



21 LOGISTICS

GENERAL TERMS AND CONDITIONS OF TRADE (Effective as at October 2023)

To the fullest extent legally permissible all dealings between the customer (including all related and/or associated companies and/or other entities, all successors and/or assigns and in its own capacity and as trustee of each and every trust of which it is trustee) (jointly "the **Customer**") and C & S Priestman Pty Ltd ACN 139 920 157 ATF for The Priestman Family Trust trading as '21 Logistics' (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "21 Logistics" ("the **Company**") and/or otherwise relating to any goods and/or services (the "**goods**" and/or the "**services**") are subject to the following terms and conditions ("these **Terms**") unless otherwise expressly agreed in writing

DEFINITIONS AND INTERPRETATION

1. Definitions

In these Terms, the following defined terms will have the following defined Meanings:

"**Airfreight Convention**" means either:

- (a) The Conventions for the Unification of Certain Rules for the International Carriage by Air signed at Montreal on 28 May 1999; or
- (b) The Convention for the Unification of Certain Rules relating to the International Carriage by Air, signed at Warsaw on 12 October 1929; either unamended or amended by the Hague Protocol 1955; at Guatemala City 1971, by the additional Protocol No. 3 of the Montreal 1975 and/or by the additional Protocol No.4 of Montreal 1975, whoever may be applicable;

"**AQIS**" means the Australian Quarantine Inspection Service;

"**ACL**" The Australian Consumer Law in Schedule 2 of the *Competition and Consumer Act 2010* (Cth);

"**Authority**" means the authority and acknowledgement by which the Customer appointed the Company to act on its behalf on these Terms;

"**Terms**" means these terms and conditions;

"**Company**" means C & S Priestman Pty Ltd ACN 139 920 157 ATF for The Priestman Family Trust trading as Twenty One Logistics or any of its Related Body Corporate and the nominees, agents, subagents and employees of the Company or any of its Related Body Corporate.

"**Consequential Loss**" includes without limitations, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, or any similar loss or damage was contemplated by the parties at the time of entering into an agreement in relation to the Services or at the time of the act or omission giving rise to the loss or damage;

"**Customer**" means:

- (a) If there is an Authority, the customer named in the Authority; or
- (b) If there is no Authority, any entity that instructs the Company to perform the Services,

And will include all employees, officers, agents and contractors of the Customer and includes as otherwise defined above in the heading recital;

"**Customs**" means the Australian Customs and Border Protection Service;

"**Dangerous Goods**" means good which are noxious, hazardous, inflammable, explosive or offensive (including radioactive materials) or may become noxious, hazardous, inflammable, explosive or offensive or radioactive or may become liable to cause damage to any person or property whatsoever whether precluded by Laws or otherwise;

"**Government Authorities**" means, without limitation, all Government departments and agencies whether prescribed by law or otherwise with responsibility for the imports and exports of goods, the collection of revenue on the import and export of goods and the transport of those goods to include, without limitation, Customs, AQIS and the Australian Taxation Office;

"**GST**" has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law;

"**GST Law**" means GST law as defined in *A New Tax System (Goods & Services Tax) Act 1999* (Cth), as amended;

"**Hague Rules**" means the International Convention for the Unification of Certain Rules relating to Bill of Lading signed at Brussels on 25 August 1924, or those rules as amended by the Protocol signed at Brussels on 23 February 1968 (the Hague Visby Rules) and the SDR Protocol (1979);

"**Laws**" means any laws, regulations or guidelines of the Commonwealth of Australia, any of the States, Territories or Municipalities of Australia, or of any country from which, through which or into with the goods are carried including, without limitation all regulations, ordinances and directions made pursuant to the Laws and any successor Laws

"**Related Body Corporate**" has the same meaning as under the *Corporations Act 2001* (Cth);

"**Services**" means any performance of work by the Company for the Customer in any way connected with the goods including, without limitation:

- (a) making any reports, entries and declarations required by any Government Authorities;
- (b) quoting the ABN as may be required under the GST Law;
- (c) providing all necessary information and complete all necessary documentation and reports for the purposes of any Government Authorities; and
- (d) entering into contracts with Subcontractors on behalf of the Customer to enable the carriage, import, export, storage or transportation of the goods.

"**Sub-contractor**" means any third party appointed by the Company to assist in the provision of the Services;

"**Quotation**" means a written quotation for the provision of Services under these Terms.

2. Interpretation

- (a) These Terms shall be governed by and construed in accordance with the Laws of the State or Territory in which this Contract was made
- (b) All the rights, immunities and exemptions from the liability in these Terms shall continue to have their full force and affect in all circumstance and not

withstanding any breach of these Terms by the Company or any other person entitled to the benefit of such provision and irrespective of whether such may constitute a fundamental breach of contract.

- (c) In the interpretation of these Terms the singular includes the plural and vice versa, and words importing corporations mean and include natural persons and vice versa.
- (d) References to any Laws or to any section or provision of any Laws includes any statutory modifications, re-enactments, substitutions or replacements thereof and all Laws issued there under
- (e) Reference to any Convention or any Article of any Convention includes any modifications, substitutions or replacements thereof.
- (f) No agent or employee of the Company has the authority to waive or vary these Terms unless the Company approves such waiver or variation in writing. Any forbearance by the Company in enforcing these Terms does not constitute a waiver. If the Company waiver of another breach of the same or any other Condition or as a continuing waiver.
- (g) Where any term or condition of these Terms is held to be illegal or unenforceable, it may be severed and shall in no way affect or prejudice the enforceability of any other Terms.
- (h) The use of a Customer's own form shall in no way derogate from these Terms the whole of which shall, notwithstanding anything contained in any such form, constitute the terms and conditions of the agreement so entered into. Any provision in any form which is contrary to any provision of these Terms shall to the extent of such inconsistency be inapplicable.
- (i) Headings have no effect on the interpretation of these Terms
- (j) The Customer must not assign the Customer's rights or transfer the Customer's obligations under these Terms without the Company's prior consent. The Company may assign the Company's rights and obligations under these Terms without the Customer's consent.

ACCEPTANCE OF TERMS AND NATURE OF SERVICES

- 3. Acceptance of Company Terms:
 - a. By giving the Company instructions the Customer accepts these Terms on behalf of itself and/or other legal entity who has an interest in the performance of the Services by the Customer irrespective of whether there is a signed Quotation or not. These Terms also cover and can be invoked by anyone the Company may use or sub-contract to collect, transport, deliver or perform other services as well as our employees, directors and agents. Only the Company's authorised officers may agree to a variation of these Term in writing.
 - b. If the Customer gives the Company any oral or written instructions that conflict with these Terms, the Company will not be bound by such instructions and these Terms will prevail to the extent of any inconsistency.
- 4. All and any business undertaken and Services provided by the Company is transacted subject to these Terms each of which shall be deemed to be incorporated in and to be a condition of any agreement between the Company and the Customer. The Company only deals with goods subject to these Terms. These Terms shall prevail over any terms and conditions in any transport document including any bill of lading, waybill or consignment note except to the extent

provided for in these Terms. The Company is not a common carrier and will accept no liability as such. The Company in its sole and absolute discretion may refuse to deal with any goods without assigning any reason.

ABILITY TO APPOINT AGENTS, SUBCONTRACTORS AND THIRD PARTIES

- 5. Any instructions given to the Company may in the absolute discretion of the Company be complied with by the Company as agent for the Customer as disclosed principal or by the Company as principal contractor by its own servants performing part or all of the relevant Services or by the Company employing or instructing or entrusting the goods to Sub-contractors on such other conditions as they may stipulate to perform part or all of the Services. The Customer shall be bound by such other conditions and shall release the Company from liability and indemnify the Company against any claims arising out of their acceptances.
- 6. Any term in these Terms which limits the Company's liability will also extend and apply to all agents and employees of the Company and any Sub-contractor. For the purpose of this **clause 5**, as the Company is deemed to be acting as agents, employees and Sub-contractors and each of those persons shall be deemed to be a party to these Terms.
- 7. The Customer undertakes that no claim or allegation will be made, whether by the Customer or any other person, against the Company's agents, employees or Sub-contractors and if such claim or allegation is made the Customer will indemnify the Company for the consequence thereof. It is agreed that this release and indemnity operate irrespective of how the claim or allegation arises including negligence or out of events which may constitute a fundamental breach of contract.

PAYMENT, RECOVERY OF FEES

- 8. The Company is entitled to retain and be paid all brokerages commissions, allowances and other remunerations customarily retained by or paid to shipping and forwarding agents and (where the Company accepts specific instructions under **clause 22** to effect insurance) insurance brokers whether declared or otherwise and no such brokerage, commission or allowance or other remuneration shall be payable or allowable to the Customer. The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the goods and charge additional fees accordingly.
- 9. Quotations are given on the basis of immediate acceptance and subject to the right of the withdrawal before acceptance and revision after acceptance. If any changes occur in the rates of Customs, duty, tax, freight, levies, warehousing, insurance premiums or other charges applicable to the goods or the provision of the services, quotations and charges shall be subject to revision, and/or levies may be applied accordingly with or without notice to the Customer.
- 10. The Customer and the senders, owners and consignees and their agents, if any, shall be jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit or outlay of whatsoever nature levied by any Government Authority or the authorities at any port or place in connection with the goods and for any payments, fines, expenses, loss or damage incurred or sustained by the Company in connection therewith and shall indemnify the Company, its servants and agents from all claims by third parties howsoever arising in connection with the goods and/or the provision of the Services.
- 11. The Company's charges including freight have been calculated on the basis of particulars furnished by, or on

behalf of the Customer. The Company may at any time open any container or any other package or unit in order to reweigh, remeasure or revalue the contents and if the particulars furnished by or on behalf of the Customer are incorrect, it is agreed that a sum equal to either five times the difference between the correct freight and the freight charged, or double the correct freight less the freight charged, whichever sum is smaller, shall be payable as liquidated damages to the Company.

12. The Company's fees and/or charges to the Customers including freight shall be deemed fully earned on receipt of the goods by the Company and shall be paid and non-returnable in any event, including where cargo is lost or where a voyage or flight at the port or airport of shipment is elsewhere, any forwarding of the goods or any part thereof shall be at the risk and expense of the Customer and the senders, owners and consignees
13. When goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the consignee or any other person the Customer shall remain responsible for the same if they are not paid by such consignee or other person.
14. All unpaid fees and/or charges shall be paid in full and without offset, counterclaim or deduction, in the currency of the place of receipt of the goods or at the Company's option, in the currency of the place of delivery at the Telegraphic Transfer selling rate of the ANZ Bank in effect on the day of payment. If the date determined above falls on a day which banks are closed for business the rate ruling on the next succeeding business day shall apply.
15. If the amounts payable or due under any agreement between the Company and the Customer are not made within seven days of the due date, the Customer will be in default and without limiting any other rights to the Company, the Customer shall pay to the Company, by the way of liquidated damages, interest to be calculated in accordance with the ANZ Bank business overdraft reference rate to the amount outstanding calculated from the due date until payment is made in full.
16. The Company reserves the right to offset any amounts receivable from the Customer against any amounts payable to that Customer or any company affiliated with the Customer or any Related Body Corporate of the Customer. This right exists irrespective of the date the liability has been created or debt incurred with the Company.
17. The Company, its servants or agents shall have a special and general lien on all goods and documents relating to goods and a right to sell the goods and documents relating to the goods whether by public or private sale or auction without notice, for fees, freight, demurrage, detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover the costs and expenses of exercising the lien including without limitation, the costs of the same and reasonable legal fees. The lien and rights granted by this **clause 17** shall survive delivery of the goods and the Company shall be entitled to retain the proceeds of the sale of the goods or documents relating to the goods in respect of any outstanding amounts referred to in this clause. The Company sells or otherwise disposes of such goods or documents relating to goods pursuant to this **clause 17** as principal and not as agent and is not the trustee of the power of sale.
18. Without limiting the generality of **clause 17**, the Customer acknowledges that the Company shall have a security interest which attaches over all the goods and documents

in relation to goods which are the subject of the Company's Services and the Company's possession. The Customer acknowledges and consents to the registration and perfection of the interest set out in this **clause 18** for the purposes of the act or acts and regulations that is, or are, enacted following the state and federal bills containing the words "Personal Property Securities" as that term is understood under *Personal Property Securities Act 2009* (Cth) as amended from time-to-time, or similar words of the same effect, in their title.

WARRANTIES BY THE CUSTOMER

19. Customers (on behalf of themselves, the senders, the owners and the consignees) entering into transactions of any kind with the Company expressly warrant that:
 - (a) they are either the owners or the authorised agents of the owners of any and all goods or property the subject matter of the Services;
 - (b) they will provide all documents, information and assistance required by the Company to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities;
 - (c) they will retain all documents or records in the manner required by Government Authorities;
 - (d) they will observe all requirements of any Government Authorities;
 - (e) it will maintain as confidential the terms of the Authority and these Terms;
 - (f) they have complied with all laws and regulations of any Government Authorities relating to the nature, condition, packaging, handling, storage and carriage of the good;
 - (g) except where the Company is instructed in writing to pack the goods, the goods are packed to withstand ordinary risks of handling storage and Carriage, having regard to their nature;
 - (h) the goods are not Dangerous Goods; and
 - (i) the goods and their carriage do not contravene any LawsBy entering into the transaction they accept these Terms for themselves and for all other parties on whose behalf they are acting and they warrant that they have authority so to do.
20. The Customer and the senders, owners and consignees of any goods and their agents, if any, shall be deemed to be bound by and to warrant the accuracy of all descriptions values and other particulars furnished to the Company for customs consular and other purpose and shall jointly and severally indemnify the Company against all losses, damages, expenses and fines arising from any inaccuracy or omission, even if such inaccuracy is not due to any negligence, wilful act or omission.
21. The Customer acknowledges that a breach or failure to observe all or any of the warranties in **clause 18 and 19** could lead to penalties or damages to the Customer and also to the Company and the Customer agrees to provide the indemnity to the Company

INSURANCE

22. No insurance will be effected by the Company except upon express instructions as to the risks to be insured against and the value or values to be declared in writing by the Customer or all insurances effected by the Company is subject to the usual exceptions and conditions of the policies of the insurance company or underwriters accepting the risk. The Company shall not be under any obligation to effect a separate insurance on each consignment by may declare it on any open or general policy. Should the insurers dispute their liability for any reason the insured shall have recourse against the insurers only and the Company shall not be under any responsibility or liability in relation thereto, notwithstanding that the premium upon the policy may not be at the same

rate as that charged by the Company or paid to the Company by the Customer.

STORAGE AND TRANSPORT

23. Subject to express instructions in writing given by the Customer and by the Company, the Company reserves to itself complete freedom of choice by means route and procedure to be followed in the handling and transportation of goods. If in the Company's opinion it is necessary or desirable in the Customer's interests to depart from any express instructions, the Company shall be at liberty to do so.
24. The Customer agrees that:
- (a) in the case of carriage by sea, the value of the goods will not be declared or inserted in the Bill of Lading for the purpose of extending a ship or carrier's liability under the *Carriage of Goods by Sea Act 1991* and the *Carriage of Goods by Sea Regulations 1998* except upon express instructions given in writing by the Customer;
 - (b) in the case of carriage by air, no optional declaration of value to increase the air-carrier's liability under Article 22 of Schedule 1A to the *Civil Aviation (Carrier's Liability) Act 1959* or Article 22 (2) OF Schedule 1, 2, 4 or 5 to the *Civil Aviation (Carrier's Liability) Act 1959* will be made except upon express instructions given in writing to the Customer;
 - (c) in the case of carriage by land, or any carriage ancillary to the carriage mentioned above or not expressly provided for under these Terms, under Convention or under any Laws, the Customer agrees that the value of the goods will not be declared or inserted into a contractual document or as part of the trading terms for the purpose of extending the forwarder or carrier's liability under any circumstance expect upon express conditions agreed to in writing by the carrier or forwarder who expressly elect to waive that right;
 - (d) in all other cases where there is a choice of tariff rate according to the extent of the liability assumed by carriers, warehousemen, stevedores or others no declaration of value (where optional) will be made for the purposes of extending liability and goods will be forwarded or dealt with at Customer's risk unless express instructions in writing to the contrary are given by the Customer; and
 - (e) the Company will have no obligation to take any action in respect of any goods that may be recognisable as belonging to the Customer unless it has received suitable instructions relating to such goods together with necessary documents. In particular, the Company will not be obliged to notify the Customer of the existence or whereabouts of the good or to examine them or to take any other steps for their identification, protection or preservation or for the preservation of any claim by the Customer or any other party against the carrier, insurer or any third Party.

PERISHABLE, NON-DELIVERABLE, UNCOLLECTED, HAZARDOUS AND DAMAGED GOODS

25. Perishable goods, which are not taken up immediately upon arrival or which are insufficiently addressed or marked otherwise not identifiable may be sold or otherwise disposed of without any notice to the Customer and payments or tender of the net proceeds of any sale after deduction of all costs, expenses and charges incurred by the Company in effecting such sale or disposal shall be equivalent to delivery. All charges and expenses arising in connection with the sale or disposal of the goods shall be paid by the customer
26. Non-perishable goods which cannot be delivered either because they are insufficiently or incorrectly addressed or because they are not collected or accepted by the consignee may be sold or returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the Customer at the address which

they gave to the Company on delivery of the goods. All costs, charges and expenses incurred by the Company arising in connection with the sale or return of the goods shall be paid by the Customer and may be deducted from the same of the goods. A communication from any agent or correspondent of the Company to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact.

27. Where the goods are stored by the Company for the Customer and they are uncollected for whatever reason they may returned at the Company's option at any time after the expiration of 21 days from a notice in writing sent to the Customer at the address which the Customer gave to the Company on delivery of the goods. All costs, charges and expenses incurred by the Company and arising in connection with the storage, sale or return of the goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the goods. A communication from the Company or its agent to the effect that the goods cannot be delivered for any reason shall be conclusive evidence of that fact. In the event that the Company, acting reasonably, forms the view that the Goods are 'uncollected goods' as that term is defined under section 54 of the *Australian Consumer Law and Fair Trading Act 2012 (Vic) (Act)* then the Company reserves its rights to dispose of all such 'uncollected goods' in accordance with its rights and obligations under Part 4.2 of the Act. In the event that any sale of goods pursuant to this clause does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Customer acknowledges that it is not released from the remainder of the liability to the Company merely by sale of any goods. For the avoidance of doubt, if the Company sells or otherwise disposes of any such goods it does so as principal and not as agent and is not trustee of the power of sale.
28. Disposal of goods - If in the reasonable opinion of the Company, any uncollected goods are either not fit for sale, fail to sell when offered for sale, pose a public health risk or of insufficient value to warrant the expense of attempting to sell the Company reserves its rights absolutely to dispose of all Goods the contents of any shipment by any means it deems to be appropriate acting at all times in accordance with its rights and obligations under Part 4.2 of the Act.
29. If the Company acting reasonably determines it is a health and safety risk to conduct an inventory of any uncollected goods, where the disposal of such goods requires the Company to open any bags or boxes, due to the inherent safety risks of such an action, the Company may elect in its absolute discretion acting reasonably and subject at all times to its rights and obligations under the Act, to dispose of all bagged and/or boxed items without any obligation of opening them.

DANGEROUS AND RESTRICTED GOODS

30. Except under special arrangements previously made in wiring the Company will not accept or deal with any Dangerous Goods. Any Person delivering such goods to the Company or causing the Company to handle or deal with any such goods (except under special arrangements previously made in writing) shall be liable for all loss or damage caused thereby and shall indemnify the Company against all penalties, claims, damages, costs and expenses arising in connection therewith. In the event the goods are found to be Dangerous Goods the goods may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person whose custody they may be in at the relevant time. If such goods are accepted

under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods or property.

31. Except under special arrangements previously made in writing the Company will not accept bullion, coins, precious stones, jewellery, valuable, antiques, pictures, livestock or plants and the Company will not accept liability whatever for any such goods except under special arrangements previously made in writing

INSPECTION

32. The Company may without liability open any package or other container which the goods are placed or carried to inspect the goods either to determine their nature or condition or to determine their ownership or destination.

STORAGE OF GOOD PENDING DELIVERY

33. Pending forwarding and delivery goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer's or owner's risk and expense. In circumstances where the Company stores the goods, the Company may, by notice in writing, require that the Customer remove the goods for any reason whatsoever within 7 days from receipt of a notice delivered to the address which the Customer gave to the Company on delivery of the goods. If the Customer fails to do so, the Company may remove the goods and store them in such a manner and in such a place as the Company thinks appropriate at the Customer's expense and risk.

COD GOODS

34. The Company may in its absolute discretion refuse instructions to collect payment on delivery (COD) in cash or otherwise. Where the Company does accept such instructions its only obligation to the Customer is to use reasonable diligence and care in such collection. The Company will not be liable for any loss or damage arising from such collection whether caused by negligence or otherwise.

LIMITATION OF LIABILITY, FORCE MAJEURE AND INDEMNITY FROM LIABILITY

35. To the extent permitted by law:
- a. the Company excludes all conditions, warranties and guarantees provided or implied by any State, Territory or Commonwealth law, including but not limited to the statutory consumer guarantees described in the ACL and the provisions of any State or Territory legislation other than Non-Excludable Terms which are any conditions, warranties and guarantees provided or implied by any State, Territory or Commonwealth law, including but not limited to the statutory consumer guarantees described in the CCA and the provisions of any State or Territory legislation which cannot be lawfully excluded;
 - b. the Company's total liability for a breach of any Non-Excludable Condition is limited to the remedies available under Section 64A of the ACL or similar remedies under any applicable State or Territory fair trading legislation including the Act;
 - c. the Company will not be liable for any loss of income, loss of profits, loss of markets, loss of reputation, loss of customers, loss of use, loss of an opportunity, loss of deterioration, loss of business, loss of reputation or goodwill, loss of value or use of intellectual property or other proprietary rights even if the Company had knowledge that such damages or loss might arise or for any other indirect, incidental, special

or consequential damages or loss howsoever arising including without limitation our breach of contract, negligence, wilful act or omission or default.

36. Further, without limiting the effect of any other clause, to the extent permitted under law the Company its servants and agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provisions of its Services to the Customer (unless such loss or damage occurs whilst the goods are in the actual custody of the Company and under its actual control and such loss or damage is due to the wilful neglect or default of the Company or its own servants) and the Customer agrees to indemnify the Company in respect of any claims made by Sub-Contractors or third parties concerning the provisions of services by the Company and, without limitation, the following matters are expressly covered by this limitation of liability:
- (a) any liability to pay amounts to Government Authorities (including, without limitation, customs duty or GST) that would not have otherwise been payable or any other penalties imposed directly on the Company, its servants or agents as a result of their reliance on incorrect information provided by the Customer, consignor or consignee of the goods or their respective agents);
 - (b) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;
 - (c) any costs incurred by the Company on behalf of the Customer to any other person in relation to the provision of the Services including the carriage of the goods;
 - (d) any loss or damage resulting from any delay in delivery, forwarding or transit or failure to deliver goods, any deterioration, contamination, evaporation or any Consequential Loss (whether or not the loss or damage was contemplated by the Company or the Customer as a likely result of an act or omission) or loss of market however caused;
 - (e) any liability for the failure to follow instructions given to it by or on behalf of the Customer whether or not such failure is wilful;
 - (f) any damage or expense arising from or in any way connected with marks, numbers, brands, contents, quality or description of any goods;
 - (g) any loss or damage resulting from fire, water, explosion or theft whether caused by negligence of the Company's servants or otherwise; and
 - (h) any loss or damage occasioned by treatment of the goods by any Government Authorities (including without limitation, any fumigation or decontamination or other treatment by AQIS).
37. The Company and Customer acknowledge that goods moving by airfreight are subject to the applicable Airfreight Convention. The Customer's recovery of loss or damage, if any, is against the airline carrier and is limited in accordance with the Airfreight Convention or any other Conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the goods are in the possession of the airline carrier, the Company will seek to recover on behalf of the Customer from the principal airline carrier amounts payable under the aforementioned Conventions as they are applicable. The Customer will indemnify, defend and hold the Company

harmless against any claims for loss or damage to their goods incurred whilst they were in the possession of the airline carrier.

38. The Company and Customer acknowledge that goods moving by seafreight are subject to the applicable international treaties including the Hague Rules. The Customer's rights to recovery of loss or damage, if any, is against the seafreight carrier and is limited in accordance with the Hague Rules or any other Conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the goods are in the possession of the seafreight carrier, the Company will seek to recover on behalf of the Customer from the carrier amounts payable by the Hague Rules as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their goods incurred whilst they were in the possession of the seafreight carrier.
39. The Company and Customer acknowledge that goods moving by airfreight or seafreight may necessary involve a part of transport undertaken by other means in order to comply with the terms of carriage under these Terms or any contract between the parties. Where this is so, and no international treaty is applicable which covers the additional transport, the Customer's recovery of loss or damage, if any, is against the carrier and is limited in accordance with the Convention does not envisage liability of the kind of transport concerned. In the event of any loss or damage suffered by the Customer whilst the goods are in the possession of a third party carrier amounts payable under these Conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their goods incurred whilst they were in the possession of the third party carrier.
40. The Company shall not be liable to the Customer for any breach or failure to performs its obligations under these Terms for any damage or loss to goods resulting from one of the following:
- (a) perils, dangers and accidents of the sea or other navigable waters;
 - (b) act of God;
 - (c) act of war;
 - (d) pandemics;
 - (e) act of terrorism;
 - (f) act of public enemies;
 - (g) arrest or restraint of princes, rulers or people, or seizure under legal process;
 - (h) strikes or lock-outs or stoppage or restraint of labour from whatever case, whether partial or general;
 - (i) riots an civil commotions;
 - (j) saving or attempting to save life or property at sea; or
 - (k) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the agents or servants of the Company.
41. In addition to and without prejudice to any other Condition the Customer undertakes that it shall in any event indemnify the Company against all liabilities suffered or incurred by the Company arising directly or indirectly from or in connection with the Customer's instructions or their implementation or the goods, and in particular the Customer shall indemnify the Company in respect of any liability it may be under to any servant, agent or Sub-contractor, or any haulier, carrier, warehouseman, or other person whatsoever at any time involved with the goods arising out of any claim made directly or indirectly against

any such party by the Customer or by any sender, consignee or owner of the goods or by any person interested in the goods or by any other person whatsoever.

42. In addition to and without prejudice to any other Condition, the Company shall have the right to enforce any liability of the Customer under these Terms or to recover any sums to be paid by the Customer under the Terms not only if it thinks fit against or from the sender and/or owners and/or consignees of the goods.
43. Liability of the Company arising out of any one incident whether or not there has been any declaration of value of the goods, for breach of warranty implied into these Terms by the Trade Practices Act 1974 or howsoever arising, is limited to any of the following as elected by the Company.
- (a) the supplying of the Services again; or
 - (b) the payment of the cost of having the Services supplied again; or
 - (c) the lesser of A\$200.00 for loss of or damage to any such goods, packages or units or A\$2.00 per kilogram of the gross weight for loss of or damage to any such goods, packages or A\$20.00 per package or unit lost or damaged.

For the purposes of this clause the word "package" shall include the contents even if particulars have been provided or incorporated in any document of the Company.

NOTIFICATION OF LIABILITY

44. To the extent permitted by law, any claim for loss or damage must be notified in writing to the Company within three (3) days of delivery of the goods or of the date upon which the goods should have been delivered. In the event that the said time period shall be found contrary to any compulsorily applicable Convention or Laws for, period prescribed by such Convention or Laws shall then apply but in that circumstance only.

GUARANTEE, UNDERTAKING AND INDEMNIFY BY DIRECTORS AND SHAREHOLDERS

45. If the Customer is a company, the directors and shareholders of that company will guarantee the debts, undertake to perform the obligations of the Customer and indemnify and keep indemnified the Company against the debts of the Customer. For the purposes of this clause 42, the Customer will ensure that its directors and shareholders will sign any other documents as reasonably required by the Company to evidence and confirm any guarantee, undertaking and indemnity.

GENERAL

46. Reliance - The Customer acknowledges and agrees that it has not relied on any prior representation or promises made by the Company except as set out under these Terms.
47. No Waiver - No failure or delay by the Company in exercising any right, power or privilege to which it is entitled shall operate as a waiver, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise. These Terms and obligations and acknowledgments hereunder may only be waived or modified by ACR by an agreement in writing between the parties hereto.
48. Severance- In the event of any part of these Terms becoming void or unenforceable, then that part shall be severed from and the remaining terms and provisions hereof shall remain in full force and effect.
49. Waiver and Variation
- a. The Company may only waive a right or remedy created by these Terms in writing. ACR's delay in exercising a right or remedy does not constitute a waiver of that right or remedy, nor

does ACR's waiver (either wholly or in part) operate as a subsequent waiver of the same or any other right.

- b. ACR reserve the right to amend these Terms from time to time without prior written notice to the Customer.

50. Entire Agreement- These Terms constitutes the entire agreement of the parties about its subject matter and any other agreements, understandings and negotiations on that subject matter (whether oral or in writing) will, unless specifically agreed to by ACR in writing, have no effect.

51. Applicable Law- These Terms shall be governed by and construed in accordance with the laws of the State of Victoria, Australia. The parties hereby agree to submit to the non-exclusive jurisdiction of the Courts of Victoria and any court which may hear appeals there from.