

These terms and conditions contain important terms affecting your rights and you should read these terms and conditions carefully. Your attention is drawn to the following terms in particular:

2.2 Variation – the Company may vary the terms and conditions for future orders unilaterally (but on notice).

3.4 Delivery – the Company is not liable for any liability arising in connection with the delivery of the Goods and the Client indemnifies the Company against any Claim for loss, damage or other liability as a result of the Company acting in accordance with delivery instructions.

3.5 Time for Delivery – any quoted delivery time is an estimate only.

3.6 Storage – the Company may hold the Goods at any time and storage is at your risk.

3.8 Inspection – the Client indemnifies the Company for any loss or liability incurred by the Company in connection with an inspection of Goods.

4.5 Lien – the Company has a lien over the Goods for any amount owing by the Client.

5 Dangerous Goods and Prohibited Articles – the Client indemnifies the Company from and against all liabilities, penalties, losses, expenses (including legal expenses on an indemnity basis) and Claims in connection with the Company's carriage, handling, storage or disposal of any Dangerous Goods or Prohibited Articles.

6.2 Accuracy of Information – the Client agrees to indemnify the Company for any and all fines, penalties, losses, costs and damages that the Company may incur or suffer, and all fines, penalties, losses, costs and damages a third party may incur or suffer, which arise from or are caused by late, incomplete or inaccurate information provided by the Client.

7.1 Legislative Requirements – the Client indemnifies the Company for all loss and liability the Company incurs in connection with the Client's non-compliance with legislative requirements.

7.3 Packaging, description and presentation - the Client indemnifies the Company against, and must immediately reimburse the Company for, all loss, expenses and liability incurred by the Company to conform to the packaging requirements of the Receiver or any Legislative Requirements.

8.18.1 Consumer Guarantee liability - the Company is not liable for any loss or damage arising from or in connection with the supply of, or failure to supply, the Services except to the extent the loss or damage is a foreseeable result of the Company's failure to meet an applicable Consumer Guarantee.

8.3 Limitation of Liability - in the event that loss or damage has occurred due to the Company's negligent act or omission, the total liability of the is limited to the profit made by the Company in connection with the Services.

8.4 Third party Claims – the Client will indemnify the Company against all loss, damage and other consequences incurred by the Company due to a Third Party Claim.

9 Privacy – the Client will keep the Company indemnified against all Claims that arise in connection Personal information provided to by the Client to the Company.

1. Definitions and Interpretation

1.1 Definitions

In these Terms and Conditions, unless the context requires otherwise:

ACL means the Australian Consumer Law contained in Schedule 2 of the Competition and Consumer Act 2010 (Cth).

ADR means the European Agreement concerning the International Carriage of Dangerous Goods by Road.

ADG Code means the latest edition of the Australian Dangerous Goods Code.

Claim means any claim, notice, investigation, action, proceeding, demand, cost, damage, loss, expense, liability or other outgoing of whatever nature, past and present, howsoever and whensoever arising, whether known or unknown, fixed or ascertained, actual or contingent.

Client means the person who engages the Company to provide the Services.

Company means Smartways Logistics Holdings Pty Ltd (ABN 25 169 615 525).

Consumer Guarantee means a guarantee relating to the supply of goods or services to consumers provided by Division 1 of Part 3-2 of the ACL.

Delivery Address means the address specified by the Client in the Order to which it requests the Company to deliver the Goods.

Dangerous Goods means Goods which are volatile or explosive or which are or may become dangerous, noxious, hazardous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property and includes all Goods which are likely to fall within the definition of hazardous, noxious, dangerous, explosive, inflammable or radioactive goods under any legislation, regulation, code or convention (whether or not legally enforceable) relevant to the Services, including those specified in the ICAO technical instructions, the IATA dangerous goods regulations, the IMDG code, the ADG code, the ADR regulations or any other national or international rules applicable to the transport of, or the performance of other services regarding, dangerous goods.

Engagement Letter means an engagement letter or notification of award of work (if any) between the Company and the Client (or any of their respective related companies) to perform the Services and incorporating these Terms and Conditions.

Goods means the goods including their packaging or anything supplied with them, which are the subject of the Services pursuant to these Terms and Conditions.

GST Law has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999.

GST means a tax imposed under GST Act.

IATA means International Air Transport Association.

ICAO means International Civil Aviation Organisation.

IMDG means International Maritime Dangerous Goods.

Heavy Vehicle National Law means the *Heavy Vehicle National Law Act 2012* (Qld).

HVNL means Heavy Vehicle National Law as it applies (with modifications by law in each state and territory of the Commonwealth of Australia), together with any supporting regulations but in the case of:

(a) Western Australia, means the *Road Traffic (Vehicles) Act 2012* (WA) and the *Work Health and Safety Act 2020* (WA); and

(b) the Northern Territory means the *Motor Vehicles Act 1949* (NT) and the *Work Health and Safety (National Uniform Legislation) Act 2011* (NT).

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Interested Person means a person with any interest in the Goods including the Client, the owner, storer, consignor or consignee of the Goods and each of their agents and employees.

Legislative Requirements means any applicable law including legislation, ordinances, regulations, by-laws and other subordinate legislation.

List Prices means the Company's list prices (including levies and charges) for Services, as issued by the Company from time to time.

Order means any request or order by or from the Client for the supply of Services by the Company, whether written, oral or otherwise including via an Engagement Letter.

Personal Information has the meaning given to it in the Privacy Act 1988 (Cth).

Premises means any place or places nominated or used by the Company where Goods are handled, held, packaged, packed, repacked, unpacked, unloaded, despatched, warehoused, stored, transported or removed from time to time.

Prohibited Article means any item:

- (a) the possession of which is unlawful; or
- (b) the carriage of which by air, road or rail is prohibited in Australia.

Quotation means a quotation issued by the Company for the provision of Services.

Receiver means the person to whom the Goods are being sent.

Sensitive Information has the meaning given to it in the Privacy Act 1988 (Cth).

Service Fees means the fees payable by the Client for the Services.

Services includes the whole of the operations and services performed or undertaken by the Company and its related bodies corporate in respect of the Goods, whether in transit, in storage, or otherwise and includes carriage, storage services, stocktaking services, goods / stock management services, goods assembly / processing services, packaging or handling of Goods, customs agent services, forwarding services, shipping services and any other service performed or undertaken by the Company and its related bodies corporate.

Subcontractor means:

- (a) any other person, trust, firm or corporation with whom the Company may arrange for the performance of the Services or any part thereof; and
- (b) any employee, agent or subcontractor of any of the persons in paragraph (a).

Taxable Supply has the meaning given in section 195-1 of the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Terms and Conditions means these terms and conditions for the provision of services by the Company.

Workplace Health and Safety Laws means any Legislative Requirements or guidelines relating to workplace health and safety.

Interpretation

The following rules apply unless the context requires otherwise.

- (a) Headings are for convenience only and do not affect interpretation.
- (b) A reference to one or more things includes each part and all parts of that thing or group of things but nothing in this clause implies that part performance of an obligation constitutes performance of that obligation.
- (c) A reference to a clause is a reference to a clause of these Terms and Conditions.
- (d) A reference to legislation or to a provision of legislation includes a modification or re-enactment of it, a legislative provision substituted for it and a regulation or statutory instrument issued under it.

- (e) A reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity.
- (f) A reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally.
- (g) The meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

2. Application of Terms and Conditions

2.1 Application and acceptance

- (a) These Terms and Conditions apply to and govern all Services and all Orders, including Orders accepted by the Company and processed by the Company on behalf of the Client following instructions received from the Client by any means of communication including phone, email or other form of communication. If there is any inconsistency between the Terms and Conditions and the terms and conditions contained in any other document issued by or on behalf of the Company in connection with particular Services (which terms and conditions are incorporated into these Terms and Conditions for the purposes of that particular contract), then these Terms and Conditions will prevail.
- (b) By placing an Order, the Client or person placing an Order on behalf of the Client:
 - (i) warrants that they have the authority of all Interested Persons to request the Services and accept these Terms and Conditions and to enter into any contract on the Client's behalf; and
 - (ii) confirms acceptance of these Terms and Conditions on behalf of itself and each Interested Person.
- (c) Each Order will form a separate contract between the Company and the Client for the relevant Services and will incorporate and be governed by these Terms and Conditions.

2.2 Variation or Waiver

- (a) The Company may amend the Terms and Conditions from time to time. These Terms and Conditions cannot otherwise be waived or varied except in writing by a director of the Company. Unless otherwise stated, the amended Terms and Conditions will apply to all Orders placed by the Client after the earlier of the date the amended Terms and Conditions are:
 - (i) published on the Company's website(<https://smartwayslfl.com/>); or
 - (ii) provided to the Client.
- (b) Any subsequent request for the provision of Services by the Client will constitute acceptance of the amended terms and conditions.
- (c) Except as provided in clause 2.2(a), the Company is not bound by any terms and conditions contained in any of the Client's documentation or any instructions given by any person which conflict with these Terms and Conditions.

2.3 Benefit

These Terms and Conditions, including without limitation clause 7.4, cover, and may be invoked by, any person whom the Company uses to perform any part of the Services, including any Subcontractor, and each of the Company's employees, agents and officers.

3. Services

3.1 Not a common carrier

The Company is not a common carrier and will accept no liability as such.

3.2 Acceptance of Orders

- (a) The Company reserves the right in its absolute discretion to refuse the provision of Services to, or the carriage of Goods or any class of Goods for, any person.

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- (b) The Company reserves the right to not comply with any directive or instruction provided by the Client that may:
 - (i) result in or contribute to a breach of the HVNL or any other Legislative Requirements; or
 - (ii) prevent the Company from taking all reasonably practicable steps to prevent any breach of the HVNL or any other Legislative Requirements; or
 - (iii) prevent the Company from otherwise complying with its duties of care under the HVNL or any other Legislative Requirements.
- (c) Each Order is subject to acceptance or rejection by the Company and is not binding on the Company prior to the Company's acceptance of it. The Company may accept an Order by:
 - (i) giving the Client written notice of acceptance; or
 - (ii) collecting any of the Goods, the subject of the Order.

3.3 Subcontracting

The Company is authorised at its absolute discretion to arrange on any terms for the performance of the Services by any Subcontractor.

3.4 Delivery

- (a) The Company will attempt to deliver the Goods to the Delivery Address.
- (b) The Company may deliver the Goods to the Receiver or any person who the Company reasonably believes to be an employee, agent or other representative of the Receiver at the Delivery Address.
- (c) If the Receiver is unavailable or the Delivery Address is unattended and the Client or the Receiver has provided the Company with authority to do so, the Company may at its sole discretion and at the Client's sole cost, expense and risk:
 - (i) leave the Goods at the Delivery Address, which will be conclusively deemed to be due delivery of the Goods; or
 - (ii) return the Goods to any of the Company's Premises and notify the Client it has done so.
- (d) If the Receiver is unavailable, or the Delivery Address is unattended, or the Company returns any Goods to the Company's Premises as contemplated by clause 3.4(c)(ii):
 - (i) the Company will seek the Client's further instructions regarding delivery of the Goods;
 - (ii) pending receipt and implementation of the Client's further instructions, the Company will store the Goods at the Client's sole risk;
 - (iii) the Client must pay the Company any costs which the Company may incur in forwarding, storing, returning or disposing of the Goods and the Company's charges (if any) for making a second or further delivery attempt and for otherwise implementing the Client's further instructions.
- (e) The Company does not accept any liability and the Client will not hold the Company responsible for any loss, damage or other liability to the Client, Receiver or any other party having an interest in the Goods as a result of the Company acting in accordance with this clause 3.4. The Client indemnifies the Company against any Claim for loss, damage or other liability as a result of the Company acting in accordance with this clause 3.4.

3.5 Time for delivery

The Company will use reasonable endeavours to deliver the Goods at or within the time agreed with the Client. However, any dates or times specified for departure or arrival at the point of collection or delivery are estimates only and will not bind the Company. The Company is not liable for any loss, damage or delay occasioned to the Client or any other person from late or non-delivery of the Goods.

3.6 Storage

The Company may at any time and from time to time hold the Goods at any Premises and may at any time and from time to time remove the Goods from any Premises at which they are being held at the sole discretion of the Company and in every case at the Client's risk and expense. The Company is not liable for any loss, damage or delay occasioned to the Client or any other person arising from or in connection with the Company's storage or management of the Goods.

3.7 Third Party Logistics

- (a) If the Services to be provided to the Client include third party logistics, the Company will be responsible for:
 - (i) management of all inward Good movements, including receipt of Goods from the Client, storage, and confirmation that the Goods are available for supply; and
 - (ii) management of all outward Good movements, including picking, consolidating and packaging the Goods so they are ready for dispatch to meet the order delivery requirements of the Client, adhering to any special instructions or requirements of the Client, and notifying the Client if Goods orders are unable to be fulfilled.
- (b) In addition to the packaging requirements set out in clause 7.3, the Client must ensure all Goods received by the Company comply with the Company's receiving requirements as advised by the Company from time to time. If the Client fails to meet these receiving requirements, the Client may incur additional fees.
- (c) The Company will process all transactions using the information technology solution and operational procedures agreed by the Client and Company.

3.8 Inspection

The Company is entitled, and may permit any governmental authority, to open any container or package in which the Goods are placed or carried, in order to inspect the Goods, and will not be liable for any costs or loss incurred by the Client as a result. The Client indemnifies the Company for any loss or liability incurred by the Company in connection with this clause 3.8.

3.9 Company's discretion

The Company will use reasonable endeavours to comply with any specific instructions of the Client regarding the provision of the Services, but the Company may, in its discretion:

- (a) use any method or mode of carriage it considers appropriate to carry out the Services;
- (b) deviate from any usual route or storage location; or
- (c) without limiting clause 3.9(a), refuse to, store, deliver or transport the Goods where, the Company considers in its absolute discretion, it would be unlawful, dangerous or a work health and safety hazard to do so.

4. Services Fees

4.1 Liability for Service Fees

In relation to transportation services, the Company is entitled to the Service Fees as soon as the Goods are delivered to the Receiver or the Delivery Address and, to the fullest extent permitted by law, the Service Fees are non-refundable.

In relation to Services other than transportation services, the Company earns the Service Fees in accordance with the provisions set out in the Engagement Letter, an Order or as otherwise agreed between the parties in writing.

4.2 Calculation of Service Fees

The Service Fees payable for the Services will be determined:

- (a) if the Company has provided a Quotation (and that Quotation has not lapsed or been withdrawn), in accordance with the Quotation;

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- (b) if the Company has agreed on a pricing schedule or contract with the Client for the Services, in accordance with the pricing schedule or contract; or
- (c) otherwise, in accordance with the List Prices, or as otherwise agreed in writing by the Company and the Client.

4.3 Adjustments

- (a) Except as otherwise agreed in writing by the Company, the Company may withdraw a Quotation at any time before the placement of an Order by the Client, and in any event, a Quotation lapses after 7 days.
- (b) The Company will not be bound by a Quotation if, in the opinion of the Company, there has been a change in the circumstances in which the Quotation was given, including any incorrect description of the Goods, and in such circumstances, the Company may charge the List Prices for the Services or, in its absolute discretion, refuse to perform the Services.
- (c) Except to the extent a pricing schedule or contract provides to the contrary, the Company may revise the rates and charges specified in the pricing schedule or contract by giving not less than 5 business days' prior written notice to the Client. The Company may alter the pricing applicable to Services in progress without the agreement of the Client however, will advise the Client if such alteration is made. The Client may withdraw any Order placed before a price increase for which Services have not commenced. Any subsequent request by the Client for the Company to provide the Services will constitute acceptance of the revised rates and charges.
- (d) The Company may revise the List Prices at any time.

4.4 Additional amounts payable

- (a) Except as expressly stated to the contrary, all Quotations and prices offered by the Company are quoted exclusive of GST, stamp duty, registration fees, taxes or government charges of any kind or other fees incurred as a result of the performance of the Services and any such charges will be added to and are payable by the Client in addition to the Service Fees.
- (b) Despite any other provision of the Terms and Conditions, the Company may, in its discretion, make an additional charge in respect of any delay in the collection of the Goods, if in the opinion of the Company, the delay is of unreasonable duration in light of the nature and time involved and other relevant circumstances and is not attributable to any default on the part of the Company.

4.5 Lien

The Company will have a particular and general lien on Goods that the Company has in its possession. The particular and general lien will be for all monies due or becoming due under these Terms and Conditions, any Engagement Letter or Order, including interest, handling charges and costs, packaging charges and costs, if any, and all other expenses relating to the handling, transport, storage or warehousing of the Goods. The Company's particular and general lien also extends to the amount of any costs of complying with the law, in relation to the advertisement for sale, sale by auction, or otherwise, customs, excise, taxes, duties and other statutory charges which may apply in relation to the sale of the Goods to satisfy or partially satisfy the Client's obligations to the Company under these Terms and Conditions, any Engagement Letter or Order (**Costs**). The Client acknowledges and agrees that if it does not pay any monies due or becoming due under these Terms and Conditions, any Engagement Letter or Order within 60 days of notification by the Company that such amounts are due and payable, the Company may sell the Goods to recover such amounts and any Costs.

4.6 Payment

Except otherwise agreed in writing by the Company, the Client must pay each invoice issued by the Company within fourteen (14) days from the date of the invoice, without withholding, deduction, counter claim or set-off.

4.7 GST

Unless otherwise specifically stated, all amounts payable under these Terms and Conditions are expressed on a GST exclusive basis. When GST is payable on a Taxable Supply, then the amount payable for the Taxable Supply will be the amount plus GST.

4.8 Interest

The Client will pay to the Company on demand interest at the default interest rate applicable to judgement debts in the Supreme Court of NSW, on any Service Fees or other monies payable by the Client to the Company which remain unpaid for seven days after notification from the Company of any amount that is due and payable. Interest under this clause 4.8 will be calculated from the relevant due date and accrue on a daily basis until paid.

The Client acknowledges and agrees that it is liable for and will pay all costs including debt collection, commission, solicitor's fees and any out of pocket expense incurred by the Company in the recovery of unpaid Service Fees or other monies payable by the Client to the Company.

5. Dangerous Goods and Prohibited Articles

- (a) The Company does not accept any carriage of any shipments of Goods that contain Dangerous Goods or Prohibited Articles and will not store or manage any Dangerous Goods or Prohibited Articles unless otherwise agreed between the parties in writing.
- (b) The Client must not tender for carriage or storage of any Dangerous Goods or Prohibited Articles unless otherwise agreed between the parties in writing.
- (c) If the Company considers, on reasonable grounds, that a shipment of Goods may contain Dangerous Goods or any Prohibited Article or may cause injury or damage to any person or property, the Company may, at the cost of the Client, do anything appropriate to minimise or avoid such injury or damage. The Company will not be liable to the Client for any loss or damage the Client may incur by reason of the Company's actions under this condition.
- (d) The Client indemnifies the Company from and against all liabilities, penalties, losses, expenses (including legal expenses on an indemnity basis) and Claims in connection with breach of this clause 5 by the Client as well as carriage, handling, storage or disposal of any Dangerous Goods or Prohibited Articles.
- (e) The Client undertakes to take appropriate security measures to prevent the unauthorised carriage of an explosive or an explosive device.
- (f) The Client affirms awareness that:
 - (i) cargo will be subject to security and clearing procedures; and
 - (ii) it is illegal without authorisation, to consign as cargo, an explosive or an explosive device.
- (g) The Client guarantees that it will not tender any shipment of Goods to the Company if the Client or any of the parties interested in or otherwise involved in the shipment of Goods are listed on the United Nations Security Council sanctions or under any US, UK or Australian autonomous sanctions regimes.
- (h) The Client agrees to identify shipments of Goods subject to pre-export regulatory controls, and provide the Company with information and all necessary documentation to comply with applicable regulations.

6. International Carriage

6.1 Export/Import Controls

- (a) The Client assumes responsibility for and guarantees compliance with all applicable export controls laws, including but not limited to regulations and rules that:
 - (i) prohibit unauthorised trade in military and other strategic goods and services, as well as financial or commercial

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dealings, with named individuals and entities in countries to, from, through or over which the Client's shipment of Goods may be carried; or

- (ii) impose conditions under which certain technologies, information, and commodities can be transported to, from, through or over any country which the Client's shipment of Goods may be carried.
- (b) The Client is responsible at its own expense for determining export and import licensing or permitting requirements for a shipment of Goods, obtaining any required licenses and permits, and ensuring that any consignee is authorised to receive or otherwise deal with by the laws of the origin, destination countries and any country(s) asserting jurisdiction over the Goods.
- (c) The Client appoints the Company as its agent solely for the purpose of clearing and entering the shipment of Goods through customs. If the Company subcontracts this work, the Client certifies that the Company is the consignee for the purpose of designating a customs broker to perform customs clearances and entries.
- (d) The Client indemnifies the Company against all loss and liability the Company incurs in connection with the Client's breach of this clause 6.1.

6.2 Accuracy of Information

- (a) The Client warrants that all statements and information that the Client provides relating to the exportation and importation of the shipment of Goods will be true and correct and the Client is responsible for compliance with all legal requirements concerning the timeliness, completeness and accuracy of shipment of Goods information.
- (b) The Client acknowledges that:
 - (i) in the event that the makes untrue or fraudulent statements about the shipment of Goods or any of its contents, the Client risks a civil claim and/or criminal prosecution the penalties for which include forfeiture and sale of the Client's shipment of Goods; and
 - (ii) if it provides late, incomplete or incorrect information this may have serious effects, such as delays to flights, denied or delayed permission to land or unload flights and/or the imposition of heavy fines by governmental or regulatory authorities.
- (c) The Client agrees to indemnify the Company for any and all fines, penalties, losses, costs and damages that the Company may incur or suffer, and all fines, penalties, losses, costs and damages a third party may incur or suffer, which arise from or are caused by late, incomplete or inaccurate information provided by the Client.

6.3 Client Responsibility

- (a) To the extent that the Company may voluntarily assist the Client in completing the required customs and other formalities, such assistance will be rendered at the Client's sole risk. The Client agrees to indemnify the Company and hold the Company harmless from any costs, penalties or liabilities that the Company incurs in connection with providing this assistance, and pay any administration fee that the Company may charge the Client for providing the services described in this clause.
- (b) Any customs duties, taxes (including but not limited to value-added tax or goods and services tax if applicable), penalties, storage charges or other expenses the Company or the Client incurs as a result of the actions of customs or other governmental authorities or the Client's failure and the Receiver's failure to provide proper documentation and/or to obtain the required licence or permit will be charged to the Client or the Receiver. In the event that the Company decides to charge the Receiver and the Receiver refuses to pay the incurred

charges the Client agrees to pay the charges to the Company together with the Company's fee for the administration involved as well as any extra costs that the Company has incurred. Upon the Company's first request the Client will provide a proper guarantee for any of the duties, taxes, penalties, storage charges or any other expenses set out in this condition.

- (c) The Company is not liable for any delays, losses or damage caused by interference from customs officers or other governmental authorities.
- (d) Quotations for customs clearance do not include any non-routine activities such as inspections, verifications, quarantine and extensive tariff research.
- (e) Unless otherwise stated or specifically included in the Company's Quotation, rates quoted do not include surcharges applied by carriers and those will be payable by the Client in addition to the quoted rates.

6.4 International shipments of Goods

The Client agrees the Company may use any reputable firm for acts of international carriage (**International Carrier**). The Client indemnifies and will keep the Company fully indemnified from and against any claims, actions, demands, suits, proceedings, judgements, expenses, costs (including legal costs), damages (including negligence awards) and liabilities whatsoever which the Company may suffer or incur as a consequence of or in connection with the International Carrier's provision of international carriage services or the Company or its agents acting as the Client's customs clearance broker. The Client agrees that the chosen International Carrier's terms and conditions of carriage shall apply to any such act of carriage with the provision that, in relation to issues of liability, as between these Terms and Conditions and the International Carrier's terms and conditions, the terms and conditions which limit or exclude the Company's liability to the greatest extent, will apply.

7. Client's warranties and undertakings

7.1 Legislative Requirements

The Client:

- (a) warrants that it has complied with and undertakes that it will continue to comply with all Legislative Requirements, including the HVNL and Workplace Health and Safety Laws applicable to the storage, packaging, processing, handling and carriage of the Goods;
- (b) indemnifies the Company for all loss and liability the Company incurs in connection with the Client's non-compliance with any Legislative Requirements; and
- (c) must provide in a timely manner all assistance, information and documents reasonably required by the Company to comply with Legislative Requirements, HVNL or Workplace Health and Safety Laws applicable to the Services.

7.2 Workplace Health and Safety Laws

- (a) The Client warrants that it will comply with all Workplace Health and Safety Laws in relation to the Goods and any premises owned or occupied by the Client and will notify the Company of any issues or requirements of which the Client is, or should be, aware, and which may affect the Company's ability to comply with Workplace Health and Safety Laws in relation to the performance of the Services, including in respect of the loading, unloading, handling, processing or management of the Goods.
- (b) Without limiting any other right or remedy of the Company, the Company may refuse to accept the Goods if the Company, in its discretion, considers that, having regard to the presentation and packaging of the Goods by the Client, it is not, or may not be, reasonably practicable to accept, load, handle, process, manage, deliver or unload the Goods in compliance with all Workplace Health and Safety Laws and the HVNL.

7.3 Packing, description and presentation

The Client acknowledges it is responsible for the requirements of the Receiver, packing of the Goods, the accuracy of any description of the Goods attached to the goods or their packaging or otherwise provided to the Company and warrants that:

- (a) the Goods are clearly labelled and addressed and presented in a clear and unambiguous manner with any old or redundant labels removed;
- (b) the Goods are packed to withstand all risks of handling, storage and carriage, having regard to their nature;
- (c) the Goods are contained in packaging and containers that are structurally sound, puncture resistant, adequate to prevent breakage and leakage, remain closed during shipment and free from any conditions that could cause leakage, spillage or damage;
- (d) any description of the Goods on any packaging or document, including regarding contents, weight or dimensions, relating to the Goods is accurate;
- (e) any special requirements or instructions relating to the loading, unloading, handling, carriage, processing or management of the Goods, including as a result of the weight or dimensions of the Goods or their packaging, are clearly specified and clearly identified to the Company at the time of placing the Order or requesting the Services; and
- (f) either:
 - (i) it has prepared the shipment of Goods for carriage in secure premises by the Client's own staff and contractors and the Goods have been protected from unauthorised interference; or
 - (ii) if the Client has not prepared the shipment of Goods for carriage, it has satisfied itself that the Goods and their packaging comply with all Legislative Requirements and otherwise comply with all the Receiver's requirements.
- (g) If the Company is required to incur any expense or liability to conform to the packaging requirements of the Receiver or any Legislative Requirements, the Client indemnifies the Company against, and must immediately reimburse the Company for, all loss, expenses and liability incurred by the Company in connection with the Client's breach of this clause 7.3.

7.4 Acknowledgement

The Client acknowledges and agrees that the Company has no obligation to verify the content, condition or quality of Goods delivered to the Premises or collected in connection with the Services.

7.5 Warranties in relation to Goods

The Client warrants that:

- (a) the person delivering the Goods to, or collecting the Goods from, the Company is authorised to do so by the Client and (if applicable) to sign for any delivery or collection document on behalf of the Client; and
- (b) the Goods are not Dangerous Goods or Prohibited Articles, other than as agreed between the parties in writing;
- (c) it has not asked the Company to handle, store or transport the Goods in any way that could be unlawful.

8. Liability

8.1 Consumer Guarantee

Nothing in these Terms and Conditions limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including ACL (or any liability under them) which by law may not be limited or excluded.

To the maximum extent permitted by law and subject to clause 8.10, the Client acknowledges and agrees that all terms, guarantees, warranties,

representations or conditions which are not expressly stated in these Terms and Conditions are excluded.

To the maximum extent permitted by law and subject to clause 8.10, the Company is not liable for any loss or damage arising from or in connection with the supply of, or failure to supply, the Services (including loss of, deterioration in, damage to, mis-delivery of, delay in delivering or failure to deliver Goods) except to the extent the loss or damage is a foreseeable result of the Company's failure to meet an applicable Consumer Guarantee.

- (a) The exclusion of liability under this clause 8.1 includes, without limitation, any loss of income, loss of profit, production, contract, customers, goodwill, opportunity or business, or any indirect, special or consequential loss or damage of any nature.

8.2 Extent of Liability

The Company limits its liability for any loss, damage or delay of the international carriage of a shipment of Goods as follows:

If the carriage of the shipment of Goods is solely or partly by air and involves an ultimate destination or a stop in a country other than the country of departure The Hague Rules (1924), Warsaw Convention (1929), or the Warsaw Convention as amended by The Hague Protocol (1955) and/or Montreal Protocol No. 4 (1975), The Hague Visby Rules (1968), the SDR Protocol (1979) or the Montreal Convention (1999), whichever is compulsorily applicable, will apply. These international treaties govern and limit the Company's liability for loss, damage or delay to the shipment of Goods.

8.3 Limitation of Liability

In all cases where liability of the Company or any of the persons identified in clause 2.3 has not been effectively excluded, whether by these Terms and Conditions, the Engagement Letter, an Order, by law or otherwise, or in the event that loss or damage has occurred due to the Company's negligent act or omission, the liability of the Company (and all of the persons identified in clause 2.3) for any claim for loss or damage is limited for each consignment or delivery to the profit made by the Company in connection with such consignment or delivery, and the liability of the Company in aggregate cannot exceed the profit made by the Company on the Services in any 12 month period.

8.4 Third party Claims

The Client undertakes that it will not permit any other person who has an interest in the Goods or the performance of the Services to bring a Claim or action against the Company and if such a Claim or action is made the Client will indemnify the Company against all loss, damages and other consequences of the Claim or action and all costs and expenses incurred by the Company in defending it.

8.5 Time for making claims

- (a) Any intention to claim for loss, damage or delay or any other Claim arising from the Services must be notified in writing to the Company within fourteen (7) days of the date on which the act or omission giving rise to the Claim occurs, failing which the Company shall be discharged of all liability in relation to the claim. Time is of the essence in respect of this clause. An endorsement on a freight note, delivery docket or other note or document in respect of any carriage does not constitute notice in writing for the purposes of this clause;
- (b) The Client must then submit a claim in the required form and all reasonable supporting documents within 20 Business Days; and
- (c) The Client must commence proceedings within 12 months of the date of delivery (or intended deliver) in relation to any claims that remain unresolved.

9. Privacy

- (a) The Client acknowledges and consents to the Company's recording of telephone conversations for training and quality assurance purposes.
- (b) The Client consents to the Company's collection, use, storage and disclosure of information including personal information in

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accordance with the Company's privacy policy accessible at: [Privacy Policy](#).

- (c) The Client consents to the disclosure of information, including personal information, to overseas jurisdictions including but not limited to New Zealand. To the maximum extent permitted by law the Client hereby indemnifies and will keep indemnified the Company and its officers, employees and contractors against all Claims whether at common law, in equity, or under statute that directly or indirectly arise from or are connected with the provision of any Personal Information by the Client to the Company.

10. Ownership, title and risk

10.1 Ownership

The Client warrants that it is the owner or the authorised agent of the owner of the Goods.

10.2 Title

Title in the Goods remains with the Client or the owner at all times.

10.3 Risk

The Goods will remain at the risk of the Client or owner of the Goods at all times.

10.4 Insurance

The Company will not affect insurance of the Goods for the benefit of the Client or any person other than the Company.

10.5 Events beyond the Company's control

To the maximum extent permitted by law and without limiting any other provision of these Terms and Conditions, the Company will not be liable for any delay, failure to perform the Services, loss or liability or any other

obligations resulting from any uncontrollable circumstance or cause beyond the reasonable control of the Company, including natural disasters, epidemic, pandemic, adverse weather events, government actions or any form of industrial action.

11. General

11.1 Governing law and jurisdiction

These Terms and Conditions and each Order is governed by and construed in accordance with the laws in force in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

11.2 Invalidity

A word or provision of these Terms and Conditions must be read down if:

- (a) these Terms and Conditions are void, voidable or unenforceable if it is not read down;
- (b) these Terms and Conditions will not be void, voidable or unenforceable if it is read down; and
- (c) the provision is capable of being read down.

11.3 Severability

Subject to clause 11.2, part or all of any provision of these Terms and Conditions that is illegal or unenforceable must be severed from these Terms and Conditions and will not affect the continued operation of the remaining provisions of these Terms and Conditions.

11.4 Confidentiality

The parties agree that they must keep confidential the Service Fees and the terms and conditions upon which the Company has agreed to provide the Services to the Client and other documentation between the parties.