

Definitions

- 1.1 "WCBM" shall mean WCBM Pty Ltd T/A WCBM World Freight, and its successors and assigns or any person acting on behalf of and with the authority of WCBM Pty Ltd T/A WCBM World Freight.
- 1.2 "Sub-Contractor" shall mean and include:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom WCBM may arrange for the carriage or storage of any Goods the subject of the contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).
- 1.3 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting WCBM to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Carriage" shall mean all services supplied by WCBM to the Customer (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as the carriage, storage, stowing or packing or handling of the Goods, or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto), including the offering of any advice or recommendations.
- 1.5 "Goods" shall mean cargo together with any container, trailer, tilt, igloo, wagon, tank, frame(s), packaging, or pallet(s) to be moved from one place to another by way of Carriage by WCBM.
- 1.6 "Insolvency Event" means any circumstance in which the Customer is unable to pay any amounts that have become due and payable and includes liquidation, official management, administration, compromise arrangement, merger, amalgamation, reconstruction, winding up, dissolution, deregistration, assignment for the benefit of creditors, scheme, composition or arrangement with creditors, insolvency, bankruptcy, or a similar procedure or, where applicable, changes in the constitution of any partnership or person, or death.
- 1.7 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).
- 1.8 "Dangerous Goods" means Goods which are, or may become, noxious, dangerous, hazardous, inflammable, explosive or offensive (including waste or contaminated or radioactive materials), or may become liable to cause death, injury or damage to any person or property whatsoever (and includes goods likely to cause damage, such as goods likely to harbour or encourage vermin or other pests, and all such goods as falling within the definition of hazardous and dangerous goods in the legislation governing carriage by road, rail, sea or air in the states and territories of Australia) whether prescribed by legislation or otherwise.
- 1.9 "Charges" shall mean the cost (plus any GST where applicable) for Carriage as agreed between WCBM and the Customer subject to clause 4 of this contract.

2 Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for, or accepts, Carriage undertaken by WCBM.
- 2.2 These terms and conditions may be meant to be read in conjunction with WCBM's quotation, consignment note, agreement, manifests, or any other forms as provided by WCBM to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in that document shall prevail.
- 2.3 Any variation, cancellation or waiver of these terms and conditions (or any of them) must be in writing signed by a Director of WCBM Pty Ltd T/A WCBM World Freight. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these terms and conditions.
- 2.4 The use of a Customer's own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the contract so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 2.5 In the event that the Services provided by WCBM are the subject to payment on behalf of the Customer via a third party, then Irrespective of this clause, the Customer acknowledges that at all times they will be responsible for the payment of any monies due and agree to honour their obligation for payment in the event that the third party fails to make payment on behalf of the Customer on or by the due date. Failure to meet such obligation of payment will place the Customer's account in default and subject to default consequences as defined in clauses 19.1 and clause 20.
- 2.6 Except under special arrangements previously made in writing, WCBM will not accept or deal with any:
- (a) Dangerous Goods. Any person delivering such Goods to WCBM, or causing WCBM to handle or deal with any such Goods, shall be liable for all loss or damage caused thereby and shall indemnify WCBM against all penalties claims damages costs and expenses arising in connection therewith, and the Goods may be destroyed or otherwise dealt with at the sole discretion of WCBM (or any other person in whose custody they may be at the relevant time such Goods are accepted) if they become dangerous to other goods or property;
 - (b) bullion, coins, precious stones, jewellery, glassware, motor vehicle body panels, porcelain, fragile goods, appliances with electrical components, computers, currency, marble or enamel Goods, negotiable instruments, antiques, works of art, drugs, weapons, refrigerated/perishable Goods, household and personal effects, second hand Goods, cigarettes, tobacco and tobacco products, livestock or plants and any valuable documents, WCBM will not accept any liability whatsoever for any such Goods.

3 Electronic Transactions Act

- 3.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales & South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, Section 10 the Electronic Transactions Act 2001 (Western Australia), Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic

Transactions Act 2000 (Tasmania), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

4 Errors and Omissions

- 4.1 The Customer acknowledges and accepts that WCBM shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by WCBM in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by WCBM in respect of the Services.
- 4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of WCBM; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

5 Change in Control

- 5.1 The Customer shall give WCBM not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer and/or any other change in the Customer's details (including but not limited to, changes in the Customer's name, address and contact phone or fax number/s, change of trustees or business practice). The Customer shall be liable for any loss incurred by WCBM as a result of the Customer's failure to comply with this clause.

6 Charges and Payment

- 6.1 At WCBM's sole discretion the Charges shall be either:
- (a) as indicated on invoices provided by WCBM to the Customer in respect of Carriage undertaken;
 - (b) WCBM's quoted Charges (subject to clause 6.2) which shall be binding upon WCBM provided that the Customer shall accept in writing WCBM's quotation within thirty (30) days; or
 - (c) if the Goods have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Customer. WCBM may, at any time, open any container or any other package or unit in order to re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 6.2 WCBM reserves the right to change the Charges:
- (a) if a variation to WCBM's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or delivery address, facilities available for packing, loading or unloading (where a forklift is not available), weather conditions or delays beyond the control of WCBM, delivery times or date or otherwise, etc.);
 - (b) to reflect any increases to WCBM in the cost of undertaking the Carriage of the Goods which are beyond the reasonable control of WCBM (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, or increases in fuel, fuel levies, taxes or customs duties or insurance premiums or warehousing costs);
 - (c) for any delay over thirty (30) minutes in either loading and/or unloading (from when WCBM reports for such loading or unloading), or any overnight or extended storage of the Goods, occurring other than from WCBM's default.
- 6.3 Time for payment for the Carriage of Goods being of the essence, the Charges will be payable by the Customer on the date/s determined by WCBM, which may be:
- (a) on, or before, delivery of the Goods;
 - (b) the date specified on any invoice or other form as being the date for payment; or
 - (c) failing any notice to the contrary, the date which is fourteen (14) days following the date of any invoice given to the Customer by WCBM.
- 6.4 Any discounts applicable to the Charges shall become null and void if payment is not made by the due date stated on the invoice and/or statement.
- 6.5 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Customer and WCBM.
- 6.6 The Customer shall not be entitled to set off against, or deduct from the Charges, any sums owed or claimed to be owed to the Customer by WCBM nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.7 Unless otherwise stated the Charges does not include GST. In addition to the Charges the Customer must pay to WCBM an amount equal to any GST WCBM must pay for any Carriage of Goods by WCBM under this contract or any other agreement. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Charges. In addition the Customer must pay any other applicable taxes and duties imposed by any lawful authority in addition to the Charges, except where they are expressly included in the Charges.
- 6.8 The Customer acknowledges and agrees that the Customer's obligations to WCBM for the supply of Services shall not cease until:
- (d) the Customer has paid WCBM all amounts owing for the particular Services hire; and
 - (e) the Customer has met all other obligations due by the Customer to WCBM in respect of all contracts between WCBM and the Customer.
- 6.9 Receipt by WCBM of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then WCBM's ownership or rights in respect of the Carriage of Goods, and this contract, shall continue.

7 Provision of the Services

- 7.1 WCBM is not a "Common WCBM" and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by WCBM subject only to these conditions and WCBM reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 7.2 *Freight Forwarding*
- (a) the Customer authorises WCBM (in its discretion at any time without notice to the Customer) to:
 - (i) license or sub-contract all or any part of its rights and/or obligations, including using the services of others where necessary to ensure safety of other road users and property and/or compliance with lawful authority requirements and/or Police or private escorts, road closures and/or transport control, and using specialist equipment such as special cooling, etc.;

- (ii) deviate from the usual, customary, intended or advertised route (whether or not the nearest and/or most direct and/or customary) or manner of carriage of Goods that may be deemed reasonable or necessary in the circumstances, including stay at any place whatsoever once or more often in any order backwards or forwards and/or store the Goods at any such place for any period whatsoever;
- (iii) however, where the Customer expressly or implies instruction to WCBM to use or it is expressly agreed that WCBM will use a particular method of providing the Services then WCBM will give priority to that method but its adoption remains at the sole discretion of WCBM and as such the Customer authorises WCBM to provide the Services by another method;
- (iv) comply with any order or direction or recommendation on loading, unloading, departure, routes, place or call, stoppages, destination, arrival, discharge, delivery or otherwise whatsoever given by any lawful authority.

7.3 Except to the extent that any of the Services require WCBM to act as a freight forwarder, WCBM shall act as a forwarding agent only.

7.4 The Customer acknowledges and agrees:

- (a) WCBM contracts with the Customer both on its own behalf and on the behalf of WCBM's servants, agents and subcontractors, and the Customer undertakes that the Customer will not make any claims against such servant, agent or subcontractor which may impose upon any of them any liability whatsoever in connection with the Goods or the provision of the Services, whether or not arising out of negligence or a wilful act or omission by any of them;
- (b) in respect of any clause herein which excludes, or in any way limits, the liability of WCBM in respect of the Services, WCBM, in addition to acting for itself, is acting as an agent of, and trustee for, each of its employees and also any other person or company with whom WCBM arranges for the carriage of the Goods (and the employees of such person or company) so that these parties are parties to this contract in so far as to the exclusions or indemnities that are contained herein are concerned and, in so far as may be necessary to give effect to this clause, WCBM will hold the benefit of these terms and conditions for its employees and so any such person or company and their employees;
- (c) the Customer shall indemnify WCBM against:
 - (i) the consequences of such claim or allegation thereof;
 - (ii) all claims or demands whatsoever by whomsoever made in respect of any loss, damage, or injury howsoever caused whether or not by negligence or wilful act or omission of WCBM, its servants, agents or subcontractors.

7.5 WCBM's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and despatched from the Customer's premises or despatched from third party premises as directed by the Customer in order to fulfil the carriage of the Goods.

7.6 Should the Customer require WCBM to collect the Goods upon the Customer's behalf from a third party, any receipt WCBM may give that third party when effecting collection is no more than a record of the collection and cannot be construed as confirmation of the quality or condition of the Goods.

8 Custom Brokerage

8.1 The Customer agrees that, by signing acceptance of these Terms and Conditions the Customer duly authorises WCBM to act as their nominated Customs Broker under Section 181 (1) of the Customs Act 1901 (as Authorised Agents), to act on the Customer's behalf, with WCBM then becoming the Customer's duly nominated agent or sub-agent as appointed, in all matters involving the Australian Customs Service.

8.2 The Customer acknowledges that WCBM will, for the purposes of customs duty, classify the Goods, compile the Goods for customs purposes and calculate the customs duty payable on the Goods based on the information provided by the Customer to WCBM in relation to the Goods, and WCBM shall not be liable for any mistake in classification, or compiling of the Goods or calculation of customs duty resulting from the failure of the part of the Customer to provide sufficient information to WCBM concerning the Goods so as to enable WCBM properly to classify and compile the Goods and properly calculate the customs duty on the Goods.

8.3 In the event that an examination of the Goods is required by any statutory authority, or other person authorised by the Customer or entitled to examine the Goods, WCBM shall not be responsible for failure to arrange, or delay in arranging such examination unless WCBM shall have been given sufficient written notice by the Customer to enable it to arrange such examination.

8.4 WCBM is entitled to be paid, and retain, all brokerages, commissions, allowances and other remuneration's paid to, or retained by, ship forwarding agents (or freight forwarders) and/or insurance brokers.

9 Customer-Packed Containers

9.1 Subject to any written special instructions to the contrary, the Customer is solely responsible for the safe and proper packaging of the Goods (including the manner in which the Goods have been packed, the suitability of the Goods for carriage or manner or packaging and/or the condition of the packaging, etc.) and for any loss suffered or incurred by any person (including the Customer) through any such failure.

9.2 Goods requiring special appliances all loading and unloading are accepted for carriage only on condition that such appliances are made available by the Customer at the collection or delivery address. If WCBM is, without prior arrangement, called upon to load or unload such Goods, WCBM shall not be liable to the Customer for any loss whatever, however caused, arising out of such loading or unloading and the Customer shall indemnify WCBM against all claims and demands whatever which could not have been made if such assistance had not been given.

9.3 Any handling, installation, removal, assembly or erection of any kind included in the Carriage of the Goods is undertaken on the basis that WCBM accepts no liability for any loss, damage or injury of any kind whatsoever, howsoever arising (including, but not limited to, any negligence or breach of contract by WCBM) caused or incurred or occurring during any part of such activity including loss, damage or injury to any person, property or thing or any Goods.

10 Customer's Responsibility

10.1 The Customer expressly warrants, represents, confirms and/or acknowledges that:

- (a) WCBM has relied upon the Customer in its description of the Goods (including weight, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, WCBM accepts no liability for any discrepancy that may arise with the description;
- (b) unless specified otherwise in writing, WCBM has relied upon the Customer's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Customer has complied with all applicable laws and regulations (including those relating to the any

applicable dangerous goods codes) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;

- (c) the Customer is either the owner, or the authorised agent of the owner, of any Goods or property that is the subject matter of this contract, and:
 - (i) and the Customer is authorised by all persons owning or interested in the Goods to enter into this contract; and
 - (ii) by entering into this contract, the Customer accepts these terms and conditions for any owner or party with interest in the Goods, as well as for all other persons on whose behalf the Customer is acting.
- (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Customer's description of the Goods;
- (e) the person handing over the Goods to WCBM is authorised to sign and accept these terms and conditions;
- (f) it is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

11 Insurance

- 11.1 WCBM will not, without the Customer's written instruction, **and WCBM's written approval**, insure the Goods, and:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of WCBM;
 - (b) subject to sub-clause (c):
 - (i) WCBM is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all;
 - (ii) under no circumstances will WCBM be under any liability with respect to the arranging of any such insurance and no claim will be made against WCBM for failure to arrange or ensure that the Goods are insured adequately or at all.
 - (c) any such insurance is at the Customer's own expense. Where the Customer's instruction does not specify the class of insurance to be effected, WCBM may in its discretion effect that class of insurance which it considers appropriate. Such insurance shall exclude all claims resultant from:
 - (i) wear, tear, moths, vermin, damp, mildew or loss of market;
 - (ii) loss, damage or expensed proximately caused by delay;
 - (iii) strikes, riots, civil commotions or malicious damage of the insured Goods;
 - (iv) gradual deterioration, rust or oxidation unless due to or consequent upon fire, collision, overturning or other accident;
 - (v) any exclusion common to that class of insurance;
 - (vi) any other exclusion advised by the Customer to WCBM, detailed in the special instructions.

12 Dangerous Goods

- 12.1 Unless otherwise agreed in writing, WCBM will not accept Dangerous Goods for carriage, nor anything which may encourage vermin or pests. The Customer shall be liable for (and shall indemnify WCBM against) all loss and damage and additional Charges and expenses incurred or sustained by WCBM arising out of:
- (a) any false or misleading or inaccurate information or description of such Dangerous Goods; or
 - (b) any default or failure to declare the Goods as dangerous Goods and to provide full particulars thereof.
- 12.2 When Dangerous Goods are accepted for carriage, the Customer warrants that:
- (a) the carriage requested by the Customer is not prohibited;
 - (b) the Customer has fully disclosed in writing to WCBM before WCBM took possession of the Goods:
 - (i) full particulars and description of the Dangerous Goods;
 - (ii) all requirements of lawful authorities for such carriage;
 - (iii) the name, nature and value of the Dangerous Goods; and
 - (iv) all other relevant information.
- 12.3 The Customer is liable for any loss or damage suffered by WCBM or any Sub-Contractor or other person through the carriage of Dangerous Goods (whether declared or not).
- 12.4 WCBM may, at its sole discretion, at the Customer's expense and without compensation to the Customer or to any other person interested in the Goods, and without prejudice to its Charges or any other rights hereunder:
- (a) remove, sell, destroy or otherwise dispose of any undeclared Dangerous Goods in its possession without being responsible or accountable for the value thereof to the Customer or any other person interested in the Goods; and
 - (b) dispose or destroy or abandon or render harmless:
 - (i) any Goods which WCBM believes have deteriorated or become objectionable, unwholesome, infested with vermin or pests, or a source of danger or contamination; and
 - (ii) any undeclared Dangerous Goods which are or are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature.

13 Delivery of the Goods

- 13.1 WCBM shall be deemed to duly deliver the Goods, and discharge its obligations hereunder, by delivering the Goods to a person and location authorised or directed by the Customer in writing, or at any other location directed by the Customer orally.
- 13.2 The Customer shall ensure that WCBM has clear and free access to the site at all times to enable them to undertake the Services. WCBM shall not be liable for any loss or damage to the site (including, without limitation, damage to pathways, driveways and concreted or paved or grassed areas) unless due to the negligence of WCBM.
- 13.3 It is the responsibility of the Customer to ensure that access is suitable to accept the weight of laden trucks. The Customer agrees to indemnify WCBM against all costs incurred by WCBM in recovering such vehicles in the event they become bogged or otherwise immovable.

14 Loss or Damage

- 14.1 Subject to clause 18, and any statutory provisions imposing liability in respect of the loss of or damage to the Goods, the Goods shall be and remain at the Customer's sole risk, and WCBM shall not be under any liability for:
- (a) any loss or damage suffered by the Customer (or any third party) as a result of the Customer contravening clause 10;
 - (b) any delay or any loss or damage to the Goods occasioned during carriage arising from any Force Majeure or compliance with the directions of any person or lawful authority entitled to give them;
 - (c) deterioration, contamination (including any contamination of any grain or other cargo compromising the Goods), evaporation, breakdown or malfunction of any refrigeration or cooling equipment, wrongful delivery, misdelivery, delay in delivery or non-delivery of the Goods whenever or howsoever occurring (and whether the Goods are or have been in the possession of WCBM or not) or any injury or loss of any nature whatsoever;
 - (d) any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
 - (e) any act or omission whether wilful, reckless, negligent or otherwise of WCBM, or its servants or agents or Sub-Contractors;
 - (f) any latent defect or inherent vice or natural deterioration or wastage of the Goods or packaging;
 - (g) any act, omission or neglect of the Customer, including any breach of its obligations under this contract, insufficient or improper packaging, labelling or addressing, or failure to take delivery, or any handling, loading, storage or unloading of the Goods.
- 14.2 In the case of carriage by sea or air, no optional declaration of value to increase the carrier's liability under either the Carriage by Civil Aviation (Carrier's Liability) Act 1959, Article 22(2) of Schedule 1 as amended by Schedule 2, or Article IV Rule 5(a) of Schedule 1 of the Carriage of Goods by Sea Act 1991, will be made except upon express instructions given in writing to the Customer. In all other cases where there is a choice of tariff rates according to the extent of the liability assumed by carriers, warehousemen or others, no declaration of value (where optional) will be made for the purposes of extending liability, and Goods will be forwarded or dealt with at the Customer's risk or other minimum charges unless express instructions in writing to the contrary are given by the Customer.

15 Claims

- 15.1 Notwithstanding clauses 11 and 14, WCBM shall be discharged of all liability unless:
- (a) notice of any claim is received by WCBM or its agent in writing within three (3) days after the date specified in Clause 15.2, or within a reasonable time after that date if the Customer proves that it was impossible to so notify, and
 - (b) suit is brought in the proper forum and written notice thereof received by WCBM within nine (9) months after the date specified in Clause 15.2.
- 15.2 For the purposes of Clause 15.1, the applicable dates are:
- (a) in the case of loss or damage to Goods, the date of delivery of the Goods,
 - (b) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered,
 - (c) in any other case, the event giving rise to the claim.

16 Conditions of Storage

- 16.1 WCBM will prepare an inventory of Goods received for storage and will ask the Customer to sign the inventory. The Customer will be provided with a copy of the inventory. If the Customer signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from WCBM, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Customer asks for the contents to be listed, in which case WCBM will be entitled to make a reasonable additional charge.
- 16.2 WCBM is authorised to remove the Goods from one warehouse to another without cost to the Customer. WCBM will notify the Customer of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 16.3 The Customer is entitled, upon giving WCBM reasonable notice, to inspect the Goods in store but a reasonable charge may be made by WCBM for this service.
- 16.4 Subject to payment for the balance of any fixed or minimum period of storage agreed, the Customer may require the Goods to be removed from the store at any time on giving WCBM not less than five (5) working days' notice. If the Customer gives WCBM less than the required notice, WCBM will still use its best endeavours to meet the Customer's requirements, but shall be entitled to make a reasonable additional charge for the short notice.
- 16.5 The Customer agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from WCBM to do so. In default, WCBM may, after fourteen (14) days' notice to the Customer, SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty, and apply the net proceeds in satisfaction of any amount owing by the Customer to WCBM.
- 16.6 WCBM reserves the right to charge the Customer for any storage costs incurred due to failure by the Customer to provide all necessary paperwork requested by WCBM.

17 Lien

- 17.1 WCBM shall have and retain a general lien on any Goods owned by the Customer and in the possession or control of WCBM (and any documents relating to those Goods) for pecuniary obligations owing from time to time by the Customer on any account whatsoever to WCBM (including, but not limited, to payment of the Charges), and WCBM shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Customer. WCBM shall be entitled to retain the sums due to it, in addition to the Charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect WCBM's right to recover from the Customer any Charges due or payable in respect of the carriage or such detention and sale.

18 The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts

- 18.1 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (“**Non-Excluded Guarantees**”).
- 18.2 WCBM acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 18.3 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, WCBM makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Carriage of the Goods. WCBM’s liability in respect of these warranties is limited to the fullest extent permitted by law.
- 18.4 If the Customer is a consumer within the meaning of the CCA, WCBM’s liability is limited to the extent permitted by section 64A of Schedule 2.
- 18.5 If WCBM is required to rectify, re-provide, or pay the cost of the Carriage of the Goods under this clause or the CCA, but is unable to do so, then WCBM may refund any money the Customer has paid for the Carriage of the Goods but only to the extent that such refund shall take into account the value of any portion of the Carriage of Goods undertaken by WCBM for the Customer which were not defective.
- 18.6 If the Customer is not a consumer within the meaning of the CCA, WCBM’s liability for any defect in the Carriage of the Goods is:
- (a) limited to the value of any express warranty provided to the Customer by WCBM at WCBM’s sole discretion;
 - (b) otherwise negated absolutely.

19 Cancellation

- 19.1 Without prejudice to any other remedies WCBM may have, if at any time the Customer is in breach of any obligation (including those relating to payment) WCBM may suspend or terminate the Carriage of the Goods for the Customer and any of its other obligations under the terms and conditions, and may (by written notice to the Customer) demand that the Customer collect the Goods. WCBM will not be liable to the Customer for any loss or damage the Customer suffers because WCBM exercised its rights under this clause and where the Customer fails to collect the Goods when demanded by WCBM to do so, WCBM may (at the Customer’s expense) remove and relocate the Goods.
- 19.2 WCBM may cancel any contract to which these terms and conditions apply, or cancel the Carriage of the Goods at any time before the Goods are delivered, by giving written notice to the Customer. On giving such notice WCBM shall repay to the Customer any sums paid in respect of the Charges, less any amounts owing for any portion of the Carriage of the Goods which have been undertaken by WCBM. WCBM shall not be liable for any loss or damage whatever arising from such cancellation.
- 19.3 In the event that the Customer cancels this contract, or the Carriage of the Goods, then the Customer shall be liable for any loss incurred by WCBM (including, but not limited to, any loss of profits) up to the time of cancellation.

20 Default and Consequences of Default

- 20.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of three percent (3%) per calendar month (and at WCBM’s sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Customer owes WCBM any money the Customer shall indemnify WCBM from and against all costs and disbursements incurred by WCBM in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WCBM’s contract default fee, and bank dishonour fees).
- 20.3 Further to any other rights or remedies WCBM may have under this contract, if a Customer has made payment to WCBM, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by WCBM under this clause 20 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer’s obligations under this agreement.
- 20.4 Without prejudice to WCBM’s other remedies at law WCBM shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to WCBM shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to WCBM becomes overdue, or in WCBM’s opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer becomes insolvent/bankrupt, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

21 Limitation of Liability

- 21.1 The Customer shall indemnify WCBM against any loss (including any fine, levy, charge or other monetary imposition to which WCBM may become liable incidental to the Carriage of the Goods), damage, death or injury (including loss or damage to WCBM’s containers and/or equipment) arising out of the Customer’s contravention of clause 11, or the Customer’s unreasonable detention of any vehicle, container or other equipment of WCBM.
- 21.2 Nothing whatsoever done or omitted to be done or other conduct by WCBM in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under no circumstances constitute either a breach going to the root of this contract, or a deviation or departure therefrom or a repudiation thereof such as to have the effect of disentitling WCBM from obtaining the benefit of and enforcing all rights, defences, exceptions, immunities and limitations of liability and other like protections herein which shall continue to have full force and effect in any event whatsoever. Subject to clause 18, WCBM shall be under no liability whatsoever to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach by WCBM of these terms and conditions (alternatively WCBM’s liability shall be limited to damages which under no circumstances shall exceed the Charges).

22 Sub-Contractors

- 22.1 The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of WCBM which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods. If any such claim should nevertheless be made, the Customer undertakes to indemnify WCBM against all consequences thereof.
- 22.2 Without prejudice to Clause 22.1, every servant, sub-contractor or agent of WCBM shall have the benefit of all provisions herein as if such provisions were expressly for their benefit. In entering into this contract, WCBM, to the extent of those provisions, does so not only on its behalf, but as agent and trustee for such servants, sub-contractors and agents.
- 22.3 The Customer shall defend, indemnify and hold harmless WCBM from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of WCBM under these Conditions.
- 22.4 Without prejudice to the generality of this Clause 22, the indemnity referred to in Clause 22.3, shall cover all claims, costs and demands arising from or in connection with the negligence of WCBM, its servants, sub-contractors and agents.
- 22.5 In this Clause, “sub-contractors” includes direct and indirect sub-contractors and their respective employees, servants and agents.

23 Confidential Information/Conflict of Interest

- 23.1 The Customer assumes liability for all loss or damage suffered by WCBM as a result of breach of confidentiality undertaken by itself, or its employees or agents.
- 23.2 Neither party will use the other party’s confidential/personal Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this contract, and a party may only disclose the other party’s confidential/personal Information:
- (a) if required by law;
 - (b) to exercise their rights under this contract;
 - (c) if necessary to perform their obligations under this contract;
 - (d) if the other party has provided their written consent to the disclosure;
 - (e) if the confidential/personal Information is already in the public domain (otherwise than as a result of disclosure in breach of this contract).
- 23.3 WCBM is obliged to remain vigilant to, and to advise the Customer of, any conflict of interest that may potentially impact or harm the Customer. To avoid conflict of interest and commercial sensitivities, it is agreed by WCBM that any and all information regarding the Customer (and their business, commercial agenda and employees) shall remain confidential at all times and shall only be disclosed in the event of legal order or obligation.
- 23.4 The obligations of confidentiality shall survive the finalisation or discontinuance of any agreement between the Customer and WCBM.
- 23.5 The Customer agrees to indemnify WCBM on a continuing, full indemnity basis from and against any liability, loss, expense and demand for or arising from any false, misleading, non-descriptive representation or statement made by the Customer in respect of the Goods to any third party (including but not limited to, the Australian Border Force where Goods are subject to customs inspection). This indemnity survives termination of this contract.

24 Intellectual Property

- 24.1 The Customer agrees that WCBM may (at no cost) utilise any digital images taken by WCBM of the transported items for the Customer for the purposes of marketing, website display or entry into any competition.

25 Personal Property Securities Act 2009 (“PPSA”)

- 25.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 25.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and both parties agree that WCBM has possession of the Goods within the meaning of section 24 of the Personal Property Security Act 2009 and thereby creates a security interest in:
- (a) Goods that have previously been carried and/or stored and any Goods that will be carried and/or stored in the future by WCBM for the Customer; and/or
 - (b) all the Customer’s present and after acquired property being a charge, including anything in respect of which the Customer has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Customer to WCBM for the Carriage of the Goods – that have previously been undertaken and that will be undertaken in the future by WCBM for the Customer.
- 25.3 The Customer undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WCBM may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 25.3(a)(i) or 25.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, WCBM for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest which would rank ahead of WCBM, without the prior written consent of WCBM;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the registration in favour of a third party without the prior written consent of WCBM.
- 25.4 WCBM and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 25.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 123, 130, 132(3)(d) and 132(4) of the PPSA.
- 25.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

- 25.7 Unless otherwise agreed to in writing by WCBM, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 25.8 The Customer must unconditionally ratify any actions taken by WCBM under clauses 25.3 to 25.5.
- 25.9 Subject to any express provisions to the contrary (including those contained in this clause 24) nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

26 Security and Charge

- 26.1 In consideration of WCBM agreeing to undertaken the Carriage of the Goods, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 26.2 The Customer indemnifies WCBM from and against all WCBM's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising WCBM's rights under this clause.
- 26.3 The Customer irrevocably appoints WCBM and each director of WCBM as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 26 including, but not limited to, signing any document on the Customer's behalf.

27 Privacy Act 1988

- 27.1 The Customer agrees for WCBM to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by WCBM.
- 27.2 The Customer agrees that WCBM may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two (2) years.
- 27.3 The Customer consents to WCBM being given a consumer credit report to collect overdue payment on commercial credit.
- 27.4 The Customer agrees that personal credit information provided may be used and retained by WCBM for the following purposes (and for other agreed purposes or required by):
- (a) the Carriage of Goods; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the Carriage of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Carriage of Goods.
- 27.5 WCBM may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 27.6 The information given to the CRB may include:
- (a) personal information as outlined in 27.1 above;
 - (b) name of the credit provider and that WCBM is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and WCBM has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of WCBM, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 27.7 The Customer shall have the right to request (by e-mail) from WCBM:
- (a) a copy of the information about the Customer retained by WCBM and the right to request that WCBM correct any incorrect information; and
 - (b) that WCBM does not disclose any personal information about the Customer for the purpose of direct marketing.
- 27.8 WCBM will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.
- 27.9 The Customer can make a privacy complaint by contacting WCBM via e-mail. WCBM will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

28 General

- 28.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 28.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

- 28.3 The Customer agrees that WCBM may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for WCBM to undertake Carriage of Goods for the Customer.
- 28.4 Where WCBM is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of WCBM, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this contract and WCBM gives the Customer prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of WCBM.
- 28.5 Both parties warrant that they have the power to enter into this agreement and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this agreement creates binding and valid legal obligations on them.
- 28.6 The Customer shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to this contract.
- 28.7 Any exercise of discretion by WCBM shall be absolute and unfettered and may be unreasonable or arbitrary.
- 28.8 The Customer states that it did not rely on any representation, promise, warranty or condition not expressly made (in writing) as part of this contract.
- 28.9 The defences and exclusions of liability in these terms and conditions, including clause 14, apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against WCBM even if it is resulted from an act or omission of WCBM done wilfully or recklessly with knowledge that damage would or would probably result.