

**1 Definitions**

- 1.1 "HBH" shall mean Herb Blanchard Haulage Pty Ltd, and its successors and assigns or any person acting on behalf of and with the authority of Herb Blanchard Haulage Pty Ltd.
- 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 HBH may arrange for the carriage or storage of any Goods the subject of the contract; or
  - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.3 "Client" means any person/s requesting HBH to undertake the Carriage of Goods (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 Carriage of Goods is a reference to each person jointly and severally.
- 1.4 "Carriage" shall mean all services supplied by HBH 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 the carriage, storage, stowing or packing or handling of the Goods, 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, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto), including the offering of any advice or recommendations.
- 1.5 "Goods" shall mean cargo together with any container, trailer, tilt, igloo, wagon, tank, frame(s), packaging, or pallet(s) to be moved from one place to another by way of Carriage by HBH.
- 1.6 "Price" shall mean the cost (plus any GST where applicable) for Carriage as agreed between HBH and the Client subject to clause 4 of this contract.
- 1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 "Dangerous Goods" means Goods which are, or may become, noxious, dangerous, hazardous, inflammable, explosive or offensive (including waste or contaminated or radioactive materials), or may become liable to cause death, injury or damage to any person or property whatsoever (and includes goods likely to cause damage, such as goods likely to harbour or encourage vermin or other pests, and all such goods as falling within the definition of hazardous and dangerous goods in the legislation governing carriage by road, rail, sea or air in the states and territories of Australia) whether prescribed by legislation or otherwise.

**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, Carriage undertaken by HBH.
- 2.2 These terms and conditions may be meant to be read in conjunction with HBH's quotation, consignment note, agreement, manifests, or any other forms as provided by HBH to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in that document shall prevail.
- 2.3 Any variation, cancellation or waiver of these terms and conditions (or any of them) must be in writing signed by a Director of HBH. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these terms and conditions.
- 2.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.

**3 Errors and Omissions**

- 3.1 The Client acknowledges and accepts that HBH shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by HBH in the formation and/or administration of this contract; and/or
  - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by HBH in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of HBH; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**4 Change in Control**

- 4.1 The Client shall give HBH 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 and contact phone or fax number/s, change of trustees or business practice). The Client shall be liable for any loss incurred by HBH as a result of the Client's failure to comply with this clause.

**5 Price and Payment**

- 5.1 At HBH's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by HBH to the Client in respect of Carriage undertaken;
  - (b) HBH's quoted Price (subject to clause 5.2) which shall be binding upon HBH provided that the Client shall accept in writing HBH's quotation within thirty (30) days.
- 5.2 HBH reserves the right to change the Price:
- (a) if a variation to HBH'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 HBH, delivery times or date or otherwise, etc.);
  - (b) to reflect any increases to HBH in the cost of undertaking the Carriage of the Goods which are beyond the reasonable control of HBH (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in fuel, fuel levies, taxes or customs duties or insurance premiums or warehousing costs);
  - (c) for any delay over thirty (30) minutes in either loading and/or unloading (from when HBH reports for such loading or unloading), or any overnight or extended storage of the Goods, occurring other than from HBH's default;

- (d) where the Price is calculated by weight, measurement or value, HBH may at any time 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.
- 5.3 Time for payment for the Carriage of Goods being of the essence, the Price will be payable by the Client on the date/s determined by HBH, which may be:
- (a) on, or before, delivery of the Goods;
  - (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 twenty-one (21) days following the end of the month of the date of any invoice/s and/or statement furnished to the Client by HBH.
- 5.4 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card – excluding Amex (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and HBH.
- 5.5 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 HBH nor to withhold payment of any invoice because part of that invoice is in dispute.
- 5.6 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to HBH an amount equal to any GST HBH must pay for any Carriage of Goods by HBH under this contract 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 applicable taxes and duties imposed by any lawful authority in addition to the Price, except where they are expressly included in the Price.
- 5.7 The Client acknowledges and agrees that the Client's obligations to HBH for the supply of Services shall not cease until:
- (a) the Client has paid HBH all amounts owing for the particular Services hire; and
  - (b) the Client has met all other obligations due by the Client to HBH in respect of all contracts between HBH and the Client.
- 5.8 Receipt by HBH 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 HBH's ownership or rights in respect of the Carriage of Goods, and this contract, shall continue.

## 6 Carriage of Goods

- 6.1 HBH 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 HBH subject only to these conditions and HBH 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.
- 6.2 The Client authorises HBH (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, entering into contracts and arranges with any third party to perform or undertake the Carriage of the Goods (or any part thereof). In so engaging such third parties, HBH has or will represent to such third parties that the terms of this contract, including the benefit of any terms conferred upon HBH, shall extend to such third parties in providing their goods and/or services;
  - (b) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary, to proceed to or 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) or method of carriage of the Goods that may be deemed reasonable or necessary in the circumstances, (including, but not limited to, using the services of any third party to ensure the safety of other road users and property and/or compliance with lawful authority requirements and/or Police or private escorts, road closures and/or transport control, using specialist equipment such as special cooling);
  - (c) comply with any order, direction, recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.
- 6.3 HBH'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.
- 6.4 HBH may open, at the Client's risk and expense, any document or any packaging, or container in which the Goods are placed or carried, to inspect the Goods to determine their nature or condition, or to determine their ownership or destination, where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced, or otherwise.
- 6.5 Any time specified by HBH for Carriage of the Goods is an estimate only and HBH will not be liable for any loss or damage incurred by the Client as a result of any delay (including where arising from any action under clause 6.2). However both parties agree that they shall make every endeavour to enable the Carriage of the Goods to be undertaken at the time and place as was arranged between both parties. In the event that HBH is unable to undertake Carriage of the Goods as agreed solely due to any action or inaction of the Client then HBH shall be entitled to charge a reasonable fee for the Carriage of the Goods at a later time and date.
- 6.6 Subject to clause 17, but without prejudice to any other provision hereof, this contract and any agreement HBH makes under its authority and any contract made by any person to whom HBH 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 including storage thereof 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 5.3.

## 7 Client-Packed Containers

- 7.1 Subject to any written special instructions to the contrary:
- (a) 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;
  - (b) HBH is not obliged to pack the Goods or to provide any plant, power or labour required for loading and/or unloading of the Goods.
- 7.2 Goods requiring special appliances for loading and unloading are accepted for carriage only on condition that such appliances are made available by the Client at the collection or delivery address. If HBH is, without prior arrangement, called upon to load or unload such Goods, HBH shall not be liable to the Client for any loss whatever, however caused, arising out of such loading or unloading and the Client shall indemnify HBH against all claims and demands whatever which could not have been made if such assistance had not been given.

7.3 Any handling, installation, removal, assembly or erection of any kind included in the Carriage of the Goods is undertaken on the basis that HBH accepts no liability for any loss, damage or injury of any kind whatsoever, howsoever arising (including, but not limited to, any negligence or breach of contract by HBH) caused or incurred or occurring during any part of such activity including loss, damage or injury to any person, property or thing or any Goods.

## 8 Client's Responsibility

8.1 The Client expressly warrants, represents, confirms and/or acknowledges that:

- (a) HBH has relied upon the Client in its description of the Goods (including weight, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, HBH accepts no liability for any discrepancy that may arise with the description;
- (b) unless specified otherwise in writing, HBH has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those relating to the any applicable dangerous goods codes) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;
- (c) 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 contract, and:
  - (i) and the Client is authorised by all persons owning or interested in the Goods to enter into this contract; and
  - (ii) by entering into this contract, the Client accepts these terms and conditions for any owner or party with interest in the Goods, as well as for all other persons on whose behalf the Client is acting.
- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods;
- (e) the person handing over the Goods to HBH is authorised to sign and accept these terms and conditions;
- (f) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

## 9 Insurance

9.1 HBH will not, without the Client's written instruction, insure the Goods, and:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of HBH;
- (b) subject to sub-clause (c):
  - (i) HBH is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all;
  - (ii) under no circumstances will HBH be under any liability with respect to the arranging of any such insurance and no claim will be made against HBH for failure to arrange or ensure that the Goods are insured adequately or at all.
- (c) any such insurance is at the Client's own expense. Where the Client's instruction does not specify the class of insurance to be effected, HBH may in its discretion effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
  - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
  - (ii) loss, damage or expensed proximately caused by delay;
  - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
  - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
  - (v) any exclusion common to that class of insurance;
  - (vi) any other exclusion advised by the Client to HBH, detailed in the special instructions.

## 10 Dangerous Goods

10.1 Unless otherwise agreed in writing, HBH will not accept Dangerous Goods for carriage, nor anything which may encourage vermin or pests. The Client shall be liable for (and shall indemnify HBH against) all loss and damage and additional charges and expenses incurred or sustained by HBH arising out of:

- (a) any false or misleading or inaccurate information or description of such Dangerous Goods; or
- (b) any default or failure to declare the Goods as dangerous Goods and to provide full particulars thereof.

10.2 When Dangerous Goods are accepted for carriage, the Client warrants that:

- (a) the carriage requested by the Client is not prohibited;
- (b) the Client has fully disclosed in writing to HBH before HBH took possession of the Goods:
  - (i) full particulars and description of the Dangerous Goods;
  - (ii) all requirements of lawful authorities for such carriage;
  - (iii) the name, nature and value of the Dangerous Goods; and
  - (iv) all other relevant information.

10.3 The Client is liable for any loss or damage suffered by HBH or any Sub-Contractor or other person through the carriage of Dangerous Goods (whether declared or not).

10.4 HBH may, at its sole discretion, at the Client's expense and without compensation to the Client or to any other person interested in the Goods, and without prejudice to its charges or any other rights hereunder:

- (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Client or any other person interested in the Goods; and
- (b) dispose or destroy or abandon or render harmless:
  - (i) any Goods which HBH believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination; and
  - (ii) any undeclared Dangerous Goods which are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature.

## 11 Delivery of the Goods

- 11.1 HBH shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Client in writing, or at any other location directed by the Client orally.
- 11.2 The Client shall ensure that HBH has clear and free access to the site at all times to enable them to undertake the Services. HBH shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of HBH.
- 11.3 It is the responsibility of the Client to ensure that access is suitable to accept the weight of laden trucks. The Client agrees to indemnify HBH against all costs incurred by HBH in recovering such vehicles in the event they become bogged or otherwise immovable.

## 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, the Goods shall be and remain at the Client's sole risk, and HBH shall not be under any liability for:
- (a) any loss or damage suffered by the Client (or any third party) as a result of the Client contravening clause 8;
  - (b) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or compliance with the directions of any person or lawful authority entitled to give them;
  - (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of HBH or not) or any injury or loss of any nature whatsoever;
  - (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
  - (e) any act or omission whether wilful, reckless, negligent or otherwise of HBH, or its servants or agents or Sub-Contractors;
  - (f) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
  - (g) any act, omission or neglect of the Client, including any breach of its obligations under this contract, insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.

## 13 Conditions of Storage

- 13.1 HBH will prepare an inventory of Goods received for storage and will ask the Client to sign the inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from HBH, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client asks for the contents to be listed, in which case HBH will be entitled to make a reasonable additional charge.
- 13.2 HBH is authorised to remove the Goods from one warehouse to another without cost to the Client. HBH will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 13.3 The Client is entitled, upon giving HBH reasonable notice, to inspect the Goods in store but a reasonable charge may be made by HBH for this service.
- 13.4 Subject to payment for the balance of any fixed or minimum period of storage agreed, the Client may require the Goods to be removed from the store at any time on giving HBH not less than five (5) working days' notice. If the Client gives HBH less than the required notice, HBH will still use its best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 13.5 The Client agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from HBH to do so. In default, HBH may, after fourteen (14) days' notice to the Client, SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty, and apply the net proceeds in satisfaction of any amount owing by the Client to HBH.
- 13.6 HBH reserves the right to charge the Client for any storage costs incurred due to failure by the Client to provide all necessary paperwork requested by HBH.

## 14 Lien

- 14.1 In addition to its rights under the Warehouseman's Liens Act 1985, HBH shall have and retain a general lien on any Goods owned by the Client and in the possession or control of HBH (and any documents relating to those Goods) for pecuniary obligations owing from time to time by the Client on any account whatsoever to HBH (including, but not limited, to payment of the Price), and HBH shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Client. HBH shall be entitled to retain the sums due to it, in addition to the charges incurred in detention 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 HBH'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 9 and 12, in the event that the Client believes that they have any claim against HBH then they must lodge any notice of claim for consideration and determination by HBH within seven (7) days of the date of delivery, or for non-delivery within seven (7) 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 HBH of its obligations hereunder.
- 15.3 The Client undertakes that no claim or allegation shall be made against any Sub-Contractor, servant or agent of HBH which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify HBH and any such servant or agent against all consequences thereof.

**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 HBH 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, HBH makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Carriage of the Goods. HBH’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, HBH’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 16.5 If HBH is required to rectify, re-provide, or pay the cost of the Carriage of the Goods under this clause or the CCA, but is unable to do so, then HBH may refund any money the Client has paid for the Carriage of the Goods but only to the extent that such refund shall take into account the value of any portion of the Carriage of Goods undertaken by HBH for the Client which were not defective.
- 16.6 If the Client is not a consumer within the meaning of the CCA, HBH’s liability for any defect in the Carriage of the Goods is:
- (a) limited to the value of any express warranty provided to the Client by HBH at HBH’s sole discretion;
  - (b) otherwise negated absolutely.

**17 Cancellation**

- 17.1 Without prejudice to any other remedies HBH may have, if at any time the Client is in breach of any obligation (including those relating to payment) HBH may suspend or terminate the Carriage of the Goods for the Client and any of its other obligations under the terms and conditions, and may (by written notice to the Client) demand that the Client collect the Goods. HBH will not be liable to the Client for any loss or damage the Client suffers because HBH exercised its rights under this clause and where the Client fails to collect the Goods when demanded by HBH to do so, HBH may (at the Client’s expense) remove and relocate the Goods.
- 17.2 HBH may cancel any contract to which these terms and conditions apply, or cancel the Carriage of the Goods at any time before the Goods are delivered, by giving written notice to the Client. On giving such notice HBH shall repay to the Client any sums paid in respect of the Price, less any amounts owing for any portion of the Carriage of the Goods which have been undertaken by HBH. HBH shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.3 In the event that the Client cancels this contract, or the Carriage of the Goods, then the Client shall be liable for any loss incurred by HBH (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 HBH’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 HBH any money the Client shall indemnify HBH from and against all costs and disbursements incurred by HBH in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, HBH’s contract default fee, and bank dishonour fees).
- 18.3 Without prejudice to HBH’s other remedies at law HBH 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 HBH shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to HBH becomes overdue, or in HBH’s opinion the Client will be unable to meet its payments as they fall due; or
  - (b) the Client becomes insolvent/bankrupt, 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 Limitation of Liability**

- 19.1 The Client shall indemnify HBH against any loss (including any fine, levy, charge or other monetary imposition to which HBH may become liable incidental to the Carriage of the Goods), damage, death or injury (including loss or damage to HBH’s containers and/or equipment) arising out of the Client’s contravention of clause 9, or the Client’s unreasonable detention of any vehicle, container or other equipment of HBH.
- 19.2 Nothing whatsoever done or omitted to be done or other conduct by HBH in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under no circumstances constitute either a breach going to the root of this contract, or a deviation or departure therefrom or a repudiation thereof such as to have the effect of disentitling HBH from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other like protections herein which shall continue to have full force and effect in any event whatsoever. Subject to clause 16, HBH 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 HBH of these terms and conditions (alternatively HBH’s liability shall be limited to damages which under no circumstances shall exceed the Price).

**20 Sub-Contractors**

- 20.1 The Client undertakes that no claim will be made against any servant, sub-contractor or agent of HBH which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Client undertakes to indemnify HBH against all consequences thereof.
- 20.2 Without prejudice to Clause 20.1, every servant, sub-contractor or agent of HBH shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, HBH, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.
- 20.3 The Client shall defend, indemnify and hold harmless HBH from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of HBH under these Conditions.
- 20.4 Without prejudice to the generality of this Clause 20, the indemnity referred to in Clause 20.3, shall cover all claims, costs and demands

arising from or in connection with the negligence of HBH, its servants, sub-contractors and agents.

20.5 In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

## 21 Confidential Information/Conflict of Interest

21.1 The Client assumes liability for all loss or damage suffered by HBH as a result of breach of confidentiality undertaken by itself, or its employees or agents.

21.2 The obligations of confidentiality shall survive the finalisation or discontinuance of any agreement between the Client and HBH.

21.3 Neither party will use the other party's confidential/personal Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this contract, and a party may only disclose the other party's confidential/personal Information:

(a) if required by law;

(b) to exercise their rights under this contract;

(c) if necessary to perform their obligations under this contract;

(d) if the other party has provided their written consent to the disclosure;

(e) if the confidential/personal Information is already in the public domain (otherwise than as a result of disclosure in breach of this contract).

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

22.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

22.2 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:

(a) Goods that have previously been carried and/or stored and any Goods that will be carried and/or stored in the future by HBH for the Client; and/or

(b) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to HBH for the Carriage of the Goods – that have previously been undertaken and that will be undertaken in the future by HBH for the Client.

22.3 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 HBH 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 22.3(a)(i) or 22.3(a)(ii);

(b) indemnify, and upon demand reimburse, HBH 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 HBH;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of HBH.

22.4 HBH 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.

22.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

22.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

22.7 Unless otherwise agreed to in writing by HBH, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

22.8 The Client must unconditionally ratify any actions taken by HBH under clauses 22.3 to 22.5.

22.9 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.

## 23 Security and Charge

23.1 In consideration of HBH agreeing to undertaken the Carriage of the Goods, 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).

23.2 The Client indemnifies HBH from and against all HBH's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising HBH's rights under this clause.

23.3 The Client irrevocably appoints HBH and each director of HBH as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 23 including, but not limited to, signing any document on the Client's behalf.

## 24 Privacy Act 1988

24.1 The Client agrees for HBH 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 HBH.

24.2 The Client agrees that HBH 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 (2) years.
- 24.3 The Client consents to HBH being given a consumer credit report to collect overdue payment on commercial credit.
- 24.4 The Client agrees that personal credit information provided may be used and retained by HBH for the following purposes (and for other agreed purposes or required by):
- (a) the Carriage of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the Carriage of Goods; 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 Carriage of Goods.
- 24.5 HBH 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.
- 24.6 The information given to the CRB may include:
- (a) personal information as outlined in 24.1 above;
  - (b) name of the credit provider and that HBH 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 HBH has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of HBH, 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).
- 24.7 The Client shall have the right to request (by e-mail) from HBH:
- (a) a copy of the information about the Client retained by HBH and the right to request that HBH correct any incorrect information; and
  - (b) that HBH does not disclose any personal information about the Client for the purpose of direct marketing.
- 24.8 HBH 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 contract or is required to be maintained and/or stored in accordance with the law.
- 24.9 The Client can make a privacy complaint by contacting HBH via e-mail. HBH 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).

## 25 Service of Notices

- 25.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 25.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## 26 Trusts

- 26.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust (Trust) then whether or not HBH may have notice of the Trust, the Client covenants with HBH as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Client will not without consent in writing of HBH (HBH will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
    - (i) the removal, replacement or retirement of the Client as Trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

## 27 General

- 27.1 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.
- 27.2 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 HBH has its principal place of business, and are subject to the jurisdiction of the courts in that state.
- 27.3 The Client agrees that HBH 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 HBH to undertake Carriage of Goods for the Client.

- 27.4 Where HBH is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of HBH, 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 contract and HBH 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 HBH.
- 27.5 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.
- 27.6 The Client shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to this contract.
- 27.7 Any exercise of discretion by HBH shall be absolute and unfettered and may be unreasonable or arbitrary.
- 27.8 The Client states that it did not rely on any representation, promise, warranty or condition not expressly made (in writing) as part of this contract.
- 27.9 The defences and exclusions of liability in these terms and conditions, including clause 12, apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against HBH even if it is resulted from an act or omission of HBH done wilfully or recklessly with knowledge that damage would or would probably result.