



TERMS AND CONDITIONS

1. Acceptance

- 1.1 By submitting an application or providing instructions to ECS after the date on which it was supplied with these terms and conditions, the Customer is taken to have accepted and is immediately bound by these terms and conditions and acknowledges that upon acceptance by ECS they will form a binding contract. Each time the Customer engages ECS to provide the Services, it reaffirms its acceptance of and intention to be bound by these terms and conditions. ECS does not accept any terms and conditions supplied by a Customer and shall not be bound by them.
- 1.2 Both parties warrant on the date of these terms and conditions and each time they engage ECS to provide the Services, that they have the power to enter into these terms and conditions, have obtained all necessary authorisations to allow them to do so, have the capability to fulfil their obligations and that they are not insolvent.
- 1.3 The Customer agrees that ECS may vary these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes in writing, or otherwise at such time as the Customer makes a further request for ECS to provide Services to the Customer.
- 1.4 ECS may, in its absolute discretion, extend, grant, grant subject to conditions, or withdraw credit approval from, the Customer from time to time. The Customer agrees that it is not entitled to credit facilities until it receives notice in writing from ECS stating that credit facilities will be given and the terms and conditions of which such credit facilities are offered.

2. Order for Services

- 2.1 The Customer may engage ECS to provide the Services by making a request to ECS from time to time. This request must be made in writing unless otherwise agreed by ECS.
- 2.2 ECS reserves the right to accept or decline, in whole or in part, any engagement. Any engagement or part engagement not accepted by ECS is deemed to be cancelled.
- 2.3 The Customer acknowledges and accepts that the supply of the accepted Services remains subject to availability.
- 2.4 ECS may request the Customer to provide forecasts of the Services required from time to time. The Customer agrees to use reasonable efforts to provide an accurate forecast of the Services required.

3. Price and Payment

- 3.1 The Price shall be as indicated on any written quotation or invoice provided by ECS to the Customer for the provision of the Services. All applicable disbursements that may be due and payable, including but not limited to, customs duty, freight, warehousing, insurance premiums and Third Party Costs are payable by the Customer in addition to the Price and are not normally known to ECS at the time of preparing a quotation. Any estimates given are indicative only and not binding on ECS.
- 3.2 ECS reserves the right to change a quotation if a variation is requested by the Customer or otherwise necessary. Such variations may include a change to the Goods required or the date or place of delivery.
- 3.3 The Customer acknowledges and accepts that the Price is subject to change at any time. Unless otherwise agreed, ECS will provide the Customer with twenty (20) days' written notice of any change

to the Price.

- 3.4 At ECS's sole discretion, a deposit may be required from the Customer.
- 3.5 Time for payment for the Services is of the essence and the Price is payable by the Customer on the date/s determined by ECS, which is to be the earlier of:
- (a) before delivery of the Services or release of the Goods as the case may be;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by ECS.
- 3.6 Payment may be made by cash, electronic/online banking or by any other method as agreed to between the Customer and ECS.
- 3.7 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 ECS, nor to withhold payment of any invoice because part of that invoice is in dispute.
- 3.8 Unless otherwise stated, the Price does not include GST. In addition to the Price, the Customer must pay to ECS an amount equal to the GST which ECS must pay for any supply it makes under these terms and conditions. The Customer must pay the GST, without deduction or set off against any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition, the Customer must pay any other taxes and duties which may be applicable in addition to the Price, except where they are expressly included in the Price.
- 3.9 The Customer is solely liable for and agrees to indemnify ECS for all Third Party Costs arising in the course of the provision of the Services and which may be in addition to the Price.
- 3.10 The Customer remains solely liable for the Price, including in the event that a Third Party has agreed to bear the costs of the Services. Where the Third Party does not pay the Price in accordance with this clause 3, the Customer agrees to indemnify and hold harmless ECS for any default by a Third Party.

4. Credit Terms

- 4.1 If applicable, the Customer represents that all information supplied in the credit application preceding these terms and conditions is in all respect complete, accurate and truthful. The Customer must notify ECS promptly and in writing of any information which ceases to be complete, accurate or truthful.
- 4.2 The Customer agrees and acknowledges that all information supplied in the credit application is relied upon by ECS in determining whether to extend credit facilities and if so, the amount and conditions of any credit facility to be extended.
- 4.3 In the event that ECS has agreed to extend credit facilities to the Customer then it is acknowledged and agreed by both parties that:
- (a) all accounts are to be settled in full within the agreed trading terms noted on any statement and/or invoice supplied by ECS;
 - (b) credit terms will not be extended to any Customer whilst their account is overdrawn or payment is overdue;
 - (c) interest on overdue credit accounts will accrue in accordance with clause 15.1;
 - (d) ECS may withdraw credit facilities at any time in which case all outstanding monies shall become immediately due and payable;
 - (e) the extension of credit facilities is subject to the Customer granting security in accordance with these terms and conditions;
 - (f) the Customer acknowledges and agrees that credit facilities are supplied for the Customer's convenience and may be withdrawn at any time, in which case ECS shall not be liable for ceasing to provide such credit facilities.
- 4.4 The Customer shall be responsible for the timely return of any container to the person who owns or

has a right to possession of the container in a clean and undamaged condition. The Customer agrees to indemnify ECS against any claim, liability or expense, including detention or demurrage charges, which arise as a result of:

- (a) a failure to return the container;
- (b) a delay in the return of the container beyond the customer period allowed for container returns;
- (c) any damage to the container; or
- (d) the container being returned in a dirty or contaminated condition, regardless of who failed or delayed in the return of the container or where or by whom the container was damaged, made dirty or contaminated.

5. Completion of Services

- 5.1 Completion of the Services is taken to occur at the time that:
 - (a) an authorised person takes possession of the Goods at the Delivery Address; or
 - (b) ECS provides the Goods to the Delivery Address, regardless of whether or not any person is present at such address.
- 5.2 The Goods shall be deemed to have been delivered as described unless notice of loss or of damage to the Goods indicating the general nature of such loss or damage shall have been given in writing to ECS or to its representative at the place of delivery before or at the time of removal of the Goods by a representative of the person entitled to delivery thereof or if the loss or damage be not apparent within three (3) consecutive days thereafter.
- 5.3 The Customer must ensure that delivery is taken by receipt or collection 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, ECS shall be entitled to charge a reasonable fee for redelivery and/or storage. Alternatively, ECS may leave the Goods at the Delivery Address.
- 5.4 ECS may deliver the Goods in separate instalments. Each separate instalment shall be invoiced and paid in accordance with these terms and conditions.
- 5.5 Any time or date given by ECS to the Customer is an estimate only. The Customer must accept delayed delivery of the Goods and ECS will not be liable for any loss or damage incurred by the Customer as a result of the delivery being delayed.

6. Access and Inspection

- 6.1 The Customer shall ensure that ECS has clear and free access to the Delivery Address at all times to enable ECS to undertake the Delivery of the Goods. ECS shall not be liable for any loss or damage (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas), unless due to the negligence of ECS.
- 6.2 ECS has the right, but not requirement to open and inspect Goods without notice on a safety, security, customs or other regulatory basis. If deemed necessary by ECS, it may reweigh, remeasure or revalue Goods.
- 6.3 In the event that ECS reweighs, remeasures or revalues the Goods and the particulars completed by the Customer are incorrect, the parties acknowledge and agree that a sum equal to either five (5) times the difference between the correct freight and the freight charged, or double the correct freight less the freight charged, whichever sum is smaller, shall be payable by the Customer as liquidated damages to ECS. For the avoidance of doubt, in circumstances where there are any Costs arising as a result of the misdescription of Goods, the Customer is solely responsible for and shall indemnify ECS for such Costs.

7. Title and Risk

- 7.1 Title in and risk of damage to, or loss of, the Goods remains with the Customer at all times including whilst they are in the possession of ECS or stored on the Customer's behalf. The Customer must,

having regard to the nature of the Goods, securely package the Goods in a manner sufficient to tolerate all foreseeable risk which may arise in the course of the Services.

- 7.2 It is the responsibility of the Customer to arrange suitable insurance or procure ECS to arrange it on the Customer's behalf and at the Customer's cost. No insurance will be effected by ECS unless requested and paid by the Customer and confirmed by ECS prior to the commencement of the Services. Any such insurances effected are subject to those conditions, limitations and exclusions contained in the relevant policy. ECS is not responsible or liable for any such insurance except to arrange it where requested.
- 7.3 If any of the Goods are damaged or destroyed during transit, the Customer is only entitled to receive any insurance proceeds payable for the Goods and ECS shall not be liable in any respect.
- 7.4 If the Customer requests ECS to leave Goods at the Delivery Address for collection or to deliver the Goods to an unattended location, such Goods shall be left at the Customer's sole risk.
- 7.5 Any advice, recommendation, information, assistance or service provided by ECS in relation to Services supplied is given in good faith and is based on ECS's knowledge and experience and shall be accepted without liability on the part of ECS. It shall be the responsibility of the Customer to confirm the accuracy and reliability in light of the use to which the Customer makes or intends to make of the Services.

8. Customs and Freight Authorities

- 8.1 ECS is not a common carrier and does not accept any liability as such.
- 8.2 The Customer warrants and declares that the Goods conform and comply with the requirements of all applicable law, both Australian law and international law as related to the consignment and packaging of goods and the requirements of all Authorities. The Customer must accurately and carefully complete all documents and forms requested by ECS and acknowledge and agree that they will be used in the preparation of such customs declaration.
- 8.3 The Customer is solely responsible for the accuracy and completeness of any declaration as to the Goods which describes the Goods, their nature and value and any risk, danger, hazard or element present in the Goods which may cause harm, damage or injury to property or persons. Any Goods which are deemed dangerous or hazardous by ECS may result in excess fees to reflect the additional work required as a result of the nature of the Goods. If such Goods are not declared, ECS is entitled to, but not required to, terminate the Services without notice to the Customer.
- 8.4 In the event that the Goods are of a noxious, dangerous, hazardous, inflammable, explosive nature or are otherwise likely to cause damage, the Customer indemnifies ECS against all Costs arising in connection therewith and the Goods may be destroyed or otherwise dealt with at the sole discretion of ECS or any other person in whose custody they may be at the relevant time. If such Goods are accepted under arrangements previously made in writing they may nevertheless be so destroyed or otherwise dealt with if they become dangerous to other Goods or property. To avoid any doubt, the expression 'goods likely to cause damage' includes goods likely to harbour or encourage vermin or other pests.
- 8.5 If any Goods are seized or become subject to the control of any Authority, ECS shall advise the Customer. The Customer shall be directly liable to the Authority for any costs arising as a result of the seizure or control by the Authority. The Customer is solely liable for and shall indemnify ECS for additional fees together with any Costs or loss incurred as a result of the seizure or control by the Authority.
- 8.6 The Customer acknowledges and agrees that parts of the Services may be delivered by third parties. ECS is permitted to enter into contractual arrangements direct with those third parties on behalf of the Customer. ECS does not accept any liability for the act or omission of any Third Party.
- 8.7 In the event that any Goods are deemed to be abandoned at any time prior to delivery being effected, ECS shall arrange for those Goods to be securely stored at the Customer's expense. The Customer shall indemnify ECS for transport, storage and incidental expenses incurred in respect of abandoned

goods. If the Customer cannot be contacted or a direction is not received for a period in excess of thirty (30) days, ECS may release, sell or dispose of the Goods without incurring any liability to the Customer, with the proceeds to be applied to Third Party Costs, the Price and other costs incurred under these terms and conditions.

- 8.8 The Customer acknowledges and agrees that the mode or manner of the provision of the Services is in the absolute discretion of ECS and does not form part of the contract. ECS may be required to determine alternative mode or manner as is desirable or necessary in the circumstances.

9. PPSA

- 9.1 Terms used in this clause 9 which are defined in the PPSA shall have the meaning given by the PPSA.
- 9.2 Upon assenting to these terms and conditions, the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA.
- 9.3 To secure the payment of monies under these terms and conditions and the punctual performance of the Customer's obligations, the Customer grants to ECS a security interest over all PPSA Personal Property.
- 9.4 The Customer acknowledges and confirms that ECS has given value for ECS's security interest in the Collateral, including by its promises under these terms and conditions or by providing or continuing to make available any financial accommodation to the Customer, and the parties confirm that they have not agreed that the security interest granted by these terms and conditions attaches at any later time.
- 9.5 If the Customer disposes of or otherwise deals or agrees to deal with the Collateral in breach of these terms and conditions, the Customer acknowledges that:
- (a) ECS has not:
 - (i) authorised any disposal or dealing or agreement to deal; or
 - (ii) agreed that any disposal or dealing or agreement to deal will extinguish any security interest held by ECS; and
 - (b) ECS's security interest continues in the Collateral despite the disposal or dealing or agreement to deal.
- 9.6 The Customer 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 ECS 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 9.6(a)(i) or 9.6(a)(ii);
 - (b) not register a financing change statement in respect of a security interest without the prior written consent of ECS;
 - (c) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a Third Party without the prior written consent of ECS;
 - (d) immediately advise ECS of any material change in its business practices of selling the Goods which would result in a change in the nature of proceeds derived from such sales.
- 9.7 Subject to the rights of any prior registered security interest holder, the Customer irrevocably appoints ECS and its directors (jointly and severally) as its attorney with the right:
- (a) at any time, to:
 - (i) comply with the obligations of the Customer under these terms and conditions;
 - (ii) do everything that, in the attorney's reasonable opinion, is necessary or expedient to enable the exercise of any right of ECS in relation to these terms and conditions;

- (iii) complete and satisfy these terms and conditions;
 - (iv) appoint substitutes and otherwise delegate its powers, including this power of delegation; and
 - (v) control any of the Collateral that is collateral within the meaning of section 21(2)(c) of the PPSA; and
- (b) after any event of default has occurred, to do everything that the Customer may lawfully authorise an agent to do in relation to these terms and conditions and the Collateral.

9.8 The Customer will:

- (a) grant to ECS and its receivers or authorised agents, at any reasonable time, a right to enter on any property owned, used or occupied by it for any purpose related to these terms and conditions; and
- (b) do everything on its part that is necessary or desirable to enable ECS to exercise its rights under this clause 9.8, including the use of the facilities and the services of personnel of the Customer to the extent reasonably required by ECS for that purpose.

9.9 ECS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

9.10 The Customer waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d), 132(4) and 157 of the PPSA.

9.11 The Customer waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

9.12 The Customer must unconditionally ratify any actions taken by ECS under clauses 9.7 to 9.8.

9.13 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.

9.14 The Customer indemnifies ECS from and against all ECS's costs and disbursements, including legal costs on a solicitor and own client basis, incurred in exercising ECS's rights under this clause 9.

10. Cancellation

10.1 Without prejudice to any other remedies ECS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) under these terms and conditions ECS may suspend or terminate the supply of Services to the Customer. ECS will not be liable to the Customer for any loss or damage the Customer suffers because ECS has or has not exercised its rights under this clause.

10.2 ECS may cancel any order to which these terms and conditions apply or cancel delivery of Services at any time before commencement by giving written notice to the Customer. On giving such notice, ECS shall repay to the Customer any money paid by the Customer for the Services which will not be performed. ECS shall not be liable for any loss or damage whatsoever arising from such cancellation.

10.3 In the event that the Customer cancels Services, the Customer shall be liable for any and all loss incurred, whether direct or indirect, by ECS as a direct result of the cancellation, including, but not limited to, any loss of profits.

11. Intellectual Property

11.1 All intellectual property rights arising out of or during the provision of the Services shall be the property of ECS. The Customer may not use any intellectual property belonging to ECS without prior express written approval.

11.2 ECS and the Customer agree to keep confidential any information in relation to the other party which is not in the public domain, including, but not limited to trade secrets, processes, formulae, recipes, accounts, marketing, designs, customer information, business processes and all other information held in any form.

11.3 The Customer warrants that all designs, specifications or instructions given to ECS will not cause ECS

to infringe any patent, registered design or trademark in the execution of the Customer's order and the Customer agrees to indemnify ECS against any action taken by a Third Party against ECS in respect of any such infringement.

12. Privacy

- 12.1 Terms used in this clause 12 which are defined in the Privacy Act shall have the meaning given by the Privacy Act.
- 12.2 ECS collects personal information in respect of the Customer as is reasonably necessary to provide the Customer with the Services or is otherwise required in the conduct of its business. ECS manages all personal information in accordance with its Privacy Policy which is available on its website.

13. Trusts

If the Customer has entered into these terms and conditions in the capacity as a trustee of a trust ("Trustee") under any trust deed, deed of settlement or other instrument ("Trust Deed") or subsequently the Customer commences acting in the capacity of Trustee, whether or not ECS has notice of the trust ("Trust"), the Customer represents and warrants to ECS that:

- (a) the Trustee has full power and authority under the Trust Deed and, in the case of a corporation, under its constitution, to enter into and execute these terms and conditions and perform the obligations imposed under these terms and conditions as such Trustee;
- (b) all necessary resolutions have been passed as required by the Trust Deed and, in the case of a corporation, by its constitution, in order to make these terms and conditions fully binding on the Trustee;
- (c) the execution of these terms and conditions is for the benefit of the Trust;
- (d) the Trustee warrants that, at the time of signing and each time it places an order, it is not in default under the Trust Deed;
- (e) there is not now, and the Trustee will not do anything by virtue of which there will be in the future, any restriction or limitation on the right of the Trustee to be indemnified out of the assets of the Trust; and
- (f) there is no material fact or circumstance relating to the assets, matters or affairs of the Trust known to the Trustee that might, if disclosed, be expected to affect the decision of the other party, acting reasonably, to enter into this Agreement.

14. Change of Control

The Customer shall give ECS not less than fourteen (14) days prior written notice of any proposed Change of Control of the Customer and/or any other change in the Customer's details, including, but not limited to, changes in the Customer's name, address, contact phone number/s, facsimile number/s or business practice. ECS may end these terms and conditions or decline to provide the Services as a result of the Change of Control without incurring any liability. The Customer shall be liable for any loss incurred by ECS as a result of the Customer's failure to comply with this clause 14.

15. Default

- 15.1 Interest on overdue invoices shall accrue daily from the date on which payment becomes due until the date payment is received at the rate which is two (2) percent higher than the rate prescribed by the *Penalty Interest Rates Act 1983* (Vic) from time to time, compounding monthly.
- 15.2 Where the Customer defaults in complying with its obligations under these terms and conditions, it shall irrevocably and unconditionally indemnify ECS from and against all costs and disbursements incurred by ECS in recovering the debt, including, but not limited to, interest in accordance with clause 15.1, reasonable administration fees, legal costs on a solicitor and own client basis, fees for the engagement of any debt collection agency and bank dishonour fees.
- 15.3 Without prejudice to any other remedies ECS may have, if at any time the Customer is in breach of any obligation, including those relating to payment, under these terms and conditions, ECS may suspend or terminate the supply of Services to the Customer. ECS will not be liable to the Customer

for any loss or damage the Customer suffers because ECS has exercised its rights under this clause 15.3.

- 15.4 Without prejudice to ECS's other remedies at law, ECS shall be entitled to cancel all or any part of any order of the Customer which remains unfulfilled and all amounts owing to ECS shall, whether or not due for payment, become immediately due and payable if:
- (a) any money payable by the Customer to ECS becomes overdue;
 - (b) the Customer has exceeded any applicable credit limit provided by ECS;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors, proposes or enters into an arrangement with creditors or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

16. Dispute Resolution

- 16.1 If a dispute arises between the parties to these terms and conditions, either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within ten (10) business days after service of a notice of dispute, the parties shall meet, in good faith, to attempt to resolve the dispute. At any such meeting, each party shall be represented by a person having authority to agree to a resolution of the dispute.
- 16.2 In the event that the dispute cannot be resolved under clause 16.1, either party may, by further notice in writing to the other party, refer such dispute to mediation. Any mediation shall be:
- (a) referred to a single mediator to be nominated by the President of the Law Institute of Victoria or similar body; and
 - (b) each party agrees to be bound by the decision reached at mediation.
- 16.3 The parties agree that, apart from matters which require an urgent injunction on equitable grounds, the parties must undertake mediation before issuing any legal proceedings.
- 16.4 No claim may be brought by the Customer against ECS unless it is lodged in writing within three (3) months from Delivery or the date on which Delivery would have been effected in accordance with ordinary business practice.

17. Liability

- 17.1 To the extent permitted by convention or law, ECS excludes and denies all liability including but not limited to claims for consequential loss. Where such liability cannot be excluded by law, ECS limits its liability arising out of any single incident for breach of warranty implied into these terms and conditions or howsoever arising, to any of the following as determined by ECS:
- (a) supplying of the Services again; or
 - (b) payment of the cost of having the Services supplied again; or
 - (c) in the case of loss of or damage to Goods, packages or units, the lesser of:
 - (i) two hundred (\$200.00) dollars; or
 - (ii) two (\$2.00) dollars per kilogram of the gross weight for such lost or damaged Goods; or
 - (iii) twenty (\$20.00) dollars per package or unit lost or damaged,and the parties agree that the foregoing applies notwithstanding any declaration of value of the Goods which shall not be binding on ECS.
- 17.2 Unless express instructions to the contrary are given by the Customer to ECS:

- (a) in the case of carriage by sea, the value of Goods will not be declared or inserted in the Bill of Lading for the purpose of extending the Ship owners' liability under the *Carriage of Goods by Sea Act 1991*;
- (b) in the case of carriage by air, no optional declaration of value will be made to increase the air carrier's liability under the *Civil Aviation (Carrier's Liability) Act 1959*; and
- (c) 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 on the basis of minimum charges.

18. Notices

18.1 Any written notice given under these terms and conditions shall be deemed to have been served:

- (a) where handed to the other party in person, on the date which the notice is given;
- (b) where leaving it at the address of the other party as stated in these terms and conditions, on the next business day;
- (c) where sending it by registered post to the address of the other party as stated in these terms and conditions, three (3) business days after posting, unless evidence to the contrary is shown; or
- (d) if sent by email to the email address of the other party as stated in these terms and conditions (if any), on the next business day.

19. General

19.1 These terms and conditions shall prevail to the extent of any inconsistency with any other document or agreement, written or otherwise, between the Customer and ECS.

19.2 These terms and conditions shall be governed by and construed in accordance with the laws of Victoria and the parties submit to the non-exclusive jurisdiction of the courts in Victoria.

19.3 Each party must bear its own costs and expenses arising out of and in connection with the negotiation, preparation and execution of these terms and conditions.

19.4 Subject to any provisions of the law to the contrary which cannot be excluded, ECS shall be under no liability whatsoever to the Customer for:

- (a) any deterioration of the Goods including perishable Goods;
- (b) any damage to Goods which are susceptible to damage or otherwise fragile even if known to ECS; nor
- (c) any indirect and/or consequential loss and/or expense (including loss of profit),

suffered by the Customer arising out of a breach by ECS of these terms and conditions. ECS's liability shall be limited to the Price of the Services or the price of having the Services resupplied to the Customer.

19.5 Neither party shall be liable for any default due to a Force Majeure but shall take all reasonable steps to mitigate loss.

19.6 ECS may contract, licence and/or assign all or any part of its rights and/or obligations under these terms and conditions without requiring the Customer's consent. The Customer must not licence or assign without the prior written approval of ECS, which may be withheld in its absolute discretion or given on conditions.

19.7 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.

19.8 These terms and conditions are to be interpreted so that it complies with all applicable laws and, if any provision is invalid, void, illegal or unenforceable, it shall be read down to give it as much effect as possible. If it is not possible to give it effect at all, however, it is to be severed from these terms and

conditions, in which case the remaining provisions shall not be affected, prejudiced or impaired.

20. Definitions and Interpretation

20.1 Definitions

Authorities means any government, statutory public or other person, authority, instrumentality or body having jurisdiction over the Goods or the Services or any part of them or anything in relation to them and includes any customs, dock, harbour, railway or shipping authority or company.

Change of Control means the occurrence of an event whereby the person who Controls the Customer, as at the date these terms and conditions were originally supplied to the Customer, subsequently ceases to have Control of the Customer.

Collateral means any PPSA Personal Property:

- (a) of whatever kind and wherever situated;
- (b) whether the Customer is the beneficial owner or holds the property as trustee of a trust; and
- (c) whether the Customer holds it jointly or with one (1) or more other persons.

Control means holding fifty (50) percent or more of the voting power of the Customer, including as Trustee, or directing the management or policies of the Customer, or being reasonably perceived to influence the conduct of the Customer.

Costs means all claims, costs, damages, disbursements, expenses, fees, fines, legal costs on a solicitor/client basis loss, penalties, registration fees, Third Party Costs and other amounts charged by Third Parties and any other costs or amounts incurred or arising under these terms and conditions or the performance of the Services.

Customer means the person/s named in section 1 of the application form or any person acting on behalf of and with the authority of the Customer requesting ECS to provide the Goods as specified in any proposal, quotation, order, invoice or other documentation and includes the Customer's executors, administrators, successors and permitted assigns.

Delivery has the meaning given by clause 5.1.

Delivery Address means the delivery address specified in section 1 of the application form or as otherwise nominated in writing by the Customer to ECS.

ECS means Export Consolidation Services (Australia) Pty Ltd (ACN 007 444 288), and includes its successors and assigns or any person acting on behalf of and/or with its authority.

Force Majeure means any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

Goods means cargo, articles or goods which are to be transported as part of the Services including any container, packaging or other storage supplied to ECS, but excludes, unless under special arrangement, bullion, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants.

GST means the goods and services tax imposed by Australian law and currently being defined within the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) as amended and replaced from time to time.

PPSA means the *Personal Property Security Act 2009* (Cth) as amended and varied from time to time.

PPSA Personal Property means:

- (a) all of the Customer's present and after-acquired property in which the Customer can be a grantor of a security interest, including property in which the Customer has, or may have in the future, rights or the power to transfer rights;
- (b) proceeds; and
- (c) PPSA retention of title property, as that term is defined in the *Corporations Act 2001* (Cth).

Price means the price payable (plus any GST, where applicable) for the Services as agreed between ECS and the Customer in accordance with clause 3.

Privacy Act means the *Privacy Act 1988* (Cth) as amended from time to time.

Services means the carriage, freight and transport services provided by ECS to the Customer at the Customer's request from time to time.

Third Party means any Authority or any other any party who is not employed or contracted by ECS.

Third Party Costs means any duty, excise, tax, levy, stamp duty, charge, royalty, fee, surcharge, contribution or impost imposed by any Authorities.

20.2 Interpretation

- (a) The application form, execution page and annexures (if any) are each incorporated in and form part of these terms and conditions.
- (b) A reference to the singular includes the plural and vice versa.
- (c) Other parts of speech and grammatical forms of a word or phrase defined in these terms and conditions have the corresponding meaning.
- (d) Use of the word including and similar expressions are not, nor are they to be interpreted as, words of limitation.
- (e) A reference to a person includes a natural person, company or other entity recognised by law.
- (f) A reference to any agreement or document is to that agreement or document (and, where applicable, any of its provisions) as amended, novated, supplemented or replaced from time to time.
- (g) A reference to writing includes any mode of reproducing words, figures or symbols in tangible and permanently visible form and includes email and facsimile transmission.
- (h) A reference to Australian dollars, dollars \$, A\$, \$A or AUD is a reference to the lawful currency of the Commonwealth of Australia.
- (i) A party includes the successors and permitted transferees and assigns and, if a party is a natural person, includes executors and personal legal representatives.
- (j) Where any obligation is imposed on, or any benefit enures for, two (2) or more persons, the obligation binds or enures for the benefit of (as the case may be) those persons jointly and each of them severally.
- (k) A reference to time is to local time in Melbourne, Australia.
- (l) If the time for performing an obligation under these terms and conditions expires on a day which is not a business day (being a date on which banks are open for trade in Melbourne, Australia), the time is extended until the next business day.
- (m) Any party which is a trustee is bound both personally and in their capacity as a trustee.
- (n) Any reference to laws includes rules of common law, principles of equity, statutes, regulations, proclamations and statutory mandatory codes of conduct.
- (o) A reference to any legislation or legislative provision includes any statutory modification or re-enactment of, or legislation or legislative provision substituted for, that legislation or legislative provision.
- (p) No provision of these terms and conditions shall be interpreted against a party because it was responsible for the drafting of it.