

Western Free Stores Pty Ltd - Storage Terms and Conditions

1. Agreement

- (a) These Terms and Conditions, together with the Quotation, constitute an agreement between the Supplier and the Customer in relation to the Supplier's supply of the Services to the Customer (**Agreement**).
- (b) The Quotation, together with these Terms and Conditions, constitutes an offer from the Supplier that is capable of acceptance by the Customer, until the earlier of:
 - (i) the expiry of the Quotation Offer Period; or
 - (ii) the date that the Supplier advises the Customer that the Quotation is revoked,after which time, the offer set out in the Quotation will lapse and will not be capable of acceptance by the Customer without the consent of the Supplier.
- (c) The Customer will be taken to have accepted the Agreement if it:
 - (i) confirms to the Supplier in writing that it accepts the Agreement; or
 - (ii) provides the Supplier with instructions to proceed with the Services.

2. Definitions and Interpretation

2.1 Definitions

Unless the context requires otherwise, words beginning with capital letters have the meanings given to them in the Quotation or as defined below:

ACL means the Australian Consumer Law contained in Schedule 2 of the *Competition and Consumer Act 2010* (Cth).

Agreement has the meaning given to that term in clause 1(a).

Allocated Space has the meaning given to that term in clause 4.1.

Business Day means a day on which banks open for trading in New South Wales, excluding Saturdays, Sundays and public holidays.

Claim means any claim, notice, investigation, action, proceeding, demand, cost, damage, loss, expense, liability or other outgoing of whatever nature, past and present, howsoever and whensoever arising, whether known or unknown, fixed or ascertained, actual or contingent.

Customer means, where a person places an Order or accepts the Agreement:

- (a) in their personal capacity, that person; or
- (b) on behalf of another person or persons, that person or those other persons (as applicable).

Dangerous Goods means Goods which are volatile or explosive or which are or may become dangerous, noxious, hazardous, inflammable or offensive (including radioactive materials) or which may become liable to damage any person or property and includes all Goods which are likely to fall within the definition of hazardous, noxious, dangerous, explosive, inflammable or radioactive goods under any legislation, regulation, code or convention (whether or not legally enforceable) relevant to the Services, or any national or international rules applicable to the transport of, or the storage of dangerous goods.

Force Majeure Event means an act of God, war, any act of terrorism, epidemic, pandemic, revolution, any unlawful act against public order or authority, a strike or industrial dispute, an act or omission of a governmental agency, or any other event (whether the same or different to the events set out in this definition) that is out of a party's reasonable control.

Goods means all goods referred to in the Quotation and any other goods in respect of which the Supplier agrees to supply the Services pursuant to these Terms and Conditions.

GST Law has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999*.

GST has the meaning given to it under GST Law.

Insolvency Event means, in relation to a party:

- (a) any act of insolvency by that party under applicable Law;
- (b) any application made to a court for that party to be wound up or liquidated;
- (c) that party ceasing to carry on business or resolving to wind itself up, or otherwise, dissolve itself, or give notice of its intention to do so;
- (d) the appointment of a liquidator, provisional liquidator, administrator, receiver, manager or controller in respect of that party or its assets;
- (e) anything analogous or having a substantially similar effect to any of the events specified above under the Law of any jurisdiction by which that party is governed.

Interested Person means a person with any interest in the Goods including the Customer and the owner of the Goods and each of their agents and employees.

Legislative Requirements means any applicable law including legislation, ordinances, regulations, by-laws and other subordinate legislation.

Order means any request or order by or from the Customer for the supply of Services by the Supplier, whether written, oral or otherwise.

Prohibited Article means any item the possession of which is unlawful.

Quotation means a quotation issued by the Supplier for the provision of Services in response to an Order, and any other document, term or communication incorporated into the Agreement by the terms of that quotation or by agreement between the Supplier and the Customer.

Quotation Offer Period means the period of 14 days from the date of a Quotation, or such later date accepted by the Supplier.

Service Fees means the fees payable by the Customer for the Services.

Services includes the whole of the operations and services performed or undertaken by the Supplier and its related bodies corporate in respect of the storage of the Goods.

Subcontractor means:

- (a) any other person, firm or corporation with whom the Supplier may arrange for the performance of the Services or any part thereof; and
- (b) any employee, agent or subcontractor of any of the persons in paragraph (a).

Supplier means Western Free Stores Pty Ltd ACN 003 681 061.

Taxable Supply has the meaning given in section 195-1 of the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Terms and Conditions means these terms and conditions.

2.2 Interpretation

The following rules apply unless the context requires otherwise:

- (a) if the Quotation includes any special conditions these Terms and Conditions must be read subject to those special conditions;
- (b) headings are for convenience only and do not affect interpretation;
- (c) a reference to a clause is a reference to a clause of these Terms and Conditions;
- (d) a reference to time is to Sydney, Australia time;
- (e) a reference to '\$' 'AUD\$' 'AUD' or 'dollars' is a reference to the lawful currency of Australia;
- (f) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;
- (g) a reference to a right or obligation of any two or more persons confers that right, or imposes that obligation, as the case may be, jointly and severally; and
- (h) the meaning of general words is not limited by specific examples introduced by including, or for example, or similar expressions.

3. Application of Terms and Conditions

3.1 Application and acceptance

- (a) These Terms and Conditions apply to and govern all Services and all Orders.
- (b) By placing an Order, the Customer:
 - (i) warrants that it has the authority of all Interested Persons to request the Services and accept these Terms and Conditions; and
 - (ii) confirms acceptance of these Terms and Conditions on behalf of itself and each Interested Person.
- (c) Each Order that is accepted by the Supplier will form a separate contract between the Supplier and the Customer for the relevant Services and will incorporate and be governed by the Quotation (if applicable) and these Terms and Conditions.
- (d) The Agreement is the entire agreement of the Parties on its subject matter. The only enforceable rights and obligations of the Parties in relation to the subject matter of the Agreement are those, that arise out of the provisions contained in the Agreement, and:
 - (i) all representations, communications and prior agreements in relation to the subject matter of this Agreement are merged in and superseded by the Agreement; and
 - (ii) if you provide us with any form of purchase order or other terms and conditions before or after the date of this Agreement in respect of the subject matter of this Agreement, the Parties will not be bound to comply with any of the provisions set out in, or associated with, that purchase order or those terms and conditions.

3.2 Variation or Waiver

- (a) These Terms and Conditions cannot be waived or varied unless the variation is agreed in writing by a director or secretary of the Supplier.
- (b) Except as provided in clause 3.2(a), the Supplier is not bound by any terms and conditions contained in any of the Customer's documentation or any instructions given by any person which conflict with these Terms and Conditions, including for the avoidance of doubt any

purchase order that may be issued by the Customer relating to any Order.

3.3 **Amendment**

The Supplier may amend the Terms and Conditions from time to time. Unless otherwise stated, the amended Terms and Conditions will apply to all Orders placed by the Customer after the amended Terms and Conditions are provided to the Customer.

3.4 **Benefit**

These Terms and Conditions, cover, and may be invoked by, any person that the Supplier uses to perform all or any part of the Services, including any Subcontractor, and each of the Supplier's employees, servants, agents and officers. Such subcontractors, employees, servants, agents and officers are entitled to the benefit of these Terms and Conditions to the same extent as the Supplier and the Supplier holds the benefit of this Agreement on trust for those third parties.

3.5 **Authority**

The person giving instructions to the Supplier for the performance of the Services, or placing an Order on behalf of the Customer, warrants that they are authorised by the Customer to do so.

4. **Services**

4.1 **Storage**

The Customer may store, warehouse or land its Goods in any place, store or warehouse allocated to the Customer by the Supplier (**Allocated Space**) and only in that Allocated Space.

4.2 **Stocktake**

- (a) The Supplier may, but is not required to, perform a stocktake of the Goods stored in the Allocated Space (**Stocktake**), upon request by the Customer.
- (b) If the Supplier agrees to perform a Stocktake, the Supplier will perform the Stocktake subject to the Supplier and the Customer reaching agreement on the fees and charges payable by the Customer for the Stocktake.
- (c) The Customer:
 - (i) will not hold the Supplier responsible for any loss, damage or other liability incurred or suffered by the Customer or any other person having an interest in the Goods; and
 - (ii) indemnifies the Supplier against any Claim for loss, damage or other liability, arising from or in connection with the Supplier's performance of a Stocktake, or inaccurate reporting of any results of the Stocktake, except to the extent that such loss, damage or other liability was caused by the negligence of the Supplier.

4.3 **Customer acknowledgments**

The Customer acknowledges and agrees that:

- (a) the Goods are stored at the Customer's sole risk;
- (b) the Supplier accepts no responsibility for the Goods;
- (c) the Supplier receives the Goods "quantity, weight, measurement, strength, values, contents and conditions unknown";
- (d) the Supplier is not a bailee, custodian or warehouseman of the Goods; and
- (e) the Supplier does not take possession of the Goods.

4.4 **Acceptance of Orders**

The Supplier reserves the right in its absolute discretion to refuse to provide the Services to any person, or in respect of any Goods or class of Goods. The Supplier may refuse to accept an Order at its absolute discretion and without needing to provide any reason.

4.5 **Subcontracting**

The Supplier is authorised at its absolute discretion to arrange on any terms for the performance of the Services by any Subcontractor.

4.6 **Inspection and Entry**

(a) Subject to clause 4.6(b), the Customer consents to inspection and entry into the Allocated Space by the Supplier provided that the Supplier provides 10 Business Days' prior written notice to the Customer.

(b) In the event that the Supplier:

(i) is obliged to do so by law; or

(ii) reasonably suspects that:

(A) the Customer is not complying with Legislative Requirements;

(B) there is a risk of damage to property or injury arising from or in connection with the storage of the Goods in the Allocated Space; or

(C) the Allocated Space has been or is being damaged,

the Supplier may enter the Allocated Space using all necessary force without the written consent of the Customer, but the Supplier shall notify the Customer as soon as practicable thereafter. The Customer consents to entry into the Allocated Space in the circumstances outlined in this clause 4.6(b).

(c) Without limiting clause 4.6(b), if the Supplier has reason to believe that the Customer is not complying with Legislative Requirements, the Supplier may take any action that the Supplier believes necessary, including to contact, co-operate with and/or submit Goods to the relevant authorities, and/or immediately dispose of or remove the Goods at the Customer's expense, and the Customer must pay such expense upon demand by the Supplier.

5. **Services Fee**

5.1 **Calculation of Service Fee**

The Service Fees payable by the Customer to the Supplier for the Services will be determined:

(a) if the Supplier has provided a Quotation (and that Quotation has not lapsed or been withdrawn), in accordance with the Quotation; or

(b) if the Supplier has otherwise agreed on pricing terms of an Order with the Customer for the Services, in accordance with those pricing terms.

5.2 **Additional amounts payable**

(a) Except as expressly stated to the contrary, all Quotations and prices offered by the Supplier are quoted exclusive of GST, stamp duty, registration fees, taxes or government charges of any kind or other fees incurred (including those charged by third parties) as a result of the performance of the Services and any such charges will be added to and are payable by the Customer in addition to the Service Fees.

- (b) Without limiting clause 5.2(a), the Customer acknowledges that it may be required to pay additional fees and charges to the Supplier in circumstances where:
 - (i) the Supplier performs additional or ancillary services outside the scope of the Services set out in the Quotation, upon request by the Customer or where required to be performed in order to provide the Services set out in the Quotation (**Additional Services**); or
 - (ii) the Supplier incurs third party fees or charges in the course of performing the Services (**Third Party Costs**).
- (c) The Customer must pay the Supplier for all Additional Services at the prices and rates set out in the Quotation or otherwise at the current prices and rates applicable from time to time, whether or not such prices or rates are known to the Customer, or notified or published by the Supplier.
- (d) The Customer must, at the election of the Supplier, either:
 - (i) reimburse the Supplier for all Third Party Costs in full; and
 - (ii) pay the Third Party Costs direct to the relevant third party and indemnify the Supplier for the Third Party Costs and any costs or expenses incurred by the Supplier to defend any claim relating to the Third Party Costs.
- (e) The Customer may, at any time, request the Supplier to provide a list of current prices and rates applicable to any Additional Services.
- (f) The Customer acknowledges that the Additional Services and Third Party Costs that the Customer may be liable to pay include (without limitation) transport, unpacking fees (including for full and less than full container loads and loose and palletised goods), fees for movement in and out, CHEP pallet hire fees, dangerous goods fee, and fees for movement and stock reports.

5.3 **Payment**

- (a) Subject to clause 5.3(b) and except as otherwise agreed in writing by the Supplier, the Customer must pay the Service Fees to the Supplier fortnightly in arrears.
- (b) The Supplier may require the Customer to pay all or any part of the Service Fees in advance, in which case the Supplier will not provide the Services until the Supplier receives such payment.
- (c) The Customer must pay each invoice issued by the Supplier within 10 Business Days from the date of the invoice in accordance with the instructions contained in that invoice.
- (d) The Customer must pay all amounts payable to the Supplier under the Agreement without withholding, deduction, counter claim or set-off.

5.4 **GST**

Unless otherwise specifically stated, all amounts payable under these Terms and Conditions are expressed on a GST exclusive basis. When GST is payable on a Taxable Supply, then the amount payable for the Taxable Supply will be the amount plus GST.

5.5 **Adjustments**

- (a) Except as otherwise agreed in writing by the Supplier, the Supplier may withdraw a Quotation at any time before the Customer's acceptance of the Quotation, and in any event, a Quotation lapses after the expiry of the Quotation Offer Period.
- (b) The Supplier will not be bound by a Quotation if, in the opinion of the Supplier, there has been a change in the circumstances in which the Quotation was given, including any incorrect description of the Goods or any change to the scope of the Services required to be performed, and in such circumstances, the Supplier may charge additional fees for the Services or, in its

absolute discretion, refuse to perform the Services.

- (c) Except as otherwise agreed in writing by the Supplier, the Supplier may revise the rates and charges specified in the Quotation by giving not less than 5 Business Days' prior written notice to the Customer.

5.6 Lien

- (a) The Supplier will have a particular and general lien on Goods that the Supplier has in its possession. The particular and general lien will be for all monies that become due under these Terms and Conditions, including interest and all other expenses relating to the handling, storage or warehousing of the Goods. The Supplier's particular and general lien also extends to the amount of any costs of complying with the law, in relation to the advertisement for sale, sale by auction, or otherwise, customs, excise, taxes, duties and other statutory charges which may apply in relation to the sale of the Goods to satisfy or partially satisfy the Customer's obligations to the Supplier under these Terms and Conditions (**Costs**). The Customer acknowledges and agrees that if it does not pay monies owing under these Terms and Conditions within 15 Business Days of being notified by the Supplier, the Supplier may sell the Goods to recover such amounts and any Costs.
- (b) Nothing in this clause limits or excludes any rights conferred upon the Supplier by the *Storage Liens Act 1935 (NSW)*. In exercising its rights of sale under clause 5.6(a) or the *Storage Liens Act 1935 (NSW)*, the Supplier shall so far as applicable comply with the provisions of that Act.

5.7 Interest

- (a) The Customer will pay to the Supplier on demand interest at the commercial overdraft rate charged by the Supplier's bank from time to time on any Service Fees or other monies payable by the Customer to the Supplier which remain unpaid for 5 Business Days after notification from the Supplier of any amount that is due and payable. Interest under this clause 5.7 will be calculated from the relevant due date and accrue on a daily basis until paid.
- (b) The Customer acknowledges and agrees that it is liable for and will pay all costs including debt collection, commission, solicitor's fees and any out of pocket expense incurred by the Supplier in the recovery of unpaid Service Fees or other monies payable by the Customer to the Supplier.

6. Dangerous Goods and Prohibited Articles

- (a) Subject to clause 6(b), the Supplier will not store or manage any Dangerous Goods or Prohibited Articles.
- (b) In its absolute discretion, the Supplier may accept to store or manage Dangerous Goods or Prohibited Articles if such acceptance has been agreed to by the Supplier in writing and subject to the Customer providing the Supplier with the following:
 - (i) safety data sheets in respect of the Goods;
 - (ii) a full description of the Goods in writing; and
 - (iii) any additional information requested by the Supplier or that might reasonably be expected to be pertinent to the storage of the Goods.
- (c) The Customer must not tender for storage any Dangerous Goods or Prohibited Articles except as permitted by clause 6(b).
- (d) If the Supplier considers, on reasonable grounds, that Goods may contain Dangerous Goods or any Prohibited Article or may cause injury or damage to any person or property, the Supplier may, at the cost of the Customer, inspect the Goods, or permit a governmental authority to inspect the Goods, and do anything appropriate to minimise or avoid such injury or damage. The Supplier will not be liable to the Customer for any loss or damage the Customer may incur by reason of the Supplier's actions under this condition.

- (e) The Customer indemnifies the Supplier from and against all liabilities, penalties, losses, expenses (including legal expenses on an indemnity basis) and Claims from handling, storage or disposal of any Dangerous Goods or Prohibited Articles.
- (f) The Customer must:
 - (i) ensure that the Customer or other person that collects or takes possession of any Dangerous Goods or Prohibited Articles holds all licences, permits, certificates and authorisations (**Authorisations**) required by applicable law to collect or take possession of such Goods; and
 - (ii) upon request by the Supplier, provide evidence that the Customer or other person collecting or taking possession of any such Goods holds such Authorisations.
- (g) The Customer agrees that in the event that it fails to comply with a request made by the Supplier pursuant to clause 6(f)(ii):
 - (i) the Supplier may refuse to part with possession of the Goods;
 - (ii) the Customer will continue to be liable to pay for the applicable Service Fees for so long as the Supplier provides the Services; and
 - (iii) the Customer may be required to pay additional Service Fees for any storage or other services required to be provided by the Supplier as a result of the Customer's failure to comply with clause 6(f)(ii).

7. Access and Conditions

- (a) The Customer must not access the Allocated Space unless accompanied by the Supplier's personnel.
- (b) The Customer must not attach nails, screws or other fixes to any part of the Allocated Space and must maintain its Allocated Space by ensuring it is clean, free from rubbish and in a state of good repair and must not damage or alter any part of the space. If in the opinion of the Supplier the space has at any time been left in a state of uncleanliness or been damaged, the Supplier may charge the Customer an additional charge, including but not limited to a cleaning fee and/or full reimbursement from the Customer of the costs and expenses of any repairs required.
- (c) The Customer acknowledges and agrees that the Supplier may relocate the Customer's Goods from its Allocated Space to another allocated space within the same storage facility if the Supplier reasonable believes such relocation is necessary in the circumstances, including in the case of unforeseen extraordinary events or redevelopment of the storage facility.
- (d) The Customer must not:
 - (i) photograph or take video footage of the Allocated Space, of any space allocated to any third parties within the Supplier's premises, or of any other part of the Supplier's premises; or
 - (ii) otherwise collect or record any data or information regarding the space allocated to any third parties or the goods or other property stored by them, at the Supplier's premises,
 (collectively, the **Prohibited Information**).
- (e) The Customer:
 - (i) must surrender to the Supplier (or any of its employees or representatives) or delete on demand and as directed by the Supplier any Prohibited Information, or copies of such materials; and

- (ii) acknowledges that the Supplier (or any of its employees or representatives) may destroy such Prohibited Information, or copies of such materials, without any liability to the Supplier or any other person.

7.2 Packaging, description and storage

- (a) The Customer acknowledges that it is responsible for the packing, storage and securing of the Goods and warrants that:
 - (i) the Goods are packed to withstand all risks of handling and storage (including relating to sweating, evaporating, leaking, breaking, shrinking, fermenting, decaying, decomposing or spoiling), having regard to their nature;
 - (ii) any description of the Goods on any packaging or document, including regarding contents, weight or dimensions, relating to the Goods is accurate;
 - (iii) the Goods and their packaging comply with all Legislative Requirements and otherwise comply with all requirements of these Terms and Conditions; and
 - (iv) the storage of the Goods by the Supplier will not result in any:
 - (A) damage to the property of the Supplier or any third party; or
 - (B) injury or death to any person.
- (b) The Customer indemnifies the Supplier against any Claim for loss, damage or other liability arising as a result of a breach of any of the warranties provided by the Customer in clause 7.2(a) and any damage to property, injury or death arising from or in connection with the storage of the Goods by the Supplier, except to the extent caused by the negligence of the Supplier.

7.3 Suitability of Services

- (a) In the event that the Supplier indicates to the Customer, or the Customer should reasonably be aware, that the Goods are not suitable for all or any part of the Services, and the Customer nevertheless proceeds with its Order for Services, the Customer will not hold the Supplier responsible for any loss, damage or other liability to the Customer or any other person having an interest in the Goods arising from the provision of the Services. The Customer indemnifies the Supplier against any Claim for loss, damage or other liability arising as a result of the Goods not being suitable for all or any part of the Services in the circumstances outlined in this clause 7.3(a).
- (b) Notwithstanding clause 7.3(a), the Customer acknowledges that the Supplier has no obligation to assess, or inform the Customer of, the suitability of the Goods for the Services.

8. Removal of Goods

- (a) If the Supplier considers, on reasonable grounds, that Goods have become deteriorated, objectionable or unwholesome, a source of danger or contamination or hazardous, or if the Customer has left the Goods in any common areas or outside the Allocated Space, the Supplier may, without notice and at the cost of the Customer, do anything appropriate to dispose of, destroy or dump any such Goods. The Supplier will not be liable to the Customer for any loss or damage the Customer may incur by reason of the Supplier's actions under this clause 8(a).
- (b) The Supplier may, at any point in time, without reason and at the cost of the Customer, provide the Customer with written notice to remove its Goods. If upon the expiration of 21 days after such notice is given, the Customer has not removed its Goods, the Supplier may, without further notice, remove all or any of the Goods and if thought fit, sell all or any of the Goods, or do anything appropriate to dispose of, destroy or dump any such Goods.
- (c) In the event that the Supplier is required to comply with any court order or judgement for the Supplier to remove, dispose of or deliver the Goods, the Customer agrees to immediately pay

all outstanding Service Fees and other amounts payable by the Customer and to indemnify the Supplier on demand in respect of all costs, fees and charges incurred by or to be incurred by the Supplier for its compliance with the court order or judgment.

9. Customer Warranties

The Customer warrants that:

- (a) the Goods are not Dangerous Goods, other than as agreed between the parties in writing (including, without limitation, where the Supplier indicates its agreement to store Dangerous Goods by endorsing its receipt for the Goods with the words “hazardous, dangerous or advised verbally”);
- (b) the Goods are not Prohibited Articles;
- (c) the Goods are not damp, contaminated, soiled, infested, deteriorated and are free of food scraps when placed in storage;
- (d) it has not asked the Supplier to store the Goods in any way that could be unlawful;
- (e) it has knowledge of the Goods;
- (f) it will not use the storage facility to carry out any business or other activity;
- (g) it has full right, power and authority to store the Goods; and
- (h) it has complied with and undertakes that it will continue to comply with all Legislative Requirements applicable to the storage and packaging of the Goods and promises to provide, in a timely manner, all assistance, information and documents reasonably required by the Supplier to comply with Legislative Requirements.

10. Termination and Cancellation

- (a) No order for Services contained in a Quotation, once the Quotation is accepted by the Customer, may be cancelled by the Customer except with the Supplier’s prior written consent. If the Customer cancels all or any part of an order other than in accordance with this clause, the Customer indemnifies the Supplier against any and all liability the Supplier may suffer as a result of such cancellation.
- (b) Either party (**terminating party**) may terminate the Agreement by providing notice to the other party (**defaulting party**) upon the occurrence of any of the following events:
 - (i) a defaulting party breaches a material term in this Agreement, which in the reasonable opinion of the terminating party, cannot be remedied;
 - (ii) a defaulting party breaches a material term in this Agreement, which has not been remedied within 10 Business Days after receiving notice of the breach;
 - (iii) an Insolvency Event occurs in respect of a defaulting party; or
 - (iv) a defaulting party commits fraud or an act of serious or wilful misconduct.
- (c) Upon termination of the Agreement:
 - (i) any and all amounts payable by the Customer to the Supplier in respect of any period prior to termination, including for Services provided but not yet invoiced, must be paid by the Customer within 10 Business Days after the date of termination; and
 - (ii) the Customer must immediately:
 - (A) remove its Goods from the Allocated Space and the Supplier’s premises; and

(B) leave the Allocated Space in a clean condition and good and proper state of repair to the Supplier.

(d) If the Customer fails to remove its Goods in accordance with clause 10(c)(ii)(A) within 5 Business Days after the date of termination, the Supplier is authorised to (in its absolute discretion) sell, dispose of or dump the Goods, subject to the Supplier providing the Customer 5 Business Days' prior written notice of its intention to exercise its rights under this clause 10(d).

11. Liability

11.1 Consumer Guarantee

Nothing in these Terms and Conditions limits or excludes any guarantees, warranties, representations or conditions implied or imposed by law, including the ACL (or any liability under them) which by law may not be limited or excluded.

11.2 Exclusion of warranties

To the maximum extent permitted by law and subject to clause 11.1, the Customer acknowledges and agrees that all terms, guarantees, warranties, representations or conditions which are not expressly stated in these Terms and Conditions are excluded.

11.3 Exclusion of liability

(a) To the maximum extent permitted by law and subject to clause 11.1, the Supplier will not be held liable for any Claim in connection with the loss, deterioration or damage of or to the Goods that arises from, is ancillary to or is caused by:

- (i) destruction, fire, explosion, stealing, fraud, burglary, theft, storm, flood, tempest or water or by any other cause whatsoever, known or unknown to the Supplier;
- (ii) the Goods sweating, evaporating, leaking, breaking, shrinking, fermenting, decaying, decomposing or spoiling, including as a result of contamination, pests or vermin; or
- (iii) any other reason whatsoever, whether known or unknown to the Supplier.

(b) The Supplier shall not in any circumstances be liable for any Claim, loss, damage, cost or penalty sustained or incurred by the Customer:

- (i) in connection with late delivery of the Goods to the Supplier; or
- (ii) that arises from or is caused by a third party's access to the Allocated Space at the request of, direction of or as facilitated by the Customer.

(c) The exclusion of liability under clauses 11.3(a) and 11.3(b) includes, without limitation, any loss of income, loss of profit, production, contract, customers, goodwill, opportunity or business, or any indirect, special or consequential loss or damage of any nature.

11.4 Limitation of liability

In all cases where liability of the Supplier or any of the persons identified in clause 3.4 has not been effectively excluded, whether by these Terms and Conditions, by law or otherwise, the total liability of the Supplier (and all of the persons identified in clause 3.4) is limited, at the Supplier's option, to:

- (a) the resupply of the Services; or
- (b) payment of the cost of resupply of the Services.

11.5 Third party Claims

The Customer undertakes that it will not permit any other person who has an interest in the Goods or the performance of the Services to bring a Claim or action against the Supplier even if the Supplier has

been negligent or in default of its obligations under the Terms and Conditions or otherwise and if such a Claim or action is made the Customer will indemnify the Supplier against all loss, damages and other consequences of the Claim or action and all costs and expenses incurred by the Supplier in defending it.

11.6 Time for making claims

Any claim for loss, damage or delay or any other Claim arising from the Services must be notified in writing to the Supplier within 30 days of the date on which the act or omission giving rise to the Claim occurs, failing which the Supplier shall be discharged of all liability in relation to the claim. Time is of the essence in respect of this clause.

12. Personal Information

Where the Customer discloses personal information to the Supplier, the Customer must ensure it has, on behalf of the Supplier, obtained from the person to whom the personal information relates consent for the Supplier to collect, use and/or disclose the personal information to provide the Supplier's services. To the maximum extent permitted by law, the Customer indemnifies the Supplier and its officers, employees and contractors against all Claims that arise from or are connected with the provision of any personal information by the Customer to the Supplier.

13. Ownership, title and risk

13.1 Ownership

The Customer warrants that it is the owner or the authorised agent of the owner of the Goods.

13.2 Title

Title in the Goods remains with the Customer or the owner at all times.

13.3 Risk

The Goods will remain at the risk of the Customer or owner of the Goods at all times.

13.4 Insurance

The Supplier will not effect insurance of the Goods for the benefit of the Customer or any person.

14. Events beyond the Supplier's control

To the maximum extent permitted by law and without limiting any other provision of these Terms and Conditions, the Supplier will not be liable for any delay or failure to perform the Services or any other obligations resulting from any Force Majeure Event.

15. General

15.1 Assignment

The Customer must not assign or transfer its rights or obligations under this Agreement to any other party without the prior written consent of the Supplier (which may be withheld in its absolute discretion).

15.2 Governing law and jurisdiction

These Terms and Conditions and each Order are governed by and to be construed in accordance with the laws in force in the State of New South Wales and each party submits to the non-exclusive jurisdiction of the courts of that State.

15.3 **Severability**

Part or all of any provision of the Agreement that is illegal or unenforceable must be severed from the Agreement and will not affect the continued operation of the remaining provisions of the Agreement.

15.4 **Confidentiality**

The Customer agrees to keep confidential the Service Fees and the terms and conditions of the Agreement and other documentation provided by the Supplier to the Customer.

15.5 **Notices**

- (a) Any notice required or permitted to be delivered to any party under these Terms and Conditions must be in writing and is deemed properly delivered, given and received:
- (i) when delivered by hand;
 - (ii) if sent by registered mail, one Business Day after being sent;
 - (iii) if sent by overnight delivery via a national courier service, one business day after being sent; and
 - (iv) on the day sent by email, provided that the sender has not received a transmission error as of or prior to 5:00 p.m. local time of the intended recipient on such day,
- and in each case is sent or delivered to a party's last known address or email address, as applicable.
- (b) The Customer must notify the Supplier in writing of any change to its address, phone number or email address within 10 Business Days of any such change.