POWER CUSTOMS SERVICES PTY LTD STANDARD TERMS AND TRADING CONDITIONS

THESE CONTRACTUAL CONDITIONS APPLY TO ALL SERVICES PROVIDED BY POWER CUSTOMS SERVICES PTY LTD A.B.N. 56 006 501 417 (“the Company”)

These Trading Conditions include provisions that entirely change, reduce or exclude rights that you (the **“Customer”**) might otherwise have.

DEFINITIONS AND INTERPRETATION

1. Definitions

In these Trading Conditions, the following defined terms will have the following defined meanings:

“ABN” means the Australian Business Number of the Customer pursuant to the GST Law;

“Airfreight Convention” means either:

(a) the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999; or

(b) the Convention for the Unification of Certain Rules relating to 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 Montreal 1975 and/or by the additional Protocol No. 4 of Montreal 1975;

whichever may be applicable;

“AQIS” means the Australian Quarantine Inspection Service;

“Assets” means all assets, Goods, documents and records of the Customer held by the Company as part of the contractual terms and trading conditions for the appointment of the Company, and include, without limitation, the Goods and shipping documents, including, without limitation, bills of lading, insurance policies, commercial invoices and certificates as to weight, quality or other attributes;

“ATD” has the same meaning as “authority to deal” as defined in section 4 of the Customs Act;

“ATO” means the Australian Taxation Office;

“Authority” means the authority and acknowledgement by which the Customer appointed the Company to act on its behalf on the terms of the Authority and on the terms of these Trading Conditions;

“Authorised Signatory” means the party who signs the Authority on behalf of the Customer;

“Business Day” means any day that is not a Saturday or Sunday on which banks are open for general banking business in Melbourne;

“Carbon Costs” means the net increased cost of providing the Services resulting from the coming into force of Carbon Legislation as a result of:

(a) direct emissions associated with the Services covered by Carbon Legislation, taking into account any Carbon Credits;

(b) indirect emissions from electricity generation taking into account any Carbon Credits; and

(c) indirect emissions from sources other than electricity;

“Carbon Credit” means assistance provided to entities engaged in emissions-intensive trade activities in the form of free or discounted allocation of carbon units or such other form of assistance as determined by the Commonwealth of Australia;

“Carbon Legislation” means the *Clean Energy Act 2011* (Cth) and related legislation and any existing or future law or regulation or any other statutory requirement or action intended to regulate, reduce or tax greenhouse gas emissions, including any emissions trading scheme, carbon pollution reduction scheme or carbon emissions tax;

“Carriage” means carriage by vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport;

“Carrier” means any party involved in the carriage of Goods whether by airfreight, seafreight or land transport;

“Chain of Responsibility” means any State, Territory or Commonwealth legislation or regulations based on or adapted from the provisions of the *National Transport Commission (Road Transport Legislation - Compliance and Enforcement Bill) Regulations 2006 or National Transport Commission (Road Transport Legislation - Compliance and Enforcement Regulations) Regulations 2006* as approved by each State and Territory Government;

“Company” means POWER CUSTOMS SERVICES PTY LTD A.B.N. 56 006 501 417, as holder of Customs Brokers Licence number 01211 and the nominees, agents, sub-agents and employees of the Company;

“Competition and Consumer Act” means the *Competition and Consumer Act 2010* (Cth);

“Consequential Loss” means any loss or damage arising from a breach of contract or agreement (including breach of the Service Agreement), tort, or any other basis in law or equity including, but without limitation to, 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 which was not contemplated by the parties at the time of entering the Service Agreement;

“Consumer Contract” means a contract between the Company and the Customer for a supply of Services to a Customer that is an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption;

“Corporations Act” means the *Corporations Act 2001* (Cth);

“Customer” means:

(a) if there is an Authority, the customer named in the Authority and will include all employees, officers, agents and contractors of the Customer; or

(b) if there is no Authority, any entity that instructs the Company to perform the Services;

“Customs” means the Australian Customs and Border Protection Service and includes, where applicable the Chief Executive Officer of the Australian Customs and Border Protection Service;

“Customs Act” means the *Customs Act 1901* (as amended), and any succeeding Legislation and any regulations made pursuant to the Customs Act;

“Customs Broker’s Licence” means any licence granted by Customs to a party to operate as a licensed customs broker pursuant to Part XI of the Customs Act;

“Customs Duty” has the same meaning as “Duty” in the Customs Act;

“Customs Related Law” has the same meaning as in Section 4B of the Customs Act;

“Dangerous Goods” means cargo which is 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 prescribed by Laws or otherwise;

“Debts” means all amounts owing by the Customer to the Company on any account whatsoever;

“Depot Licence” has the same meaning as “depot licence” as defined in section 77F of the Customs Act;

“Excluded Interest” means any of the interests set out in section 8 of the Personal Property Securities Act or any interest that is not a Security Interest but encumbers the Goods;

“Fees” means the fees charged by the Company for provision of the Services;

“Goods” are any goods or items which are the subject of the Services provided by the Company to the Customer under this Service Agreement;

“Government Authorities” means, without limitation, all Government departments and agencies with responsibility for the import and export 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, the ATO and the RSA;

“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 the *A New Tax System (Goods and Services Tax) Act 1999*;

“GST Rate” means the rate of GST under the GST Law;

“Hague Rules” means the International Convention for the Unification of Certain Rules relating to Bills 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);

“Incoterms” means *Incoterms® 2010* issued by the International Chamber of Commerce;

“Input Tax Credit”, “Supply”, “Taxable Supply”, “Tax Invoice” means the same as in the GST Law;

“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 which the Goods are carried and including, without limitation all regulations, ordinances and directions made pursuant to the Laws and any successor Laws;

“Licence” means any Customs Broker’s Licence, Depot Licence, Warehouse Licence or any other licence issued by Customs or other Government Authority;

“Parties” means the Company and the Customer;

“PPSA” means the *Personal Property Securities Act 2009* (Cth);

“OHS Laws” means any occupational health and safety legislation, regulations or guidelines, codes of conduct or policies of the Commonwealth of Australia or any of the States, Territories or Municipalities of Australia;

“Privacy Laws” means the *Privacy Act 1988* (Cth), all associated regulations or guidelines, and any other associated or relevant State or national privacy legislation, regulations or guidelines;

“Reporting Obligations” means the obligations of the Company to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities;

“Related Body Corporate” has the same meaning as under the Corporations Act

“RSA” means those State and Commonwealth Government Authorities in Australia responsible for road safety and the laws governing the carriage of Goods by road;

“Security Interest” has the same meaning as under the PPSA;

“Service Agreement” means:

(a) these Trading Conditions;

(b) the Authority;

(c) any customer credit application with the Company; and

(d) any fee quotation estimate or agreement, as amended from time to time, regardless of whether the Customer is given notice of any amendment;

“Services” means any performance of work by the Company for the Customer in anyway 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 completing all necessary documentation and reports for the purposes of any Government Authorities; and

(d) entering into contracts with Sub-contractors on behalf of the Customer to enable the Carriage, import, export, storage or transportation of the Goods;

“Shipping Contract” means:

(a) a contract of marine salvage or towage; or

(b) a charterparty of a ship; or

(c) a contract for the carriage of goods by ship, which includes a reference to any contract covered by a sea carriage document within the meaning of the amended Hague Rules referred to in section 7(1) of the *Carriage of Goods by Sea Act 1991* (Cth);

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

“Vessel” means any vessel, vehicle or aircraft used to effect Carriage of the Goods, whether by sea, land or air;

“Warehouse Licence” has the same meaning as “warehouse licence” as defined in section 78 of the Customs Act;

2. Interpretation

2.1 These Trading Conditions and any collateral agreements made by the Company with the Customer wherever made shall be governed and construed according to the laws of Victoria and shall be subject to the exclusive jurisdiction of the courts of Victoria and those courts which can hear appeals from those courts.

2.2 If these Trading Conditions are held to be subject to the laws of any jurisdiction other than the Commonwealth of Australia and the State Victoria then these Trading Conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further.

2.3 Subject to **clause 25**, all the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all the circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by the Company and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the Authority having expired or been terminated.

2.4 Unless written notification to the contrary is given by the Customer to the Company at or prior to entering into these Trading Conditions, the Customer expressly warrants and represents that all or any Services to be supplied by the Company and acquired by the Customer pursuant to this Service Agreement are so supplied and acquired for the purposes of a business, trade, profession or occupation carried on or engaged in by the Customer.

2.5 In the interpretation of these Trading Conditions the singular includes the plural and vice versa, and words importing corporations mean and include natural persons and vice versa.

2.6 No agent or employee of the Company has the authority to waive or vary these Trading Conditions unless the Company approves such waiver or variation in writing. Any forbearance by the Company in enforcing the Trading Conditions does not constitute a waiver. If the Company waives a breach of a Trading Condition, the waiver doers not operate as a waiver of another breach of the same or any other Trading Condition or as a continuing waiver.

2.7 Where any provision (or part thereof) of these Trading Conditions is held to be illegal or unenforceable, it may be severed and shall in no way affect or prejudice the enforceability of any other term or condition herein.

2.8 Where there is an inconsistency between the terms and conditions of the Service Agreement, the relevant documents shall be construed in the following descending order of priority:

(a) these Trading Conditions;

(b) the Authority;

(c) any customer credit application;

(d) any fee quotation estimate or agreement

2.9 Reference to any Laws or to any section or provision of any Laws includes any statutory modifications, reenactments, substitutions or replacements thereof and all Laws issued thereunder.

2.10 Reference to any Convention or any Article of any Convention includes any modifications, substitutions or replacements thereof.

2.11 References to clauses are references to clauses in these Trading Conditions.

2.12 Headings have no effect on interpretation of the Trading Conditions.

2.13 These Trading Conditions do not affect any rights the Customer has under the Competition and Consumer Act.

2.14 If the Service Agreement between the Company and the Customer is a Consumer Contract and is not a Shipping Contract:

(a) **clause 24** does not apply;

(b) **clause 25** applies; and

(c) the laws in force in the place in which the contract is made apply.

2.15 If the Service Agreement between the Company and the Customer is not a Consumer Contract and/or is a Shipping Contract:

(a) **clause 24** applies; and

(b) **clause 25** does not apply.

TRADING CONDITIONS

3. Nature of Services

3.1 The Company carries on business as a Customs Broker under Part XI of the Customs Act and (delete if not applicable) forwarding agent. All Services provided by the Company are governed solely by these Trading Conditions which, shall prevail over the Customer’s terms and conditions and any terms and conditions contained in any transport document including any bill of lading, waybill or consignment note except to the extent provided for in these Trading Conditions. The Company is not a common carrier and will accept no liability as such.

3.2 The Company may refuse at its sole and absolute discretion to accept any Goods for Carriage without assigning any reason.

3.3 The Customer acknowledges that where, terms of Carriage are limited pursuant to Convention, statute, Law, bill of lading or airway bill, and the transport of the goods extends or requires transport outside and beyond the terms provided for in that Convention, statute, Law, bill of lading or airway bill then the Customer may be required to enter into a further contractual agreement with the forwarder or carrier regarding that portion of transport in order to limit liability on behalf of the forwarder or carrier, or where the transport was unforeseen, the limitation of liability provisions in place for the foreseen transport will extend to the unforeseen transport, even where that liability provision does not envision transport of that kind.

3.4 The Customer acknowledges and agrees that the Company, its agents, employees and contractors are obliged to comply with certain conditions and Laws in respect of Licences in relation to the Goods or Services and none of the Company, its agents, employees or contractors are in breach of these Trading Conditions or in their obligations to the Customer in complying with such conditions or Laws.

3.5 Without limiting the generality of **clause 3.4**, the Customer further acknowledges and agrees that:

(a) the Company’s obligation may require the Company, its agents, employees and contractors to disclose a breach or possible breach of any Customs Related Law to any Government Authority;

(b) none of the Company, its agents, employees and contractors will have any liability to the Customer or any other party arising from compliance with its obligations pursuant to the Law or the condition of its licences; and

(c) the Customer must indemnify and keep indemnified the Company, its agents, employees and contractors from all costs and liabilities they incur arising from their obligations pursuant to the Law or the conditions of its Licence, including all legal costs.

4. Acceptance of Trading Conditions

The Authorised Signatory acknowledges and agrees that it has received the Trading Conditions, understands the Trading Conditions and by either signing the Authority or instructing the Company to perform the Services, the Customer will be bound by the Trading Conditions.

5. Communications with the Company

5.1 Wherever it is necessary, for the purpose of these Trading Conditions or any other purpose whatsoever, for instructions to be given to the Company, such instructions will be valid only if given in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to adopt the instructions. Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company. If the Company adopts standing or general instructions, or instructions given late, for one or more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any future transaction. No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions.

5.2 Notwithstanding any prior dealings between the Company and the Customer or any rule of law or equity or provision of any statute or regulation to the contrary, or any contracts, documents and other matter (including cash, cheques, bank drafts and other remittances) sent to the Company through the post shall be deemed not to have been received by the Company unless and until they are actually delivered to the Company at its office address or placed in the Company’s post office box, if so addressed.

6. Ability to Appoint Agents, Sub-contractors and Third Parties

Subject to, and in accordance with, these Trading Conditions, the Company agrees and the Customer hereby employs and authorises the Company as agent for the Customer to contract either in its own name as principal or as agent for the Customer with any Sub-contractor for the Carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to these Trading Conditions. Any such contract may be made upon the terms of contract used by the Sub-contractor with whom the Company may contract for the Services and may be made upon the terms and subject to the conditions of any special contract which the Sub-contractor may in any particular case require, including in every case any term that the Sub-contractor may employ any person, firm or company for performance of the Services so contracted for.

7. Payment, Recovery of Fees and GST

7.1 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 10** 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 or its principal (if any). The Company may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods (or request the same) and charge additional fees accordingly.

7.2 Quotations as to Fees and other charges are given on the basis of immediate acceptance and subject to the right of withdrawal or revision by the Company. Quotations are valid only for the specified weight and volume ranges quoted and for the designated services and standard of services quoted. If any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the Goods, quotations and charges are subject to revision accordingly with notice or, if it is not reasonably practicable, without notice to the Customer.

7.3 If, at any time before or whilst these Trading Conditions are operative, Carbon Legislation is in force, imposed or varied, or the impact of Carbon Legislation varies, then the Customer is liable to pay the Company for any Carbon Costs (or increases in Carbon Costs) incurred by the Company.

7.4 The Company shall under no circumstances be precluded from raising a debit in respect of any fee or disbursements lawfully due to it, notwithstanding that a previous debit or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.

7.5 This **subclause 7.4** applies if the Company is or may become liable to pay GST in relation to any Supply under these Trading Conditions.

(a) Unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law.

(b) The Customer shall be responsible for payment of any GST liability in respect of the Services as provided by the Company or by third parties or Sub-contractors which shall be payable at the same time as the GST-exclusive consideration.

(c) The Customer must also pay GST on the Taxable Supply to the Company, calculated by multiplying the GST exclusive consideration by the GST Rate.

(d) GST shall be payable by the Customer without any deduction or set-off for any other amount at the same time as the GST exclusive consideration is payable.

(e) The Company agrees to provide the Customer with a Tax Invoice to enable the Customer to claim an Input Tax Credit.

(f) If the Customer defaults in the payment on the due date of any amount payable under **subclause 7.4(b)** then without prejudice to any other remedies of the Company and upon demand by the Company, the Customer shall pay to the Company an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company due to the default of the Customer.

7.6 All amounts due to the Company in Australia are payable in Australian dollars. The Company is entitled to charge a currency conversion premium when converting receivables into Australian currency.

7.7 The Customer agrees that the Fees will be paid within the due date on the invoice.

7.8 If any amounts payable or due under any agreement between the Company and the Customer (including, without limitation, amounts payable pursuant to **subclause 9.1** or fees payable for Services provided by the Company) are not made within seven days of the due date, the Customer will be in default and without limiting any other rights of the Company, the Customer shall pay to the Company, by way of liquidated damages, interest to be calculated in accordance with the Commonwealth Bank’s business overdraft reference rate on the amount outstanding calculated from the due date until payment is made in full. The Company may take any legal proceedings to recover amounts owing pursuant to these Trading Conditions.

7.9 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.

7.10 The Company, its servants or agents shall have a special and general lien on the Assets and a right to sell the Assets 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, 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 sale and reasonable legal fees. The lien and rights granted by this **subclause 7.9** shall survive delivery of the Assets and the Company shall be entitled to retain the proceeds of sale of the Assets in respect of any outstanding amounts referred to in this clause. The Company sells or otherwise disposes of such Assets pursuant to **subclause 7.9** as principal and not as agent and is not the trustee of the power of sale.

7.11 Without limiting the generality of **subclause 7.9**, the Customer acknowledges that the Company shall have a Security Interest which attaches over any Assets which are the subject of the Services and in the Company’s possession. The Customer acknowledges and consents to the registration and perfection of the interest set out this **subclause 7.10** for the purposes of the PPSA.

7.12 The Customer warrants that it has rights in the Assets and the power to transfer rights in the Assets to the Company.

7.13 The Customer acknowledges that it must sign the Authority and if it does not sign the Authority it must adopt or accept these Trading Conditions by conduct.

7.14 The Customer must not grant any other person a Security Interest in respect of the Assets.

7.15 The Customer must not allow an Excluded Interest to exist over the Goods.

7.16 To the maximum extent permitted by law, if the PPSA applies, the Customer irrevocably waives any rights the Customer may have to:

(a) receive notices or statements under sections 95, 121(4), 125, 130, 132(3)(d), 132(4) and 135 of the PPSA;

(b) redeem the Assets under section 142 of the PPSA;

(c) reinstate these Trading Conditions under section 153 of the PPSA; and

(d) receive a verification statement (as defined in the PPSA);

7.17 The Customer agrees to do anything (such as obtaining consents, signing and producing documents, producing receipts and getting documents completed and signed) which the Company asks and considers necessary for the purposes of:

(a) ensuring that a Security Interest is created under these Trading Conditions is enforceable, perfected and otherwise effective; or

(b) enabling the Company to apply for any registration, or give any notification, in connection with a Security Interest created under these Trading Conditions so that the Security Interest has the priority required by the Company, including anything the Company reasonably asks the Customer to do in connection with the PPSA.

8. Warranties by the Customer

8.1 The Customer (on behalf of itself, the consignor and the consignee) warrants to the Company that:

(a) 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 act or otherwise have authority to arrange the Services under the Service Agreement;

(b) it has not granted any other person a Security Interest in respect of the Assets;

(c) it has not allowed an Excluded Interest to exist over the Goods and an Excluded Interest does not exist over the Assets;

(d) it 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;

(e) it will retain all documents or records in the manner required by the Government Authorities;

(f) it will observe all requirements of any Government Authorities;

(g) it will maintain as confidential the terms of the Authority and these Trading Conditions;

(h) it has complied with all Laws and regulations of any Government Authorities relating to the nature, condition, packaging, handling, storage and Carriage of the Goods including all Laws prescribed by the RSA;

(i) the Goods are packed to withstand ordinary risks of handling storage and Carriage, having regard to their nature;

(j) the Goods are not Dangerous Goods;

(k) the Goods and their Carriage do not contravene any Laws;

(l) it will comply at all times with all Privacy Laws in relation to the Service Agreement, the Goods and the Services at all times and will notify the Company of any issues or requirements under such laws in relation to the Service Agreement, the Goods or Services of which the company should be aware; and

(m) it will comply at all times with all OHS Laws in relation to the Service Agreement, the Goods and the Services, and will notify the Company of any issues or requirements under such laws in relation to the Service Agreement, the Goods or the Services of which the Company should be aware, or which may affect the Company’s ability to comply either with the OHS Laws.

8.2 The Customer acknowledges that a breach or failure to observe all or any of the warranties in **subclause 8.1** 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 on account of such penalties or damages pursuant to **clause 9**.

9. Indemnity by the Customer

9.1 Without limiting the effect of these Trading Conditions, the Customer agrees to indemnify and keep indemnified the Company for:

(a) any loss or damage directly or indirectly caused by the Goods or by breach of these Trading Conditions by the Customer;

(b) amounts of Customs Duty, GST and other payments made to Government Authorities by the Company on behalf of the Customer;

(c) any penalties payable by the Company (whether pursuant to a court order or pursuant to an Infringement Notice) due to the Customer:

(1) providing information that is incorrect or misleading;

(2) omitting to provide material information required to the Government Authorities;

(3) providing information in a manner which does not enable the Company to comply with the requirements of the Government Authorities for reporting in prescribed periods; and/or

(4) failing to provide information or documentation requested by the Company;

(d) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;

(e) penalties associated with providing misleading or deceptive information regarding the status of Goods, whether pursuant to the Competition and Consumer Act or other legislation;

(f) penalties imposed by any RSA for any breach of the Laws governing to the Carriage of goods by road;

(g) damages payable by the Company from the failure of the Customer to return any container or transport equipment involved in Carriage in the time required by the contract between the Company and the supplier or owner of that container or other transport equipment;

(h) demurrage or other charge for detention or failure to return items provided by the Company pursuant to contracts with other parties;

(i) liabilities or costs incurred by the Company on behalf of the Customer associated with the Services including, without limitation, amounts paid to carriers of goods for the Carriage of Goods or cleaning of containers (whether Sub-Contractors or otherwise and amounts incurred by the Company in exercising its rights pursuant to these Trading Conditions);

(j) damages payable by the Company arising from or contributed to by errors or misrepresentations by the Customer;

(k) losses or damage incurred by the Company due to a breach by the Customer of any of the warranties in **subclause 9.1**;

(l) all expenses directly or indirectly incurred arising out of or in connection with the entry of an officer of any Government Authorities or other authorised person on the premises of the Company for the purpose of exercising any powers pursuant to the requirements of any Government Authorities and/or inspecting, examining, making copies of, taking extracts of documents on the premises to the extent that the exercise of the powers is related to the Services;

(m) any Customs Duty, GST or other charge assessed against the Company in relation to the Goods or Services;

(n) any charges levied by Government Authorities for examination and treatment of the Goods;

(o) any costs or charges incurred by the Company as a result of or in connection with a direction or request from Customs in relation to the Goods or Services;

(p) any costs or charges incurred by the Company as a result of or in connection with a suspension or cancellation by Customs of an ATD in relation to the Goods or Services;

(q) any costs or charges incurred by the Company as a result of or in connection with any variation by Customs of conditions of Licences or the addition by Customs of new conditions on Licences in relation to the Goods or Services;

(r) any costs, charges or penalties incurred by the Company as a result of or in connection with any breaches of any Licences in relation to the Goods or Services;

(s) any costs or charges incurred by the Company as a result of or in connection with any suspension or cancellation of Licences by Customs in relation to the Goods or Services;

(t) any costs or charges incurred by the Company as a result of or in connection with any the Company complying with any conditions or Laws in respect of any Licences in relation to the Goods or Services;

(u) any costs or charges incurred by the Company pursuant to **subclause 20.3, 20.4** and **20.5**; and

(v) any costs or charges incurred in recovering any amounts payable to the Company (including, without limitation, costs of legal proceedings).

9.2 The Customer agrees to pay any amounts claimed pursuant to the indemnity in **subclause 9.1** within 7 days of demand by the Company.

9.3 The nature of the indemnity provided pursuant to **subclause 9.1** will include, without limitation, all penalties, liabilities, all losses (including indirect and Consequential Loss) and damages assessed against the Company and its officers and employees, together with all legal costs incurred by the Company (calculated on a solicitor/client basis). The indemnity shall continue in force and effect whether or not the Goods have been pillaged, stolen, lost, damaged or destroyed.

9.4 The Company may execute all or any of its rights pursuant to **clause 7** to recover any amounts owing pursuant to this clause 9.

9.5 There is no need for the Company to suffer or incur any losses, costs, damages, liabilities, judgments, penalties or expenses before requiring payment from the Customer.

10. Insurance

The Company shall not effect insurance on the Goods except upon receipt of express instructions given in writing by the Customer and the Customer’s written declaration as to the value of the Goods. All such insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurer or underwriter taking the risk. At the discretion of the Company such insurance may name the Customer or owner as insured. In the event of any dispute in regard to liability under any such insurance policy for any reason whatsoever the Customer or other insured shall have recourse against the insurer or underwriter only and the Company shall have no liability or responsibility in relation to any such insurance policy.

11. Storage and Transport

11.1 Subject to express instructions in writing given by the Customer and accepted by the Company in writing (and without limiting the generality of **clause 6**), the Company reserves to itself complete freedom to decide upon the means, route and procedure to be followed in the handling, storage and transportation of the Goods and is entitled and authorised to engage Sub-contractors to perform all or any of the functions required of the Company upon such terms and conditions as the Company in its absolute discretion may deem appropriate.

11.2 The Customer agrees that:

(a) the value of the Goods shall not be declared or inserted in a Bill of Lading or a sea carriage document for the purpose of extending a ship or carrier’s liability under the *Carriage of Goods by Sea Act 1991* and *Carriage of Goods by Sea Regulations 1998* except upon express instructions given by the Customer;

(b) in the case of Carriage by air, no option or declaration of value to increase air-carrier’s liability under:

(1) Article 22 of Schedule 1A to the *Civil Aviation (Carrier’s Liability) Act 1959*; or

(2) Article 22(2) of Schedule 1, 2, 4 or 5 to the *Civil Aviation (Carrier’s Liability) Act 1959*; will be made except on express instruction given in writing by the Customer;

(c) in the case of Carriage by land, or any Carriage ancillary to the Carriage mentioned above and not expressly provided for under any contract within these Trading Conditions, under Convention or under any statute or Law, the Customer agrees that the value of the Goods shall 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 except 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 charges by Carriers, warehousemen, stevedores or others according to the extent of the liability assumed by the Carriers, warehousemen, stevedores or others, no declaration of value (where optional) will be made for the purpose of extending liability, and the Goods will be forwarded or dealt with at the Customer’s risk for minimum charges, unless express instructions in writing to the contrary are given by the Customer;

(e) the Company shall 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 all necessary documents. In particular, the Company shall not be obliged to notify the Customer of the existence or whereabouts of the Goods 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; and

(f) all Goods moved by air are subject to volumetric conversion on the basis of one kilo being the equivalent of six thousand cubic centimetres. Goods moved by other means are subject to volumetric conversion on the basis of relevant industry standards or as modified by the Carrier’s standard trading conditions.

12. Perishable, Non-deliverable, Uncollected, Hazardous and Damaged Goods

12.1 Where the Goods are perishable and are not taken up immediately upon arrival or are insufficiently or incorrectly addressed or marked or otherwise not identifiable, they may be sold or otherwise disposed of with or without notice to the Customer, consignor, owner or consignee of the Goods and payment 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.

12.2 Where the Goods are non-perishable and cannot be delivered either because they are insufficiently or incorrectly addressed or marked or otherwise not identifiable or because they are uncollected or not accepted by the consignee they 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 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.

12.3 Where the Goods are stored by the Company for the Customer and they are uncollected for whatever reason they 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 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.

12.4 In respect of **subclauses 12.1, 12.2** and **12.3**, the Company sells or otherwise disposes of such Goods as principal and not as agent and is not trustee of the power of sale.

12.5 In the event that any sale of Goods pursuant to **subclauses 12.1, 12.2** and **12.3** 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 the Goods.

13. Destruction of Dangerous Goods

In the event that the Goods are found to be Dangerous Goods they may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be 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. The expression “goods likely to cause damage” includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by rail in the States and Territories of Australia.

14. Inspection

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.

15. Delivery

15.1 The Company is authorised to deliver the Goods at the address given to it by the Customer.

15.2 The Company is deemed to have satisfied its delivery obligations under the Service Agreement if the Company delivers the Goods to the address given by the Customer and obtains from a person at that address a receipt or a signed delivery docket.

15.3 In the event of the consignee refusing to take delivery, or not being about to take delivery of the Goods, or the Goods being unable to be delivered for any other reason, the Company is authorised to at the Company’s absolute discretion and at the Customer’s sole expense and risk and without liability to the Company, deal with the Goods as the Company thinks fit including storing or disposing of the Goods or returning them to the Customer or the person entitled to collect the Goods.

16. Railway Declaration

The Company shall be under no obligation to make any declaration to, or to seek any special protection or cover from, the Department of Railways, railways authority or provider of railways in any State or any airline or road transport authority in respect of any Goods falling within the definition of that body:

(a) of dangerous or hazardous goods; or

(b) of goods liable to be stored in the open, unless written instructions to that effect are given to the Company by the Customer.

17. Pillaged Goods

If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect thereof, no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.

18. Storage of Goods pending delivery

18.1 Without limiting the effect of **clause 11**, pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer’s risk and expense.

18.2 In circumstances were 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.

19. COD Goods

The Company may in its absolute discretion refuse instructions to collect 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.

20. Limitation of Liability, Force Majeure and Indemnity from Liability to Third Parties

20.1 Without limiting the effect of **clause 9** but subject to **subclause 25.7** (where it applies), to the full extent permitted by law, the Company its servants and agents shall not be responsible for loss or damage of any kind whatsoever arising out of the provision of its Services to the Customer (whether caused by negligence or wilful default by the Company its servants or agents) and the Customer agrees to indemnify the Company in respect of any claims made by Sub-contractors or third parties concerning the provision of Services by the Company and 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 penalties (including 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 whether imposed by court or Infringement Notice);

(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 liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or consequential loss arising as a result however caused;

(d) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;

(e) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;

(f) loss or damage resulting from fire, water, explosion or theft;

(g) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;

(h) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, any fumigation or decontamination or other treatment by AQIS);

(i) any costs incurred by the Company on behalf of the Customer to any other person in relation to the Carriage of the Goods; and

(j) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with a direction or request from Customs in relation to the Goods or Services;

(k) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with a suspension or cancellation by Customs of an ATD in relation to the Goods or Services;

(l) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with any variation by Customs of conditions of Licences or the addition by Customs of new conditions on Licences in relation to the Goods or Services;

(m) any losses, liabilities, costs, charges or penalties incurred by the Company as a result of or in connection with any breaches of any Licences in relation to the Goods or Services;

(n) any losses, liabilities, costs, charges or penalties incurred by the Company as a result of or in connection with the Company complying with any conditions or Laws in respect of any Licences in relation to the Goods or Services;

(o) any losses, liabilities, costs or charges incurred by the Company as a result of or in connection with any suspension or cancellation of Licences by Customs in relation to the Goods or Services; and

(p) loss, damage or delay occasioned by delay in the Carriage of the Goods or handling of the Goods in the course of the Carriage of the Goods.

20.2 The Company shall not be liable in any event for any Consequential Loss whether or not the Company had knowledge that such damage might be incurred.

20.3 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.

20.4 The Company and Customer acknowledge that Goods moving by seafreight are subject to the applicable international treaties including the Hague Rules. The Customer’s right 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.

20.5 The Company and Customer acknowledge that Goods moving by airfreight or seafreight may necessarily involve a part of transport undertaken by other means in order to comply with the terms of Carriage under the Service Agreement 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 applicable for the majority of the transport, even where that 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, the Company will seek to recover on behalf of the Customer from the third party Carrier amounts payable by 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 where such Carriage was necessary in order to comply with the terms of the Service Agreement.

20.6 The Company shall not be liable to the Customer for any breach or failure to performs its obligations under these Trading Conditions or 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) act of terrorism;

(e) act of public enemies;

(f) arrest or restraint of princes, rulers or people, or seizure under legal process;

(g) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;

(h) riots and civil commotions;

(i) saving or attempting to save life or property at sea; or

(j) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the Company and without the actual fault or privity of the agents or servants of the Company.

20.7 If the occurrence of any event contemplated in **subclause 20.6** causes a delay of over 5 Business Days in any obligation of the Company, then the provision of Services may be terminated by notice in writing by either party to the other party. However, all costs, charges and expenses already incurred by the Company prior to the termination or arising in connection with the disposal or return of the Goods shall be paid by the Customer.

20.8 Any claim made against the Company, its servants or sub-agents is limited to the full extent permitted by Law. To the extent that the liability of the Company is limited by any Convention, statute, Law or contract, and that limitation exceeds the limitation of liability pursuant to these Trading Conditions then the liability pursuant to that Convention, statute, Law or contract shall apply.

20.9 If the Customer is not acquiring the Services wholly or predominately for personal, domestic or household use or consumption, the Company’s liability to the Customer for a breach of any non-excludable warranty, condition or guarantee is limited, at the Company’s option, to supplying the Services again, or the cost of supplying the Services again.

21. Notification of Liability

Any claim for loss or damage must be notified in writing to the Company within seven days of delivery of the Goods or of the date upon which the Goods should have been delivered.

22. Guarantee, Undertaking and Indemnity by Directors and Shareholders

22.1 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.

22.2 For the purposes of **subclause 22.1**, the Customer will ensure that its directors and shareholders will sign any other documents required by the Company to evidence and confirm any guarantee, undertaking and indemnity in the form annexed to these Trading Conditions.

23. Intellectual Property

The Customer acknowledges that the Company shall retain all copyright and other intellectual property in any documents or things created by the Company in the course of providing its Services pursuant to these Trading Conditions.

24. Non-consumer provisions

24.1 This **clause 24** only applies where the Service Agreement between the Company and the Customer is not a Consumer Contract and/or is a Shipping Contract.

24.2 The Customer must not assign the Customer’s rights or transfer the Customer’s obligations under the Service Agreement without the Company’s prior written consent. The Company may assign the Company’s rights and obligation under the Service Agreement without the Customer’s consent.

24.3 No modification amendments or other variation of the Trading Conditions shall be valid and binding on the Company unless made in writing and duly executed by and on behalf of the Company.

24.4 The Company reserves complete freedom to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. That discretion will be varied only by instructions delivered by the Customer to the Company in writing and acknowledged by the Company in writing in sufficient time before the performance of any service to reasonably allow the Company to adopt the manner of performing the service required by the special instructions. **THE COMPANY SHALL HAVE NO LIABILITY OR RESPONSIBILITY BY VIRTUE OF THE FACT THAT THERE MAY BE A CHANGE IN THE RATES OF DUTY, WHARFAGE, FREIGHT, RAILAGE OR CARTAGE, OR ANY OTHER TARIFF BEFORE OR AFTER THE PERFORMANCE BY THE COMPANY OR ANY ACT INVOLVING A LESS FAVOURABLE RATE OR TARIFF, OR BY VIRTUE OF THE FACT THAT A SAVING MAY HAVE BEEN EFFECTED IN SOME OTHER WAY HAD ANY ACT BEEN PERFORMED AT A DIFFERENT TIME AND WHETHER ITS PERFORMANCE OF ANY OF THE ACTS AFORESAID IS DELAYED OR PRECIPITATED THROUGH THE NEGLIGENCE OF THE COMPANY OR ITS SERVANTS OR AGENTS OR HOWEVER CAUSED.**

24.5 Any term in these Trading Conditions which limits the Company’s liability will also extend and apply to any Sub-contractor, agent or nominee. For the purpose of this **subclause 24.5**, the Company is deemed to be acting as agent or trustee for the Company’s agents, employees, nominees and Subcontractors and each of those persons shall be deemed to be a party to these Trading Conditions.

24.6 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 for the consequence thereof. It is agreed that this release and indemnity operates irrespective of how the claim or allegation arises including negligence or out of events which may constitute a fundamental breach of contract or a breach of a fundamental term of a contract.

24.7 The Company shall be discharged from all liability whatsoever in connection with the Services and/or the Goods unless proceedings are served within nine months from delivery of the Goods (or from when they should have been delivered).

24.8 The indemnity provided in **subclause 9.3**, shall not be affected in any way if such pillaging, stealing, loss, damage or destruction has occurred or been brought about wholly or in part by the negligence or the alleged negligence or any default, omission, neglect or default or any breach of duty of obligation of the Company, its servants or agents.

24.9 The Customer undertakes and warrants that neither it, nor any other party that has an interest in the Goods or Services, shall bring any claims against any party that has provided all or any part of the Services (including any Sub-contractor, principal, employer, employee, nominee or agent of the Company) and where any such claims are made by the Customer or any other interested party, the Customer undertakes to indemnify all parties against whom the claims are made (including the Company) against any loss and damage that may be suffered as a result of such claims.

24.10 In all cases where these Trading Conditions, statute, international Convention or otherwise do not exclude the liability of the Company, the liability of the Company whatsoever and howsoever caused shall be limited to whichever is the lesser between the value of the Goods the subject of the Service Agreement at the time the Goods were delivered to the Company or Australian $200.

24.11 The Company shall not be liable in any event for any Consequential Loss whether or not the Company had knowledge that such damage might be incurred.

25. Consumer provisions

25.1 This **clause 25** only applies where the Service Agreement between the Company and the Customer is a Consumer Contract and is not a Shipping Contract.

25.2 Neither Party may assign the other Party’s rights or transfer its obligations under the Service Agreement without the other Party’s prior written consent, which must not be unreasonably withheld.

25.3 No modification amendments or other variation of the Trading Conditions shall be valid and binding on the Parties unless made in writing and duly executed by and on behalf of both Parties.

25.4 The Company, acting reasonably, reserves to the right to decide the manner or procedure to be adopted for any or all of the various acts that will be necessary for the completion of the Services. **THE COMPANY SHALL HAVE NO LIABILITY OR RESPONSIBILITY BY VIRTUE OF THE FACT THAT THERE MAY BE A CHANGE IN THE RATES OF DUTY, WHARFAGE, FREIGHT, RAILAGE OR CARTAGE, OR ANY OTHER TARIFF BEFORE OR AFTER THE PERFORMANCE BY THE COMPANY OR ANY ACT INVOLVING A LESS FAVOURABLE RATE OR TARIFF, OR BY VIRTUE OF THE FACT THAT A SAVING MAY HAVE BEEN EFFECTED IN SOME OTHER WAY HAD ANY ACT BEEN PERFORMED AT A DIFFERENT TIME.**

25.5 Where the Company accepts instructions to deliver on a COD basis pursuant to **clause 19**, THE COMPANY IS NOT LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM SUCH INSTRUCTIONS OR SUCH COLLECTION, EXCEPT TO THE EXTENT THAT THE LOSS OR DAMAGE WAS CAUSED BY THE COMPANY.

25.6 The Company shall not be liable in any event for any Consequential Loss unless the Company had knowledge that such damage might be incurred.

25.7 **Clause 20.1** will not apply to the extent that:

(a) the Company directly caused loss or damage; or

(b) the loss or damage was caused by negligence or wilful default by the Company, its servants or agents.