any right under this Agreement without the prior written consent of the Supplier and any purported dealing in breach of this clause is of no effect.

This Agreement will be binding on the parties and their respective representatives, successors and assigns.

The parties are responsible for their own costs or expenses incurred in connection with preparing and executing this Agreement.

The Applicant acknowledges that they have had the opportunity to seek and obtain legal advice in relation to this Agreement.

This Agreement contains the entire understanding between the parties concerning the subject matter contained herein. All previous representations, warranties, explanations and commitments, expressed or implied, affecting the subject matter (except for agreements and deeds and documents reasonably ancillary to this Agreement and signed or executed on or about the same time) are superseded by this document and have no effect.

The Applicant must promptly do all further acts and execute and deliver all further documents required by law or reasonably requested by another party to give effect to this Agreement.

The Applicant acknowledges that the terms of this Agreement are reasonable and necessary.

Except as expressly stated otherwise in this Agreement, the rights of a party under this Agreement are cumulative and are in addition to any other rights of that party.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction is ineffective to the extent of the prohibition or unenforceability. That does

not invalidate the remaining provisions of this Agreement nor affect the validity or enforceability of that provision in any other jurisdiction.

The obligations in this Agreement (to the maximum extent possible), survive expiry of this Agreement and are enforceable at any time at law or in equity.

The non-exercise of or delay in exercising any power or right of a party does not operate as a waiver of that power or right, nor does any single exercise of a power or right preclude any other or further exercise of it or the exercise of any other power or right. A power or right may only be waived in writing, signed by the party to be bound by the waiver.

To the extent enforceable this Agreement and its subject matter are governed by the law in the Jurisdiction and the parties submit to the non-exclusive jurisdiction of the Jurisdiction's courts and any courts that may hear appeals from those courts in respect of any proceedings in connection with this Agreement and its subject matter.

TRANSPORT TERMS

1. DEFINITIONS

Address means the address given by the Applicant to the Supplier to which Goods or Services are to be delivered;

Charges means charges set by the Supplier and payable by the Applicant to the Supplier in consideration of Services provided to the Applicant, including but not limited to:

- (a) costs caused by delays that are not the fault of the Supplier;
- (b) taxes, fines and duties including customs and excise duties payable by the Supplier in respect of the Services;
- (c) any GST;
- (d) all other costs and expenses incurred in the provision of the Services including demurrage at the rate charged by the railway or shipping authority; and
- (e) charges referred to in this Agreement;

Damage means any loss of, damage to, deterioration of, or misdelivery of, or non-delivery of, or delay in Delivery of the Goods includes consequential economic or ancillary loss damage, expense or liability;

Delivery means delivery of the Goods or Services at the Address; and

Receiver means the person and its officers, employees and agents to whom the Applicant consigns, sends or directs the Goods.

Other terms used in these Transport Terms but not defined above or elsewhere in this document have the meaning given to them in the General Terms & Conditions.

2. NOT A COMMON CARRIER

The Supplier is not a common carrier and accepts no liability as such. All Services are provided subject to these conditions and the Supplier has discretion to refuse to provide Services to any person or of any class of goods;

The Supplier relies on the details supplied by the Applicant but does not verify or admit the accuracy of the details. A signature by the Supplier is merely acknowledgement of the items received.

3. DELIVERY

The Supplier must deliver the Goods to the Address and Delivery occurs if at the Address the Supplier obtains from any person a receipt or signed delivery docket for the Goods.

Where the Goods are accepted for transport by rail to an address in a place where the Supplier has no receiving depot, Delivery occurs when the Goods are delivered to the nearest rail head.

If the Address is unattended the Supplier can effect Delivery by leaving the Goods at the Address.

If the Address is unattended the Supplier may store and redeliver the Goods, and the Applicant will indemnify the Supplier for all expenses incurred by storage and attempted or actual redelivery.

4. METHOD AND ROUTE

If the Applicant instructs (expressly or impliedly) the Supplier to use a particular method of or route for providing the Services, the Supplier will give priority to that method and route but the Supplier may provide Services by another method or route.

The Supplier may change the usual or directed route or method for provision of Services if Supplier believes it is necessary or desirable.

5. PACKAGING

Containers, packaging and pallets within the Goods must conform to the Supplier's requirements, and the Applicant is liable for any expense caused by non-conformance.

If pallet weight is not included in the Goods weight nominated by the Applicant, each pallet will be charged at a rate determined by the Supplier.

All Goods accepted by the Supplier must be securely packaged and fully enclosed. Dangerous, open, leaking or sharp items are not suitable for transport.

Markings and delivery details not related to the current Goods must be removed or covered. All Goods must be accompanied by correct consignment number and delivery details including the Applicant's name, address and telephone number, Receiver name, address and telephone number, description and metric weight of the item.

The Supplier may carry, store, redirect, handle, remove, inspect, assemble, erect, pack, unpack, load, unload or consolidate the Goods.

At the end of carriage, the Applicant is responsible for return to the proper owner of the returnable containers, pallets or packaging which were delivered to the Supplier with the Goods.

6. DANGEROUS AND HAZARDOUS GOODS

The Applicant must not tender or arrange any Goods containing:

- (a) dangerous, hazardous or damaging goods, unless a full description disclosing the dangerous, hazardous or damaging character of those goods is presented to the Supplier; or
- (b) goods if the carriage of those goods is illegal or prohibited by any law or regulation of a State, Territory or the Commonwealth.

Details provided by the Applicant are warranted by them as correct.

The Applicant is liable for all Damage caused wholly or partially by a breach of this clause.

The Supplier at the Applicant's expense, may return to the Applicant or destroy, dispose or make harmless Goods tendered in breach of this clause or in breach of any law or regulation.

Irrespective of whether the Supplier has been informed that any Goods are dangerous the Applicant consents that if the Supplier considers that the Goods may cause injury or damage, or is tendered in breach of this clause, the Supplier can at the Applicant's cost do anything appropriate, including disposing of, rendering harmless, abandoning, returning to the Applicant or destroying all or any part of the Goods.

7. STORAGE

Within 28 days of the Supplier's request, the Applicant must pay the Charges and remove the Goods stored by the Supplier (**Removal**).

Where storage Charges in respect of the Goods are unpaid for 3 months the Applicant is required to pay the storage Charges within 7 days (**Storage**).

If the Applicant fails to comply with the requirement of Removal or fails to pay Storage, the Supplier may deal with the Goods in any way it sees fit including, opening and selling the Goods at the Applicant's risk and expense and applying the proceeds of any sale to the Charges then in arrears.

8. CARRIER'S CHARGES

The Applicant must pay all charges within 14 days of the Goods being delivered to by the Applicant to the Supplier and an invoice being issued. If any charges relate to amounts incurred after the Goods are delivered to the Supplier (taxes, duties, excise, demurrage, transport fees etc.) then the Applicant must pay those additional charges

within 14 days of notification to the Applicant of such additional charges having been incurred and an invoice being issued.

Charges are earned when the Goods are tendered to the Supplier.

A further Charge may be made for any delay exceeding 2 hours from the time of reporting for loading or unloading.

No Charges are refundable.

Charges are exclusive of GST unless stated otherwise. The Applicant will pay to the Supplier the GST payable by the Supplier for the Service at the same time as the Charge is payable.

The Supplier's charges are (subject to the Supplier's discretion) based on the greater of the actual deadweight or cubic volume measure of the Goods.

For the purpose of calculating deadweight the Supplier will round up to the next whole kilogram.

For Cubic measure, the Supplier will at its discretion use the projected rectangular footprint measurement multiplied by the height of the Goods. For all Goods the Supplier may assume 333 kilograms (or part thereof) is equal to one cubic meter.

The Supplier uses safe loading practise and as such may change for space not utilised by the Goods due to the requirements of such load practises.

In addition to freight the Supplier reserves the right to charge the Applicant for:

- (a) any additional expenses the Supplier incurs as a result of any inaccurate declaration by the Applicant of the weight, volume, description or packaging of the Goods;
- (b) any re-delivery fee for failed deliveries (for example where there is no one is at the premises to sign for the Goods);
- (c) any futile pick up (for example where the Goods are not ready in the time band given or no one is at the attendance);
- (d) storage charges or other charges or expenses the Supplier incurs in relation to holding the Goods;
- (e) any additional expenses the Supplier incurs as a result of inaccurate delivery instructions provided to the Supplier by the Applicant.

9. CASH ON DELIVERY

The Supplier will not collect any payment on Delivery on behalf of the Applicant even if instructed so.

10. CHARGES COLLECT

If the Applicant specifies that some other person will pay the Charges and that person fails to pay the Charges, the Applicant must pay the Charges within 5 days of request by the Supplier.

11. POSSESSORY LIEN

The Supplier has a possessory lien over the Goods and other property of the Applicant in its possession or under its control from time to time with respect to any Charges due from the Applicant or other person to the Supplier under this Agreement.

The Supplier may sell the Goods and apply the proceeds to pay Charges due after providing written notice to the Applicant's last known place of business or registered office of its intention to do so.

12. INDEMNITIES AND EXCLUSIONS

The Goods is at the risk of the Applicant and not the Supplier and, unless expressly agreed in writing, the Supplier will not be liable for any Damage to the Goods or any part of the Goods, whether or not the Damage occurs in the course of performance by the Supplier of the Services or when otherwise in the possession of the Supplier pursuant to this contract, for any reason whatsoever including without limitation, negligence, breach of contract, bailment or wilful act or default of the Supplier.

Subject to any implied warranty provided by the *Competition and Consumer Act 2010 (Cth) (CCA)*, the relevant State 'Fair Trading Act' or any other Act (as amended from time to time) which may not be excluded, no warranty, condition or representation is given on the part of the Supplier and any express or implied warranty as to quality, fitness for purpose or otherwise of the Services is hereby excluded.

To the extent that the Supplier is subject to any implied warranties provided by the CCA (as amended from time to time) the Supplier limits its liability to the maximum extent allowed.

The Goods are at all times at the risk of the Applicant.

If temperature control is required for the Goods the Applicant acknowledges that variations can occur in relation to temperature control. Temperature records of the Supplier will be sufficient evidence to prove the temperatures applying during the provision of the Services.

13. LAWS, CUSTOMS AND REGULATIONS

The Applicant warrants that the Goods comply with all the applicable laws, customs and other government regulations of any Federal, State or Territory of Australia.

The Applicant is liable for all taxes and duties levied in respect of the Services.

14. APPLICANT ACCEPTS TERMS

The Applicant warrants that it is either the owner or authorised agent of the owner and the authorised agent of the Receiver.

The Applicant accepts the terms of this Agreement for the owner and Receiver and any other person on whose behalf the Applicant is acting.