

## TERMS AND CONDITIONS OF TRADE (v02/2019)

To the fullest extent legally possible all contracts, dealings and/or arrangements made between Tasman and the Customer relating to the Services are subject to the following Terms and Conditions of Trade unless otherwise agreed in writing.

### 1. Definitions:

In these Terms, unless the context otherwise requires:

- (a) **"Acknowledgement"** has the meaning given to it at clause 3(b);
- (b) **"ACL"** means Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (C'th);
- (c) **"ADGC"** means the Australian Dangerous Goods Code;
- (d) **"Chain of Responsibility"** has the meaning described in the Heavy Vehicle National Law;
- (e) **"Consequential Loss"** means loss of revenue, loss of profit, loss of anticipated savings or business, loss of opportunity (including opportunity to enter into or complete arrangements with third parties), loss of data or goodwill, loss of reputation, or any indirect or consequential loss, whether arising in contract, tort (including negligence) or otherwise, in connection with these Terms or any Contract;
- (f) **"Contract"** means:
  - (i.) any contract to which these Terms are expressed to form part; and
  - (ii.) for the provision of Services pursuant to an Order, the contract (which includes these Terms) formed for the supply of the Services to the Customer upon an Acknowledgement or otherwise;
- (g) **"Customer"** means the customer specified in the application for commercial credit that these Terms accompanies or if there is no such application, the person or entity placing the Order, or on whose behalf the Order is placed, with Tasman;
- (h) **"Dangerous Goods"** means:
  - (i.) Goods classified as such by the DGR or the ADGC; or
  - (ii.) Goods that otherwise might injure or damage people, property or the environment,
 and includes, without limitation, Goods that are or may become poisonous, corrosive, volatile, explosive, flammable or radioactive;
- (i) **"DGR"** means the IATA Dangerous Goods Regulations;
- (j) **"Goods"** cargo and/or product that is accepted from, or on behalf of, the Customer together with containers, packages, pallets, crates, cases and equipment for use in connection with the storage, handling and carriage of that cargo and/or product;
- (k) **"GST"** means any tax imposed on the supply of any goods, services, real or personal property or other things or similar tax under any GST Law;
- (l) **"GST Law"** at any present or future time means any GST Law as defined in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999, as affected or interpreted by any other applicable legislation and any public or private ruling of the Commissioner of Taxation, as at that time;
- (m) **"Heavy Vehicle National Law"** means the Heavy Vehicle National Law Act 2012 and the regulations made under that act, associated State and Territory road transport acts and regulations, and includes subsequent amendments to any of those acts and regulations;
- (n) **"Order"** includes any order, standing appointment, and/or engagement, for the supply of the Services;
- (o) **"Personnel"** means a party's officers, employees, agents or subcontractors;
- (p) **"PPSA"** means the Personal Property Securities Act 2009 (C'th);
- (q) **"Services"** means all of the services and operations (including without limitation, cartage, transport, and storage) that Tasman undertakes in any capacity (including without limitation, as forwarding agent, shipping agent, forwarder, carrier or bailee) for the Customer in respect of the Goods;
- (r) **"SOLAS"** means the SOLAS (Safety of Life at Sea) convention;
- (s) **"Tasman"** means Tasman Logistics Services Pty Ltd ABN 37 103 193 979;
- (t) **"Tasman Group"** means Tasman and each of its subsidiaries, affiliates, associated companies and related entities;
- (u) **"Temperature Controlled Goods"** means Goods which require temperature control; and
- (v) **"Terms"** means these terms and conditions of trade;
- (w) the terms "proceeds", "security interest" and "verification statement" have the respective meanings given to them under, or in the context of, the PPSA.

### 2. Payments:

- (a) Payments are to be made to Tasman by the Customer without deduction or set-off of any kind and within 7 days of date of Tasman's invoice unless otherwise agreed in writing by Tasman. If the Customer fails to make payment in accordance with this subclause, Tasman may without limitation, exercise a general lien over, and power of sale of, the Goods in accordance with these Terms. The Customer is still required to make payment notwithstanding that Tasman sells or otherwise disposes of the Goods.
- (b) Tasman may apply a payment received from the Customer to any amount owing by the Customer (including part payment of an invoice, administration, collection and other costs) in any order.
- (c) Tasman may require the Customer to pay a credit card surcharge (in addition to any payment) of up to 2% plus GST of the payment amount where the Customer pays by credit card.
- (d) The Customer agrees to pay Tasman's standard administration costs for dishonoured payments and cheques of \$25 for the first dishonoured payment/cheque and \$50 for each subsequent dishonoured payment/cheque.
- (e) The Customer must pay Tasman interest on overdue accounts at a rate of 12% per annum calculated daily.
- (f) Tasman's rates and charges will be deemed fully earned as soon as the Goods are loaded for carriage or transport, or accepted for storage by Tasman (whichever is the first to occur), and will be payable and non-refundable, whether the Goods are delivered or not, and whether damaged, lost, or otherwise.

### 3. Orders:

- (a) To the extent permissible at law (including under the ACL), if any dispute arises concerning any Order (including any measurement, quality, quantity, identity, or authority or any telephone, facsimile, e-mail or computer generated order) the internal records of Tasman will be conclusive evidence of what was ordered except in the case of manifest error.
- (b) An Order can be made by the Customer in writing, orally, or electronic transmission and is accepted when:
  - (i.) the Customer receives an acknowledgment of the Order from Tasman; or
  - (ii.) Tasman collects part or all of the relevant Goods from the Customer, whichever first occurs ("**Acknowledgment**").
- (c) These Terms apply to every Order unless otherwise agreed in writing by Tasman. Without limitation, acceptance of Goods by Tasman is conclusive evidence that these Terms apply and are binding on the Customer.
- (d) Tasman may set specific terms from time to time in relation to Orders such as, without limitation, a requirement that the Customer pay a deposit, make full pre-payment in relation to an Order etc. even if Tasman has previously agreed to extend the Customer credit.

### 4. Dangerous Goods and Temperature Controlled Goods:

- (a) Unless prior and express agreement in writing is first obtained from Tasman, the Customer must not deliver to Tasman, or cause Tasman to deal with or handle, Dangerous Goods or Temperature Controlled Goods.
- (b) Where Tasman has agreed under clause 4(a) to take delivery of Dangerous Goods or Temperature Controlled Goods, then:
  - (i.) the Customer must provide Tasman with prior written notice and instructions regarding any special handling requirements (including without limitation, temperature) for the storage and transport of those Goods together with a full and accurate written description of them;
  - (ii.) the Customer must provide Tasman with Material Safety Data Sheets in relation to those Goods; and
  - (iii.) if Tasman or any other person forms the view that those Goods constitute a risk to property, health, or life, Tasman may without notice or compensation to the Customer and without liability, destroy the Goods or otherwise deal with them in Tasman's absolute and sole discretion, at the expense of the Customer.
- (c) If the Customer breaches clauses 4(a) and/or 4(b), then without limiting any other part of these Terms, the Customer will:
  - (i.) be liable to Tasman for all loss or damage whatsoever; and
  - (ii.) defend, indemnify and hold harmless Tasman against all claims, damages, costs and expenses whatsoever,

arising in connection therewith with the Goods and/or that breach.

**5. Tasman Not a Common Carrier:**

Tasman is not a common carrier and accepts no liability as such. The Services are provided by Tasman subject to these Terms and Tasman may refuse to handle, transport or store Goods for the Customer for any reason whatsoever and without Tasman having any liability to the Customer by reason of that refusal.

**6. Instructions:**

The Customer must provide Tasman with prior written notice and instructions regarding any special handling requirements for the storage and transport of Goods including a full and accurate written description of them.

**7. Charges:**

- (a) Tasman's charges to not include (unless otherwise explicitly agreed in writing by Tasman), and the Customer shall be and remain responsible for payment to Tasman for, all its proper charges incurred for any reason, including taxes, GST, duties, levies, port fees, imposts, deposits or charges incurred in respect of carriage or storage of the Goods.
- (b) The Customer is responsible for understanding Tasman's applicable rates and charges prior to placing an Order as they are subject to change at any time.
- (c) All sales are made by Tasman at its then current ruling price unless otherwise agreed in writing by Tasman.
- (d) Any discount offered by Tasman is at its complete discretion and will only be available provided the Customer is not in breach of any part of these Terms or in default in any of its dealings with Tasman.
- (e) Rates and charges are stated in, and payment must be made in, Australian dollars unless otherwise agreed in writing by Tasman.
- (f) Tasman may impose waiting time charges in respect of loading or unloading delays in excess of 30 minutes. Such delay period shall commence upon Tasman reporting for loading or unloading.
- (g) Tasman reserves the right to charge the Customer for demurrage at the rate charged to Tasman directly or indirectly by any railway or shipping authority or by any other person, firm or company.
- (h) Notwithstanding any other provision of these Terms, nothing will prevent Tasman from amending an invoice at any time where it determines an error or omission exists.
- (i) The Customer must give prior written notice to Tasman if any of the Goods are liable to port charges or other supply chain costs and charges. The Customer must pay such charges or, if agreed in writing by Tasman, reimburse Tasman if it agrees to pay those costs and charges on behalf of the Customer.

**8. Information and advice:**

Any quotation, advice, representation or information provided by Tasman to the Customer is done so solely on reliance upon the particulars provided by the Customer concerning the Goods and Tasman will not be liable in tort, contract, statute or otherwise howsoever if that quotation, advice, representation or information is incorrect for any reason whatsoever.

**9. Quotations:**

The Customer agrees that:

- (a) formal quotations will be writing unless otherwise agreed by Tasman;
- (b) Tasman shall not be bound by any quotation if an order is placed outside the period of the quotation's validity noted thereon and in the absence of such period being noted, 14 days from the date of the quotation;
- (c) prior to receipt of any order Tasman may withdraw or amend a quote;
- (d) Tasman shall not be bound by any quote if:
  - (i.) it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and those circumstances have materially changed; or
  - (ii.) the Customer is in breach of these Terms or any Contract; and
- (e) a quotation is not be construed as an offer by, or an obligation on, Tasman to supply Services.

**10. Method of carriage:**

- (a) Subject always to clause 10(b), if the Customer instructs, or Tasman has agreed, to use a particular method of:
  - (i.) handling or storing the Goods; or
  - (ii.) carriage, including without limitation by road, rail, sea or air, Tasman will use its reasonable endeavours to give priority to that method.
- (b) Notwithstanding clauses 6 and 10(a):
  - (i.) the method or methods of handling, storing and/or carriage of Goods adopted by Tasman will remain at the sole discretion of Tasman and the Customer hereby authorises Tasman to adopt any method or methods other than the method instructed or agreed; and
  - (ii.) the Customer authorises any deviation from the usual route or carriage or place of storage of the Goods which may in the absolute discretion of Tasman, be deemed desirable or necessary in the circumstances.

**11. Provision of Services:**

- (a) The acceptance of the Goods by Tasman for storage pending shipment shall not bind Tasman to ship the Goods.
- (b) To the extent permissible by law, Tasman may suspend or stop indefinitely supplying the Services at any time on 7 days' notice.
- (c) Tasman will in no circumstances be liable for any delay in delivery out of the Goods or in the delayed supply of Services. On notification to the Customer, Tasman reserves the right to extend the date for delivery out of the Goods and the supply of Services.
- (d) Provision of labour to load and unload the Goods shall be the responsibility and expense of the Customer unless other arrangements have been made with Tasman in writing.

**12. Removal of Goods:**

Tasman may at any time by notice to the Customer, require the Customer to remove the Goods from their location of storage with the costs of such removal to be at the Customer's expense (whether in the case of non-shipment or otherwise). If the Customer fails to remove the Goods within 7 days of such notice, then without limiting any other right of Tasman under these Terms or at law, the Customer will be liable to pay Tasman's reasonable costs of storage from the date of such notice until the date of their removal.

**13. Delivery:**

- (a) The Customer authorises Tasman to deliver the Goods at the address nominated to Tasman by the Customer for that purpose.
- (b) Subject to clause 13(c), Tasman will be deemed to have delivered the Goods in accordance with these Terms and any Contract if at that address it obtains from any person a receipt or signed delivery docket for the Goods whether in writing, electronic form, or otherwise.
- (c) If the nominated place of delivery is unattended or if delivery cannot otherwise be effected by Tasman, then Tasman may, at its option, deposit the Goods at that place or store the Goods. If the Goods are deposited, the deposit shall be deemed to be due delivery. If the Goods are stored by Tasman, then the Customer must pay and indemnify Tasman for all costs and expenses incurred for such storage, and Tasman will be at liberty to re-deliver the Goods from the place of storage at the Customer's expense.
- (d) Where the Goods are accepted for forwarding by rail to an address in a town or to a place where Tasman has no receiving depot, the Goods shall be deemed duly delivered, according to these Terms, if they are delivered to the nearest railhead.

**14. Customer's warranties:**

The Customer warrants to Tasman that:

- (a) the Goods are not subject to sanctions, illegal, or contraband;
- (b) it is either the owner of the Goods or the authorised agent of the owner of the Goods with authority to bind the owner to these Terms or otherwise has authority to arrange for the carriage and/or storage of the Goods under these Terms;
- (c) the Goods will at all times be free of objectionable matter or odours that may affect other Goods in storage, unless such condition has previously been notified in writing to Tasman and Tasman has accepted the Goods in that condition;
- (d) the Goods are sufficiently packaged to withstand handling, transport and storage and are properly labelled, except where Tasman has accepted instructions to pack and/or label the Goods;
- (e) the Customer has not asked Tasman to handle, transport or store the Goods in any way that could be unlawful;
- (f) the actual handling, transport or storage of the Goods in the usual course by Tasman will not be unlawful;
- (g) the Goods are received by Tasman within the correct temperature range (if applicable);
- (h) a compliant container weight declaration will be supplied where the Customer is to provide the consignment documentation;
- (i) it has accurately described and clearly marked the Goods and has provided Tasman all necessary instructions and information regarding the handling, care and control of the Goods having regard to the Goods nature and packaging; and
- (j) it has complied with the requirements of all applicable laws relating to the condition, nature, packaging, handling, labelling, storage, and carriage of the Goods and that it will provide Tasman (at the Customer's cost) with all necessary assistance, information and documentation to enable Tasman to comply with any of its obligations under such laws.

**15. Heavy Vehicle National Law:**

- (a) The Customer acknowledges that Tasman will not comply with any instruction by the Customer that:
  - (i.) might cause, or contribute to, a breach of the Heavy Vehicle National Law; or
  - (ii.) prevents Tasman from taking all steps that it considers to be reasonably necessary to prevent any breach of the Heavy Vehicle National Law.
- (b) The Customer agrees to meet its obligations under the Heavy Vehicle National Law Chain of Responsibility provisions.

- 16. Credit:**  
Tasman can vary or withdraw any credit facility or limit at any time at its discretion and without any liability to the Customer or any other party.
- 17. Variation and Cancellation:**
- Subject always to clause 17(b), variation or cancellation of any Order, Contract, dealing or arrangement must be on terms agreed in writing by Tasman and terms which indemnifies Tasman for any loss as a result of such cancellation.
  - The Customer acknowledges and agrees that no servant or agent of Tasman, nor any other person, has any power to waive or vary any of the terms and conditions in these Terms, unless such waiver or variation is in writing and signed by an executive officer of Tasman.
- 18. Insurance:**  
It is the Customer's responsibility to arrange for, and maintain, insurance in relation to the Goods for their full insurable value. Unless Tasman otherwise expressly agrees in writing, the Goods are not insured by Tasman and nor will insurance be arranged by Tasman on behalf of the Customer.
- 19. Entitlement to open and inspect:**  
Tasman is entitled to open any document, package or other container in which any of the Goods are placed or carried to inspect the Goods either to render them safe, determine their nature or to determine their ownership or destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced.
- 20. Preservation of Goods:**  
Tasman may at the Customer's cost, expend any amount it considers necessary or desirable to preserve the Goods or to secure the safety, storage, carriage, or shipment of the Goods.
- 21. Port and shipping:**
- It is the Customer's responsibility to comply with all regulations or requirements of customs, port and other authorities.
  - Where provision of the Services involves transport by air or sea, then the provision of such services is subject to the availability of shipping space on applicable vessels, force majeure and other factors and delivery times may vary from times quoted to the Customer.
- 22. Weight:** Tasman may, at the Customer's request, weigh Goods on behalf of the Customer. While Tasman will take all care with respect to such weighing, Tasman does not warrant that the weights recorded or reported by it are accurate for the purposes of SOLAS Verified Gross Mass or otherwise and it is the Customer's responsibility to independently verify that stated weights are correct.
- 23. Default and Recovery Costs:**
- To the extent permissible at law (including under the ACL), default or breach by the Customer of these Terms, a Contract or in any dealings with Tasman will entitle Tasman to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not) cease the provision of Services and recover from the Customer all loss of profits without prejudice to any other of its rights under these Terms, a Contract or at law.
  - The Customer will pay (on a full indemnity basis) all costs and expenses of Tasman, its legal adviser, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms, a Contract or a breach of any dealings with Tasman.
- 24. Guarantee:**  
Unless otherwise agreed in writing by Tasman, the Customer agrees to procure each of its directors to execute an agreement to guarantee and indemnify in favour of Tasman and in the form approved by Tasman. The Customer must return the signed agreement to guarantee and indemnify to Tasman at the same time as it provides Tasman with its signed credit application, or whenever otherwise requested by Tasman.
- 25. Indemnity:**  
To the extent permissible at law (including under the ACL), the Customer indemnifies Tasman, and agrees to keep Tasman indemnified against any claim or loss arising from or related in any way to any contract or dealing between Tasman and the Customer or anything arising there from, or arising as a result of, or subsequent to, any breach of these Terms or any Contract by the Customer.
- 26. Force Majeure:**
- Tasman will be released from its obligations under these Terms and any Contract to the extent that performance of the Services is delayed, hindered or prevented due to any event or circumstance beyond the reasonable control of Tasman and whether foreseeable or not including, without limitation, weather, shipping delays, industrial action, breakdowns and accidents.
  - Tasman will not be obliged to place the Customer's interests before Tasman's commercial interests.
- 27. General Customer Obligations:**  
The Customer must:
- at all times to act in utmost good faith with respect to Tasman;
  - not act in a manner which could adversely affect the reputation of Tasman;
  - promptly advise Tasman of all significant complaints, correspondence or comments relating to the Services from any source;
  - make sure that the Goods are ready for pickup so as to ensure that Tasman is not delayed in performing the Services; and
  - arrange at the Customer's cost, all necessary labour and facilities to load and unload the Goods. The Customer must make sure that such loading and unloading complies with all relevant laws, Tasman's workplace and safety standards, and Tasman's reasonable directions.
- 28. Insolvency:**  
If the Customer commits or is involved in any act of insolvency as determined by Tasman, it will be deemed in default under these Terms and all Contracts. An act of insolvency includes without limitation, bankruptcy, liquidation, receivership, administration or the like and failure to pay in accordance with these Terms or any Contract.
- 29. Privacy disclosure and consent:**  
The Customer irrevocably authorises Tasman to:
- obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in any application for commercial credit with Tasman completed by it and provided to Tasman and from any other credit provider or credit reporting agency for the purpose of assessing its application, or in connection with any guarantee given by the Customer;
  - use, disclose or exchange with other credit providers and other members of the Tasman Group information about the Customer's credit arrangements in order to assess its application for credit, monitor credit worthiness and collect overdue accounts; and
  - disclose the contents of any credit report on the Customer to any related entities of Tasman, and any of their solicitors, professional advisors or mercantile agents.
- 30. All Divisions:**  
The Customer agrees that these Terms will apply to all dealings between the Customer and Tasman and any part or member of the Tasman Group and will be deemed incorporated into all Contracts unless expressly agreed in writing otherwise by Tasman.
- 31. Lien and Security:**
- The Goods are accepted by Tasman subject to a general and particular lien for all charges due, or which may become due, to Tasman by the Customer in respect of the Services.
  - Tasman will have the right to sell the Goods (whether by public or private sale, auction or otherwise) without notice, for any unpaid amounts owing to Tasman by the Customer on any account. If Tasman sells or otherwise disposes of Goods pursuant to this clause 31(a), it does so as principal and not as an agent or trustee.
  - Where Tasman exercises its power of sale under clause 31(b), Tasman may at its option:
    - remove such Goods or part thereof and store them in such place and manner as Tasman determines at the risk and cost of the Customer;
    - sell by public auction or private sale such Goods or part thereof upon such terms as it deems fit and apply the proceeds in or towards discharge of the lien without being liable to any person for any loss thereby caused; and/or
    - dispose of abandoned Goods at the expense of the Customer in any way Tasman deems fit and without compensation being payable to the Customer,
 and the Customer must indemnify Tasman for all costs incurred by Tasman in the exercise of these rights. The exercise by Tasman of a right under subclause 31(c)(i), (ii.) or (iii.) will not preclude it from exercising the same or any other rights under any of those subclauses.
  - Tasman's lien:
    - extends to include all costs and expenses of Tasman exercising its lien, including without limitation, the costs of sale; and
    - together with other rights granted by this clause 31 will survive the delivery of the Goods and Tasman will be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever owed to it by the Customer.
  - From the time Tasman, or its Personnel receive the Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of Tasman for the payment of all amounts owing from time to time by the Customer to Tasman. Such amounts include but are not limited for all freight, demurrage, container detention charges, fines, taxes, duties, penalties, debts, charges, expenses and all other sums due and owing by the Customer. In addition, the continuing security interest will cover all the costs and expenses of exercising the lien, including the costs of selling or otherwise disposing of the Goods, legal costs and administration costs.
  - The Customer agrees that Tasman may, at the Customer's cost, register its security interest in the Goods, and all of the Customer's

present and future rights in relation to the Goods, on the Personal Property Securities Register established under PPSA.

- (g) Tasman is not required to give any notice to the Customer or any other person (including a verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
  - (h) Without limiting clause 31(g) the Customer:
    - (i.) and Tasman agree pursuant to section 115 of the PPSA that Sections 125, 142 and 143 of the PPSA do not apply to these Terms; and
    - (ii.) pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from Tasman under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.
  - (i) The Customer and Tasman agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in circumstances required by sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), if Tasman first approves in writing. Nothing in this subclause 31(i) will prevent, or be construed as preventing, any disclosure by Tasman which in Tasman's sole discretion believes is necessary to comply with its obligations under the PPSA or law.
- 32. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts:**
- (a) Nothing in these Terms or any Contract is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer Act 2010 (Cth) or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.
  - (b) If the Customer is a consumer for the purposes of the ACL, nothing in these Terms or any Contract limits any remedy available for a failure of the guarantees in sections 56 and 57 of the ACL.
- 33. Subcontracting and Personnel:**
- (a) Tasman may subcontract the whole of any part of the Services.
  - (b) The Customer must not claim against any servant, sub-contractor or agent of Tasman which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or Services. Notwithstanding, if such claim is made by the Customer then the Customer undertakes to indemnify Tasman against all consequences thereof.
  - (c) To the extent permitted by law, (including the ACL) every exemption, exclusion, or limitation in these Terms and any Contract of whatsoever nature applicable to Tasman, or to which Tasman is entitled, will also be available and extend to protect Tasman's Personnel and all persons who are or might be vicariously liable for the acts or omissions of any such person. Tasman will, for the purposes of this clause 33(c), be deemed to be acting as an agent on behalf of, and for the benefit of, all such persons and each of them, and all such persons and each of them, will to this extent be deemed to be parties to these Terms.
- 34. PPSA:**
- (a) The Customer must not register a security interest against Tasman without first providing Tasman with 7 days prior written notice.
  - (b) The parties agree that they will not disclose information of the kind noted in section 275(1) of the PPSA, except in circumstances required by sections 275(7) (b) to (e). The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), where Tasman has provided its prior consent in writing.
  - (c) Nothing in clause 34 will prevent Tasman making any disclosure it believes is necessary in order to comply with its other obligations under the PPSA or pursuant to law.
- 35. Limitation of Liability:**
- (a) Nothing in these Terms excludes, restricts or modifies any guarantee, right or remedy conferred on the Customer by the ACL, including without limitation, provisions relating to unfair contract terms, or any other applicable law insofar as they cannot be excluded, restricted or modified by agreement.
  - (b) All:
    - (i.) warranties, representations, descriptions, guarantees or conditions, whether they are express or implied by law, trade, custom or otherwise; and
    - (ii.) specific conditions, even though such conditions may be known to Tasman,are to the fullest extent expressly excluded subject always to clause 35(d).
  - (c) Subject always to clause to clause 35(d), Tasman and its Personnel will not be liable for any delay, loss, cost, liability, or expense that arises from the supply, or the failure to supply, the Services (including without limitation the deterioration of, mis-delivery of, or failure to deliver, the Goods) for any reason, including breach of contract (including a fundamental breach), negligence, breach of duty as bailee, or the wilful act or default of Tasman or its Personnel.
  - (d) If the exclusions of liability in clauses 35(b) or (c) are in any way reduced, void or not available, then Tasman's liability for any delays, loss, cost, liability, or expense arising out of these Terms or a Contract

(including without limitation liability for breach of these Terms or a Contract, in negligence, in tort or for any other common law or statutory action) will at Tasman's election be limited to:

- (i.) the supplying of the Services again;
  - (ii.) the payment of the cost of having the Services supplied again; or
  - (iii.) the value of the Goods the subject of the Services at the time the Goods were received by Tasman,
- whichever is the lower.

**36. Time Limitation on Claims:**

- (a) To the extent permissible by law (including the ACL), Tasman will not be liable to the Customer for any claims in relation to the Goods or the Services, and Tasman shall be considered discharged of all such liability unless:
  - (i.) Tasman receives written notice of such claim within 14 days after the date specified in clause 36(b) (or within a reasonable time after that date if the Customer proves that it was impossible to so notify within that period); and
  - (ii.) legal proceedings are brought in the proper forum and written notice of the same received by Tasman within 6 months after the date specified in clause 36(b).
- (b) For the purposes of clause 36(a), the applicable dates are:
  - (i.) the date of delivery of the Goods (in the case of loss or damage to Goods);
  - (ii.) the date that the Goods should have been delivered (in the case of delay or non-delivery of the Goods); and
  - (iii.) the event giving rise to the claim (in any other case).

**37. No other warranties, representations etc.:**

Except as expressly set out in these Terms or a Contract, no other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Tasman is made or given except where done so in writing and signed by an authorised officer of Tasman.

**38. No Consequential Loss:**

Tasman will not be liable to the Customer or any other person for Consequential Loss.

**39. Pallets:**

Tasman does not accept transfer of pallets onto Tasman's account. All pallets are the responsibility of the Customer and Tasman is under no obligation to facilitate their return or otherwise.

**40. Entire Agreement:**

- (a) The Contract for the supply of Services pursuant to an Order constitutes the entire agreement between Tasman and the Customer with respect to that Order. All prior negotiations, proposals, previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract.
- (b) Any terms and/or conditions sought to be imposed by the Customer upon Tasman will not apply unless expressly agreed in writing by Tasman as overriding or replacing these Terms.

**41. General:**

- (a) **Notices:** Any notice under these Terms or any Contract must be in writing, and may be delivered, faxed or posted to a party at their address or facsimile number last notified by them to the other party. A party may change its address or number for notices by notifying the other party.
- (b) **Waiver:** If Tasman elects not to exercise any rights arising as a result of breach of these Terms or a Contract, it will not constitute a waiver of any rights relating to any subsequent or other breach.
- (c) **No Merger:** Termination of these Terms, a Contract and/or dealings between the Customer and Tasman will not end those provisions of these Terms that are capable of surviving termination.
- (d) **Severability:** If a provision of these Terms or a Contract would but for this clause, be unenforceable, that provision must be read down to that extent necessary to avoid that result and if that provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Contract.
- (e) **Trusts:** The Customer agrees that these Terms and all Contracts bind it not only in its own capacity, but also as the Trustee of every trust of which it is a trustee.
- (f) **Set-Off:** Tasman will be entitled to set off against any money owing to the Customer amounts owed to Tasman by the Customer on any account whatsoever. However the Customer may not set off any amounts owing by Tasman to it against any amount due by it to Tasman.
- (g) **Jurisdiction:** All contracts made with Tasman will be deemed to be made in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the appropriate Courts in or nearest Melbourne in that State.