

1. Definitions

In these terms and conditions, unless the context requires otherwise:

- (a) **"Company"** means Allpoint Nominees Pty Ltd (ACN 083 731 257) trading as K Trans;
- (b) **"Customer"** means the customer as specified in the Quote or the person/entity to whom the Company provides Goods and/or Services;
- (c) **"Dangerous Goods"** means any goods, substances, or materials which are dangerous, hazardous, flammable, explosive, toxic, corrosive, radioactive or otherwise capable of causing harm to persons, property, the environment or other goods, including (without limitation) goods classified as dangerous goods under any applicable law, regulation, code or standard, and any goods which the Company reasonably considers to be dangerous, hazardous or volatile;
- (d) **"GST"** has the same meaning it has in *A New Tax System (Goods and Services Tax) Act 1999* (Cth);
- (e) **"Goods and/or Services"** means the goods and/or services (as applicable) supplied by the Company;
- (f) **"Insolvency Event"** means, in respect of the Customer, the occurrence of any one or more of the following events:
 - (i) the Customer is insolvent, or is taken to be insolvent, within the meaning of section 95A of the *Corporations Act 2001* (Cth);
 - (ii) an application, order, resolution, or proposal is made for the winding up, deregistration, or dissolution of the Customer (other than for the purpose of a solvent reconstruction approved by the Company);
 - (iii) the Customer enters into, or resolves to enter into, any form of external administration, including voluntary administration, a deed of company arrangement, receivership, receivership and management, provisional liquidation, or liquidation;
 - (iv) a controller, receiver, receiver and manager, administrator, liquidator, provisional liquidator, trustee in bankruptcy, or similar officer is appointed to the Customer or any of its assets;
 - (v) the Customer becomes bankrupt, commits an act of bankruptcy, or becomes subject to any arrangement, assignment, moratorium, or composition with its creditors;
 - (vi) the Customer suspends, ceases, or threatens to suspend or cease the conduct of its business;
 - (vii) any step is taken to enforce security over a substantial part of the Customer's assets; or
 - (viii) the Company reasonably believes that any of the events referred to in this definition is likely to occur.
- (g) **"PPSA"** means the *Personal Property Securities Act 2009* (Cth);
- (h) **"Prices"** means the prices payable to the Company by the Customer for the Goods and/or Services supplied by the Company as specified in the Quote or a tax invoice issued by the Company in accordance with these Terms and Conditions;
- (i) **"Quote"** means the document entitled "Quote" issued by the Company to the Customer containing a description of the Goods and/or Services to which these Terms and Conditions apply, including the Price and any other special conditions relating to the supply of the Goods and/or Services; and
- (j) **"Terms and Conditions"** means these terms and conditions which govern the provision of Goods and/or Services by the Company to the Customer.

2. Application

- (a) These Terms and Conditions apply to all Goods and/or Services supplied by the Company to the Customer.
- (b) These Terms and Conditions, together with any applicable Quote or purchase order (as applicable and once accepted), any credit approval, and any deed of guarantee and indemnity, set out the entire agreement between the Company and the Customer in relation to the provision of Goods and/or Services.
- (c) If there is an inconsistency between a provision in these Terms and Conditions and a term or condition in the Quote, the latter prevails to the extent of such inconsistency.

3. Quote and Purchase Order

- (a) The Quote will be valid and available for acceptance before the expiry date specified in the Quote, or if no expiry date is specified, within 30 days of the date of the Quote. The Company may, at any time prior to acceptance, withdraw, revoke or vary the Quote by written notice to the Customer.
- (b) The Prices and any special conditions set out in the Quote are based on initial information or instructions provided by the Customer.
- (c) The Customer may accept the Quote either by:
 - (i) issuing a purchase order to the Company; or
 - (ii) confirming acceptance in writing by email to the Company prior to the expiry of the Quote and before any withdrawal or revocation by the Company.
- (d) An email acceptance will only be valid and effective if it clearly:
 - (i) identifies the relevant Quote;
 - (ii) expressly states the Customer accepts the Quote; and
 - (iii) specifies any agreed variations (if applicable).
- (e) Upon receipt by the Company of a purchase order or valid email acceptance issued by the Customer in response to a Quote, a binding contract is formed between the Company and the Customer. Any purchase order issued by the Customer shall be deemed to be issued pursuant to, and governed by, these Terms and Conditions and the applicable Quote.

- (f) The Company does not accept, and expressly rejects, any terms or conditions contained in a purchase order that are inconsistent with, or additional to, these Terms and Conditions or the Quote, unless expressly agreed in writing by the Company. For the avoidance of doubt, no terms or conditions endorsed upon, delivered with, or referred to in a purchase order shall form part of the contract between the parties unless expressly accepted in writing by the Company.
- (g) Acceptance or performance by the Company of any purchase order does not constitute acceptance of any such inconsistent or additional terms.
- (h) In the event of any inconsistency between a purchase order, the Quote, and these Terms and Conditions, the order of precedence shall be:
 - (i) the Quote;
 - (ii) these Terms and Conditions; and
 - (iii) the purchase order.

4. Prices and Invoicing

- (a) Subject to clause 14 the Customer must pay the Prices within 30 days of the date of invoice from the Company, unless otherwise agreed in writing.
- (b) If the Customer wishes to dispute an invoice, the Customer must notify the Company in writing within 7 days of the invoice date, providing details of the dispute and the reasons an adjustment is sought. The Company will review and respond within 14 days of receipt of the notice, following which the parties will use reasonable endeavours to resolve the dispute. If no query is received by the Company within the specified time, the invoice will be deemed accepted in full, except in the case of manifest error.
- (c) Tax invoices and adjustment notes (if any) are sent via email to the Customer to the email address nominated by the Customer which constitutes sufficient notice of the amount due.
- (d) Unless otherwise stated, the Prices do not include GST. The Customer must pay to the Company an amount equal to any GST which the Company must pay for any supply by the Company under these Terms and Conditions, without deduction or set-off of any other amounts.
- (e) The Company reserves the right to review and vary the Prices if:
 - (i) the Company provides additional goods and/or services which do not form part of the Quote;
 - (ii) the Prices are affected by incomplete, inaccurate, or misleading information or instructions provided by the Customer;
 - (iii) the Company incurs additional costs or is required to vary the scope of the Goods and/or Services as a result of unforeseen circumstances, including (without limitation) site, access and safety restrictions; the need for additional support structures (including beams, stools, cradles or frames); prerequisite works by the Customer or third parties not being completed or being defective; limitations on space, load capacity or equipment availability; delays in obtaining approvals or permits from any governing body or authority; cargo lifting, lashing or restraint requirements; cargo stability or load restraint issues, or cargo conditions not meeting required specifications or standards;
 - (iv) penalty rates apply for work performed on weekends, public holidays, or outside ordinary business hours, unless expressly stated otherwise in the Quote; or
 - (v) the Prices are subject to a fuel levy, in which case the prevailing monthly fuel levy rate applicable at the time of actual freight movement will apply;
- (f) The Customer must pay the Prices as reviewed or varied by the Company according to the structure of the Prices set out in the Quote (if any) or otherwise the Company standard fees and pricing from time to time.
- (g) The Customer acknowledges and agrees any changes to the Prices as permitted under these Terms and Conditions will be reflected on the Company's invoice.
- (h) All payment must be made in Australian Dollars (AUD) and may be made by electronic funds transfer, credit card, or any other method as agreed between the Company and the Customer. Any payment made by credit card will incur a credit card surcharge of 1.25% (or such other prevailing rate as determined by the Company from time to time), which is payable by the Customer in addition to the amount due.
- (i) Without limiting any of the Company's other rights, the Company is entitled to charge and the Customer must pay, interest on overdue amounts at an interest rate of 10% per annum. Where interest is charged, it will accrue daily on amounts outstanding from the date on which they were due and payable until the Company receives payment in full.
- (j) The Customer is not entitled to set off against, or deduct from the Prices, any sums owed or claimed to be owed to the Customer by the Company nor to withhold payment of any invoice and any amounts due and payable to the Company because the invoice is in dispute or a dispute has arisen between the Company and the Customer.

5. Customer Warranties

The Customer represents and warrants that:

- (a) all goods tendered for carriage or handling comply with all applicable laws, regulations, standards, and requirements relating to their nature, condition, packing, labelling, and packaging. All expenses, charges, fines, penalties, or costs incurred by the Company in

- complying with, or as a result of, any such law or requirement of any harbour, dock, railway, shipping, customs, warehouse, or other authority must be paid by the Customer;
- (b) the Customer is responsible for arranging its own insurance cover for the goods. No insurance is affected by the Company for any freight, linehaul, handling or storage services, unless expressly agreed in writing prior to collection;
 - (c) if any goods are subject to customs control, all customs duties, excise duties, taxes, levies, charges, and any other costs which the Company becomes liable to pay, and does pay, pursuant to customs or excise legislation must be paid by the Customer on demand;
 - (d) all the goods are fully and accurately described in writing to the Company, where required, including their name, nature, quantity, weight, dimensions and value, particularly where the goods are:
 - (i) subject to special rates of carriage;
 - (ii) are noxious, dangerous, hazardous or flammable;
 - (iii) are capable of causing damage or injury to any other goods, persons, property or animals;
 - (iv) may damage any store, vessel, vehicle, wagon, van, aircraft or other conveyance in which they are loaded, carried, packed, handled or stored; or
 - (v) are liquid or partly liquid.
 - (e) the Customer is solely responsible for ensuring all containers, packaging, pallets and load preparations comply with all applicable laws, standards, requirements and are fit for carriage;
 - (f) if the Company packs goods at the request of the Customer, the Company shall not be liable for any damage to or loss of the goods, whether in the course of packing or in transit or in storage or otherwise and howsoever caused. The Customer is solely responsible for ensuring that all goods are properly and safely packed in accordance with all applicable laws, standards and industry requirements for transport. The Company reserves the right, but is under no obligation, to inspect goods or packaging at any time. If, in the Company's opinion, the goods are inadequately, improperly or unsafely packed, the Company may repack, secure or arrange for repacking or rehandling of the goods at the Customer's cost. Any additional charges incurred shall be payable by the Customer;
 - (g) if the Company is required to load, unload, handle, pack or store any liquids, or partly liquid goods, substances or commodities or products into bulk tanks or vessels, drums or containers, the Company shall not be liable for any loss, damage, leakage, deterioration or contamination of the goods arising during or in connection with any such operation, whether during loading, unloading, packing, transit or storage, and by any means whatsoever; and
 - (h) the Customer must declare all Dangerous Goods to the Company prior to the provision of any freight, handling or storage services, including delivery to any warehouse operated by the Company. All Dangerous Goods must be declared, classified, packaged, labelled and documented strictly in accordance with all applicable laws, regulations, codes and standards. The Company reserves the right to refuse to accept or store any Dangerous Goods, whether declared or undeclared, without liability.

6. Provision of Goods and/or Services

- (a) Unless otherwise agreed in writing and where applicable:
 - (i) a Quote allows for one (1) hour per trailer for loading and an additional one (1) hour per trailer for unloading. Any time in excess of these allowances will incur demurrage charges at the prevailing rate (currently \$150 per hour), payable immediately on demand;
 - (ii) minimum hire periods (calculated from depot to depot) may apply where services are quoted on an hourly basis;
 - (iii) if the Company is required to obtain or arrange for permits, pilots, escorts, police, power, or any similar services or approvals, the Customer will be charged the cost incurred by the Company plus an administration fee of 10% of such cost. All such additional charges will be invoiced to the Customer and are payable in accordance with these Terms and Conditions.
- (b) Freight shall be considered fully earned upon receipt of the goods by the Customer and shall be payable in full whether the goods are lost, damaged or otherwise affected. Under no circumstances will any freight charges be refunded.
- (c) The Company may charge freight based on weight, measurement or value, at its discretion. The Company may at any time re-weight, or re-value, or re-measure, or require the goods to be re-weighed, re-valued or re-measured, and may charge any additional freight arising from such re-assessment.
- (d) A clear and accurate delivery address must be received by the Company. The Customer must ensure that a representative is present, willing and able to accept delivery and sign a delivery receipt at the time of delivery. If no such representative is available at the delivery address during normal trading hours or at the agreed delivery time, the Company may, at its discretion, place the goods into storage or deliver the good to an alternative location nominated by the Company, to be collected by the Customer. Any additional costs incurred by the Company shall be payable by the Customer. If the Customer requires delivery without a representative present, an authority to leave request must be received by the Company prior to delivery. Any such delivery is undertaken entirely at the Customer's risk.

- (e) The Company may carry the goods, or procure the goods to be carried, forwarded or stored, by any method, route or means whatsoever and at its absolute discretion, notwithstanding any instructions (whether written or verbal) that the goods are to be carried by any particular method, route or mode of transport. The Company reserves the right to charge the Customer for any demurrage charges incurred by the Company, whether directly or indirectly, from any railway or shipping authority or from by any other person, firm or company, at the prevailing rate.
- (f) The Company may arrange for the carriage, forwarding, handling or storage of the goods by any independent contractor or subcontractor of the Company on such terms as the Company thinks fit.

- (g) If the Customer provides incomplete, inaccurate or misleading information or instructions to the Company, or if the Customer is otherwise in breach of these Terms and Conditions, the Company reserves the right, in its sole discretion and without liability, to refuse, suspend or cease the provision of the Goods and/or Services (in whole or in part) and/or reject any Goods tendered to it. Without limiting any other rights and remedies of the Company under these Terms and Conditions or at law, the Customer remains liable for all costs and expenses incurred by the Company up to the date of such refusal, suspension or cessation.

7. Risk and Title

- (a) While the Company operates secure, modern warehousing and site facilities, and take reasonable precautions for the safety of goods in its care, all goods are stored and handled at the Customer's risk.
- (b) Where the provision of the Goods and/or Services includes any handling, installation, removal, assembly or erection performed by the Company, such services are undertaken at the Customer's risk. To the maximum extent permitted by law, the Company excludes all liability for any loss of or damage to goods, and any loss, damage or injury to any person or property, arising out of or in connection with the performance of such services. Nothing in this clause excludes or limits:
 - (i) any liability that cannot be excluded under applicable law, including the Australian Consumer Law; or
 - (ii) the Company's liability for loss or damage to the extent caused by its wilful misconduct or gross negligence. The exclusions and limitations in this clause apply to the fullest extent permitted by law and extend to any loss or damage arising whether directly or indirectly from the performance of the relevant services.
- (c) Title to any goods or services supplied by the Company does not pass to the Customer until payment has been made in full of all amounts owing to the Company on any account. Until title passes, the Customer:
 - (i) holds the goods as bailee for the Company;
 - (ii) is responsible for the care, custody and risk of the goods; and
 - (iii) must not encumber, charge or dispose of the goods without the Company's prior written consent
- (d) Upon default in payment, the Company is irrevocably authorised by the Customer to enter any premises or vehicle (with such force as is reasonably necessary) where the goods are located, whether or not owned or occupied by the Customer or a third party, and to retake possession of and remove the goods. The Customer indemnifies the Company against all claims, actions, losses, damages and costs arising from the exercise of these rights.
- (e) This clause does not limit or affect any lien, security interest or other right the Company has in respect of the Goods, whether under these Terms and Conditions, the PPSA or otherwise at law.

8. Lien

- (a) The Company has a general lien over all Goods and any related documents in its possession, custody or control for all amounts owing by the Customer to the Company on any account whatsoever, whether such amounts are present, future, actual, contingent or otherwise.
- (b) The Company may refuse to deliver or release the Goods until all amounts owing by the Customer are paid in full.
- (c) The lien applies:
 - (i) whether or not title to the Goods has passed to the Customer;
 - (ii) whether the Goods are owned by the Customer or any third party; and
 - (iii) whether or not the amounts owing relate to those specific Goods.
- (d) If any amount owing remains unpaid for 14 days after written demand, the Company may, without further notice:
 - (i) sell or dispose of the Goods by public auction or private treaty; and
 - (ii) apply the proceeds towards all amounts owing, including storage, handling and sale costs. Any surplus will be paid to the Customer after satisfaction of all liabilities.
- (e) To the maximum extent permitted by law, the Company is not liable for any loss or damage suffered by the Customer arising from the exercise or attempted exercise of its rights under this clause, except to the extent caused by wilful misconduct or gross negligence.
- (f) The rights under this clause are in addition to, and do not limit, any rights available to the Company under the PPSA or otherwise at law.

9. PPSA

- (a) The Customer hereby charges in favour of the Company, by way of security, all goods consigned to, and provided by, the Company with the due performance of all obligations, present and future, of the Customer under these Terms and Conditions. This charge constitutes a security interest for the purposes of the PPSA.
- (b) If the Customer fails to pay any amount due to the Company in accordance with these Terms and Conditions, the Company may, without prejudice to any other rights and subject to the PPSA:
 - (i) retain possession of the goods;
 - (ii) sell or otherwise dispose of the goods (in whole or in part) by public auction or private treaty on such terms as the Company thinks fit; and
 - (iii) apply the proceeds of sale towards payment of all amounts owing to the Company and all costs and expenses incurred in connection with the detention, enforcement and sale of the goods.
- (c) Any surplus proceeds shall be dealt with in accordance with the PPSA or as otherwise directed in writing by the Customer. The exercise of these rights does not extinguish or reduce the Customer's liability for any outstanding amounts.
- (d) Where the Company supplies goods to the Customer on a retention-of-title basis, title to those goods does not pass to the Customer until the Company has received payment in full of all amounts owing to the Company on any account. The Customer acknowledges and agrees that the Company's retention of title gives rise to a purchase money security interest (PMSI) for the purposes of the PPSA. The Customer must, at its own cost, promptly provide all information, execute all documents, and do all things required by the Company to ensure the PMSI is valid, perfected, and enforceable.
- (e) The Customer irrevocably authorises the Company to:
 - (i) apply for, maintain, amend and renew any registration of the Company's security interest on the Personal Property Securities Register (PPSR); and
 - (ii) register the security interest with any priority as the Company considers appropriate.
- (f) The Customer shall be liable for all costs, fees and charges associated with any such registration
- (g) The Customer must, at its own cost and expense, promptly do anything (including executing documents, providing information and obtaining consents) reasonably required by the Company to ensure that the Company:
 - (i) holds a security interest that is attached, perfected, enforceable and effective;
 - (ii) has first priority (or highest possible priority) for its security interest; and
 - (iii) may fully exercise its rights and remedies under the PPSA.
- (h) To the maximum extent permitted by the PPSA, the Customer waives its right to receive any notice, statement or verification statement under the PPSA, including notices under sections 95, 96, 118, 121(4), 130, 132(3)(d) and 135.
- (i) The rights of the Company under this clause are separate from and additional to the Company's lien under these Terms and Conditions. The Company may enforce its rights under the PPSA, its lien, or both, in its absolute discretion. Nothing in the Terms and Conditions limits, restricts or excludes any right, power or remedy of the Company arising otherwise than under the PPSA, and all such rights shall continue to apply concurrently.

10. Default and Termination

- (a) Without prejudice to any other rights or remedies, the Company may, at its sole discretion, immediately suspend or cease the provision of all or part of the Goods and/or Services (including refusing delivery or collection of goods) if:
 - (i) the Customer fails to pay any amount when due, whether or not formal demand has been made;
 - (ii) the Customer breaches any provision of these Terms and Conditions and, where the breach is capable of remedy, fails to remedy that breach within a period specified by the Company; or
 - (iii) an Insolvency Event occurs in respect of the Customer or the Company reasonably believes that the Customer is likely to suffer an Insolvency Event.
- (b) The exercise of the Company's rights under clause 9(a) does not relieve the Customer of its payment obligations, and the Company shall have no liability for any loss, damage, cost, or expense arising from, or in connection with, the exercise of those rights.
- (c) If the Customer defaults in payment of any amount owing to the Company:
 - (i) the Company may, without prejudice to any other right or remedy, refer the debt to a debt collection agency or take such recovery action as it considers appropriate;
 - (ii) all monies then owing, or which may become owing, by the Customer to the Company on any account shall immediately become due and payable without notice;
 - (iii) interest may accrue on all overdue amounts at the rate of 10% per annum or, if that rate is held to be unenforceable, at the rate prescribed under the Magistrates Court (Civil Proceedings) Act 2004 (WA) and the Civil Judgments Enforcement Act 2004 (WA), as applicable, calculated daily from the due date until payment in full;
 - (iv) the Customer must pay, on demand, all costs and expenses incurred by the Company in recovering any monies owing, including (without limitation) debt collection agency fees, legal costs on a solicitor and own client basis, court fees,

- enforcement costs, disbursements, costs associated with enforcing any security or security interest, and fees arising from dishonoured payments; and
- (v) all such costs and expenses constitute a debt due and owing to the Company by the Customer and are recoverable as part of the outstanding amount.

11. Limitation of Liability

- (a) The Company is not a common carrier and, except to the extent that liability cannot be lawfully excluded, will not accept any liability as a common carrier, whether arising from any act, omission, neglect, default, or otherwise, of the Company or its officers, employees, contractors, agents, or subcontractors.
- (b) To the maximum extent permitted by law, the Company shall not be liable for any loss of or damage to goods, or for any delay in the delivery of goods, arising out of or in connection with the provision of the Goods and/or Services.
- (c) Without limiting the preceding clause, and to the maximum extent permitted by law, the Company shall not be liable, whether in contract, tort (including negligence), bailment, breach of statutory duty, or otherwise, arising out of or in connection with the provision of the Goods and/or Services, for any:
 - (i) loss of, damage to, mis-delivery, non-delivery, delay in delivery of, or deterioration of goods while in the Company's care, custody, or control;
 - (ii) concealed damage, evaporation, leakage, shrinkage, or contamination of goods; or
 - (iii) indirect, consequential, special, or economic loss, including loss of profit, loss of market, or loss of opportunity.
- (d) Nothing in these Terms and Conditions excludes, restricts, or modifies any consumer guarantee, right, or remedy conferred by the Australian Consumer Law or any other applicable legislation which cannot lawfully be excluded. Where the Australian Consumer Law applies and permits the Company to limit its liability, the Company's liability is limited, at its option, to:
 - (i) the resupply of the goods and/or services; or
 - (ii) the payment of the cost of having the goods and/or services resupplied.
- (e) The Company enters into these Terms and Conditions not only on its own behalf but also as agent of, and trustee for, each of its officers, employees, contractors, agents, subcontractors, and any other person or entity engaged in the performance of the Goods and/or Services, and their respective officers, employees, and agents.
- (f) Each such person or entity is entitled to the benefit of all exclusions, limitations, defences, rights, and immunities contained in these Terms and Conditions as if expressly named as a party, and the Company holds the benefit of these provisions on trust for them.

12. Indemnity

- (a) The Customer indemnifies and holds harmless the Company against all loss, liability, damage, cost, and expense (including legal costs on a solicitor and own client basis) suffered or incurred by the Company arising directly or indirectly out of or in connection with:
 - (i) any breach of these Terms and Conditions by the Customer;
 - (ii) any act or omission of the Customer;
 - (iii) any act or omission of any officer, employee, contractor, or agent of the Customer; or
 - (iv) any act or omission of any third party with whom the Company deals at the direction or request of the Customer.
- (b) This indemnity survives completion, termination, or expiry of the supply of the Goods and/or Services.
- (c) All exclusions, limitations of liability, defences, rights, immunities, and indemnities contained in these Terms and Conditions apply in all circumstances, including where the Company is alleged to have committed a breach of contract, negligent act, or omission.

13. Dispute Resolution

- If a dispute arises out of or in connection with these Terms and Conditions or the Goods and/or Services, the parties must first use reasonable endeavours to resolve the dispute by good-faith negotiations. If the dispute is not resolved within 14 days, either party may commence legal proceedings. Nothing in this clause prevents the Company from seeking urgent interlocutory or injunctive relief, taking debt recovery action, enforcing any security interest, or commencing proceedings where delay may cause prejudice.

14. Credit Application

- (a) The Company may, in its absolute discretion, allow the Customer to apply for the provision of credit for the payment of the Prices. Any application for credit must be made in the form required by the Company and completed to the Company's satisfaction.
- (b) The Company is not obliged to grant credit and may approve or decline a credit application, or set a credit limit, on such terms as it determines. Any approval of credit may be withdrawn, suspended, or varied by the Company at any time without notice.
- (c) As a condition of any credit approval, the Company may require the Customer, or any director, shareholder, or other third party, to execute a deed of guarantee and indemnity, or provide such other security as the Company reasonably requires.
- (d) Any credit application, credit approval, and any deed of guarantee and indemnity entered into in connection with the provision of credit are complementary to, and do not replace or vary, these Terms and Conditions, which continue to apply to all Goods and/or Services supplied by the Company.
- (e) If no credit approval is granted, or if credit approval is withdrawn or suspended, the Customer must pay for the Goods and/or Services strictly in accordance with these Terms and Conditions, including any requirement for payment in advance or on delivery.

15. Trustee

If the Customer enters into these Terms and Conditions in its capacity as trustee of a trust (whether disclosed or undisclosed):

- (a) the Customer represents and warrants that it enters into these Terms and Conditions in both its personal capacity and as trustee of the relevant trust;
- (b) the Customer warrants that it has full power and authority under the trust deed to enter into, perform, and observe its obligations under these Terms and Conditions and that such obligations are binding on the trust assets;
- (c) the Customer is personally liable for all obligations incurred under these Terms and Conditions and liability is not limited to the assets of the trust;
- (d) the Customer indemnifies the Company against any loss, liability, cost, or expense suffered or incurred by the Company as a result of any failure of the trust or trust assets to satisfy the Customer's obligations;
- (e) the Customer must not retire, be removed, or replaced as trustee, nor vary the trust deed in any way that adversely affects the rights of the Company, without the Company's prior written consent; and
- (f) any change of trustee constitutes an event of default for the purposes of credit approval unless approved in writing by the Company. The Customer agrees that the Company is not required to enquire into the extent of the Customer's authority as trustee or the application of any trust assets.

16. General Provisions

- (a) **(Entire Agreement)** These Terms and Conditions, subject to any variations expressly permitted under these Terms and Conditions, together with any applicable Quote or purchase order (as applicable and once accepted), any credit approval, and any deed of guarantee and indemnity, constitute the entire agreement between the Company and the Customer in relation to the supply of the Goods and/or Services, and supersede all prior agreements, negotiations, representations, and understandings, whether written or oral.
- (b) **(Confidentiality)** Each of the Company and the Customer shall treat as confidential all information which comes into their possession, pursuant to or as a result of these Terms, whether such information relates to the business, sales, marketing or technical operations of the other or the clientele of the other or otherwise. Neither the Company nor the Customer shall, without the written permission of the other, disclose such confidential information to a third party. This obligation does not apply if the information is already in the public domain without any breach of these Terms or if the disclosure is required by law.
- (c) **(Continued Performance)** Notwithstanding the existence of a dispute, the Customer must continue to pay all undisputed amounts when due, and the Company may continue to provide (or suspend) the Goods and/or Services in accordance with these Terms and Conditions.
- (d) **(No Variation)** No variation, amendment, or waiver of these Terms and Conditions is effective unless made in writing and signed by an authorised representative of the Company.
- (e) **(No Waiver)** A waiver by the Company of any right, power, or remedy must be in writing and is effective only to the extent expressly stated. A failure or delay by the Company to exercise any right, power, or remedy does not operate as a waiver, nor does a single or partial exercise preclude any further exercise of that or any other right.
- (f) **(Severability)** If any provision of these Terms and Conditions is held to be invalid, illegal or unenforceable in any jurisdiction, that provision is severed to the extent of the invalidity, illegality or unenforceability, and the remaining provisions remain valid, enforceable and unaffected.
- (g) **(No Assignment)** The Customer must not assign, transfer, novate, or otherwise deal with its rights or obligations under these Terms and Conditions without the Company's prior written consent.
- (h) **(Relationship)** Nothing in these Terms and Conditions creates any partnership, joint venture, agency, or employment relationship between the Company and the Customer. The Customer has no authority to bind the Company in any way.
- (i) **(Force Majeure)** The Company is not liable for any failure or delay in the performance of its obligations to the extent caused by an event beyond its reasonable control, including (without limitation) acts of God, natural disasters, industrial action, labour shortages, equipment failure, supply chain disruption, government action, war, terrorism, or public health emergencies. Where such an event occurs, the Company may suspend performance for the duration of the event without liability.
- (j) **(Notice)** Any notice, demand, consent or other communication required or permitted under these Terms and Conditions must be in writing and may be given by hand delivery or email to the address last notified by the relevant party. A notice, demand, consent or other communication sent by email is deemed received at the time it is sent, unless the sender receives a delivery failure notification. If delivery or receipt occurs outside of business hours on a business day in the place of receipt), the notice is deemed received at 9:00am on the next business day.
- (k) **(Governing Law)** These Terms and Conditions are governed by the laws of Western Australia. The parties submit to the exclusive jurisdiction of the courts of Western Australia and the Commonwealth of Australia.
- (l) **(Survival)** Any provision of these Terms and Conditions which by its nature is intended to survive termination or expiry will survive, including (without limitation) clauses relating to payment, interest, limitation of liability, indemnity, PPSA, guarantees, and governing law.