



TERMS AND CONDITIONS

1. DEFINITIONS

1.1 The meanings of the terms used in these terms and conditions are set out below.

Term	Meaning
Carrier	O'Connors Carrying Service (ABN 43 279 571 772) trading as O'Connors Carrying Service or under any other business name and its officers, servants, agents and Subcontractors
Consequential Loss	any indirect or consequential loss; loss of use; loss of product or production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; punitive or exemplary damages; in each case arising from or in connection with the performance of these terms and conditions and whether or not foreseeable at the time of entering into or accepting these terms and conditions
Customer	shall mean the Customer or any person or persons acting on behalf of and with the authority of the Customer. Where more than one Customer has entered into these terms and conditions, the Customers shall be jointly and severally liable for all payments of the Price
Dangerous Goods	Goods that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever or that are deemed to be dangerous goods under any law
Enforcement Costs	any fees, costs and expenses, including legal expenses, incurred by the Carrier in connection with any default under or enforcement or attempted enforcement of these conditions on an indemnity basis
Goods	the Customer's property (including any container, packaging, or pallet(s)) from time to time accepted by the Carrier to be moved from one place to another by way of the Carrier's Services, or for storage by the Carrier
Insolvency Event	means any of the following events occurring in relation to the Customer: (a) if an application is filed for the winding up of the Customer; (b) if the directors of the Customer pass a resolution for its winding up; (c) if a receiver, receiver and manager, controller (as defined in section 9 of the <i>Corporations Act 2001</i>), or a similar person is appointed to, or the holder of a security interest takes (or appoints an agent to take) possession of, any property of the Customer;

Term	Meaning
	<ul style="list-style-type: none"> (d) if a provisional liquidator is appointed to the Customer; (e) if the Customer is placed into administration (as defined in section 9 of the <i>Corporations Act 2001</i>) or enters into a deed of company arrangement (as defined in section 9 of the <i>Corporations Act 2001</i>); (f) if the Customer, without the consent of the other party makes any assignment or enters into any arrangement or composition generally for the benefit of one or more of its creditors; (g) if the Customer is made bankrupt; (h) if the Customer enters into or takes any step that could result in the Customer or Guarantor entering into a debt agreement under part IX of the Bankruptcy Act; (i) if the Customer enters into or takes any step that could result in the Customer or Guarantor entering into a personal insolvency agreement under part X of the Bankruptcy Act.
Interest	an amount that is calculated on any Outstanding Amount at the rate of 2.5% per calendar month.
Outstanding Amount	any amount which remains unpaid upon the expiry of the credit terms extended by the Carrier or for which the Customer is otherwise liable, pursuant to these conditions, to the Carrier
Person	includes a corporation, company, partnership, trust or any other entity
PPSA	<i>Personal Property Securities Act 2009</i> (Cth) (as amended from time to time) and the regulations
Price	means the cost of the Services as agreed between the Carrier and the Customer subject to clause 7 of these terms and conditions
Services	means all services supplied by the Carrier 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 moving, storing 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, stowing or packing the Goods, or fumigating, transhipping, or otherwise handling the Goods, or anything else done in relation thereto including the offering of any advice or recommendations.
Subcontractor	<p>includes any Person who pursuant to a contract or arrangement with any other Person (whether or not the Carrier) performs or agrees to perform the Services or any part of them, including:</p> <ul style="list-style-type: none"> (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 the Carrier may arrange

Term	Meaning
	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 subcontractor of any of the persons referred to in this definition.

1.2 Terms used in these terms and conditions have the same meaning as under the PPSA.

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 Services provided by the Carrier.
- 2.2 These terms and conditions are to be read in conjunction with any quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by the Carrier to the Customer. If there are any inconsistencies between those documents and these terms and conditions, these terms and conditions shall prevail, other than in relation to payment of invoices in which case clause 7.4(a) applies.
- 2.3 These terms and conditions shall prevail over the terms and conditions set out in any document used by the Customer, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 2.4 These terms and conditions may only be amended with the Carrier's consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Customer and the Carrier.

3. CUSTOMER'S WARRANTIES

- 3.1 The Customer warrants that:
- (a) the Goods are fit for carriage and have been suitably packaged for those purposes;
 - (b) the Person delivering the Goods to the Carrier is authorised by the Customer to do so and may sign any document required by the Carrier as an authorised agent of the Customer;
 - (c) the Customer is either the owner, or the authorised agent of the owner, of any Goods or property that will be provided to the Carrier in connection with the delivery of the Services and by engaging the Carrier to provide the Services the Customer accepts these terms and conditions for the Customer as well as for all other persons on whose behalf the Customer is acting;
 - (d) the Customer has the authority of all Persons owning or having any interest in the Goods to enter into and accepting these terms and conditions on their behalf;
 - (e) the details of description, items, space, quantity, weight, quality, value and measurements supplied by the Customer (including whether the Goods are Dangerous Goods) or any other Person to the Carrier are correct;
 - (f) there is a suitable practicable road and approach for the Carrier and the Carrier's vehicles to the place from which the Goods are to be collected and the place to which the Goods are to be delivered;

- (g) the place from which any Goods are to be collected will have safe and adequate loading facilities and equipment available;
- (h) where required by law, it has accurately completed and supplied a container weight declaration form; and
- (i) refrigerated Goods are supplied to the Carrier at a temperature suitable for carriage.

3.2 The Customer:

- (a) acknowledges that:
 - (i) the Carrier has no responsibility or liability in relation to any pallet, container or packaging used for carriage;
 - (ii) unless otherwise agreed in writing by the Carrier, the Carrier will not exchange any pallets with any Person and the Customer must not transfer any pallets to any account the Carrier may have with a pallet hirer
- (b) releases and indemnifies the Carrier from and against any liability in relation to the loss of pallet, container or packaging used for carriage.

3.3 If a container has not been stowed by or on behalf of the Carrier, the Carrier shall not be liable for loss of or damage to the Goods caused by:

- (a) the manner in which the container has been stowed; or
- (b) the unsuitability of the Goods for carriage or storage in containers; or
- (c) the unsuitability or defective condition of the container.

3.4 The Customer acknowledges that the Carrier relies on the details of description, items, space, quantity, weight, quality, value and measurements supplied by the Customer, but does not admit their accuracy.

3.5 The Carrier accepts no responsibility for collection of cash or other payments from any party.

3.6 Unless otherwise agreed in advance in writing with the Carrier, the Customer or the Customer's authorised agent shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Customer shall be liable for and hereby indemnifies the Carrier for all loss or damage whatsoever caused by any Dangerous Goods.

3.7 The Customer indemnifies the Carrier in respect of:

- (a) any liability whatsoever in respect of the Goods to any Person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Goods or any part of the Goods; and
- (b) any Enforcement Costs incurred by the Carrier in connection with any default under or enforcement or attempted enforcement of these conditions.

4. ROUTE, DEVIATION AND TRANSPORT

4.1 The Customer authorises any deviation from the usual route or manner of carriage of Goods that may, in the absolute discretion of the Carrier, be considered desirable or necessary in the circumstances.

4.2 If the Customer expressly or impliedly instructs the Carrier to use, or it is expressly or impliedly agreed that the Carrier will use a particular method of handling or storing the Goods or a

particular method of carriage, the Carrier will give priority to that method but if it cannot conveniently be adopted by the Carrier the Customer authorises the Carrier to handle or store or to carry or to have the Goods handled, stored or carried by another method or methods.

5. DELIVERY

- 5.1 The Carrier is authorised to deliver the Goods at the address nominated to the Carrier by the Customer for that purpose. The Carrier will be conclusively presumed to have delivered the Goods in accordance with these conditions if at that address it obtains from any Person a receipt or signed delivery docket for the Goods.
- 5.2 The Carrier may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in these terms and conditions.
- 5.3 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by the Carrier or the Customer otherwise fails to take delivery of the Goods the Carrier may at its option deposit the Goods at that place (which despite clause 5.1 will be conclusively presumed to be due delivery under these conditions) or store the Goods and if the Goods are stored by the Carrier the Customer will pay or indemnify the Carrier for all costs and expenses incurred in or about such storage. In the event that the Goods are stored by the Carrier the Carrier will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.
- 5.4 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of these terms and conditions.
- 5.5 It is the Customer's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 5.6 Any time specified by the Carrier for the delivery of Goods is an estimate only and the Carrier will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that the Carrier is unable to deliver the Goods as agreed solely due to any action or inaction of the Customer then the Carrier shall be entitled to charge the Customer any additional costs incurred by the Carrier as a direct consequence of any resultant delay or rescheduling of the delivery.

6. DELAY IN LOADING OR UNLOADING

The Customer will be and remains responsible to the Carrier for all its proper charges incurred for any reason. A charge may be made by the Carrier in respect of any delay in excess of 30 minutes in loading or unloading occurring other than from the default of the Carrier. Such permissible delay period will commence upon the Carrier reporting for loading or unloading.

7. PRICE AND PAYMENT

- 7.1 At the Carrier's sole discretion the Price shall be either;
- (a) as indicated on invoices provided by the Carrier to the Customer in respect of Services supplied; or
 - (b) the Carrier's quoted Price (subject to clause 7.2 and 7.3) which shall be binding upon the Carrier provided that the Customer shall accept in writing the Carrier's quotation within thirty (30) days.
- 7.2 The Carrier may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to the Carrier beyond the reasonable control of the Carrier (including,

without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).

- 7.3 The Carrier may charge freight by weight, measurement or value, and may at any time 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.
- 7.4 At the Carrier's sole discretion:
- (a) payment shall be due on the later of:
 - (i) the delivery of the Goods; and
 - (ii) the time, if any, stated on the invoice, consignment note, airway bills, manifests or any other forms;
 - (b) payment for approved Customers shall be due on thirty (30) days following the end of the month in which a statement is delivered to the Customer's email address or address for notices.
- 7.5 Payment must be made by credit card, or by direct credit/electronic banking, or by any other method as agreed to between the Customer and the Carrier.
- 7.6 Unless otherwise stated the Price excludes GST. In addition to the Price the Customer must pay to the Carrier an amount equal to any GST the Carrier must pay for any supply by the Carrier under this or any other agreement for providing the Carrier's Services. 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 Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 7.7 The Carrier's charges will be deemed fully earned on receipt of the Goods by the Carrier and are non refundable in any event.
- 7.8 Any special instruction given by the Customer to the effect that charges will be paid by the Customer or any other third party will be deemed to include a stipulation that if the Customer or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Goods the Customer will pay such charges.
- 7.9 The Customer must pay the Enforcement Costs and Interest in respect of any Outstanding Amount.

8. INTEREST

- 8.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, the Interest Rate (and at the Carrier's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 8.2 If the Customer owes the Carrier any money the Customer shall indemnify the Carrier from and against all costs and disbursements incurred by the Carrier in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, the Carrier contract default fees, and bank dishonour fees).
- 8.3 Further to any other rights or remedies the Carrier may have under this contract, if a Customer has made payment to the Carrier by credit card, 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 the Carrier under this clause 8, where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Customer's obligations under these terms and conditions.

9. STORAGE

- 9.1 Where the Carrier stores Goods for the Customer, the Customer must:
- (a) pay the Carrier's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other Person;
 - (b) if any Goods are under Customs control, pay all Customs duty, excise duty and costs (including any fine or penalty) that the Carrier becomes liable to pay or pays;
 - (c) supply or pay for labour or machinery or both to load or unload the Goods;
 - (d) compensate the Carrier for any cost, expense or loss to the Carrier's property or any Person caused by the Goods;
 - (e) if the Goods are at any time re-quantified, re-weighed or re-measured, pay any proportional additional charges.
- 9.2 Where Goods are stored by the Carrier at the request of the Customer, the Customer will provide:
- (a) an address to which notices will be sent;
 - (b) samples of the signatures of persons entitled to collect the Goods; and
 - (c) an inventory of the Goods to be stored.
- 9.3 The Carrier may remove the Goods from a place of storage to another place of storage at its discretion.
- 9.4 The Customer must give 48 hours' notice to the Carrier of its intention to remove Goods from storage.
- 9.5 The Carrier will not be obliged to deliver any Goods except to the Customer or to a person authorised in writing by the Customer to receive the Goods without:
- (a) a direction in writing from the Customer;
 - (b) payment of all amounts due by the Customer to the Carrier on any account whatsoever.
- 9.6 The Customer will remove its Goods from storage within seven days of receipt of written notice from the Carrier.
- 9.7 If any identifying document or mark is lost, damaged, destroyed or defaced, the Carrier may open any document, wrapping, package or other container in which the Goods are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.

10. GENERAL LIEN

- 10.1 The Goods are accepted subject to a general lien for all charges now due or that may become due to the Carrier by the Customer on any account whatsoever, including whether in respect of the Goods and Services which the Carrier provides or has provide or otherwise.
- 10.2 If charges are not paid when due, or the Goods are not collected when so required or designated, the Carrier may, without notice, and immediately:

- (a) remove all or any of the Goods and store them as the Carrier thinks fit at the Customer's risk and expense;
 - (b) open and sell all or any of the Goods as the Carrier thinks fit (whether by private treaty or public auction) and apply the proceeds to discharge the lien and costs of sale without being liable to any Person for any loss or damage caused.
- 10.3 The parties agree that the lien attaches to Goods when the Goods are accepted by the Carrier for carriage.
- 10.4 The Customer agrees that the lien arising under these terms and conditions is a security interest.
- 10.5 Notwithstanding clause 10.1 nothing shall prejudice the Carrier's rights to use any of the Carrier's other rights and remedies contained in these terms and conditions to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 10.1 and no exception shall be taken upon the grounds that the price realised is less than the full market value of the Goods.
- 10.6 If the Carrier requests, then the Customer must promptly upon receipt of a request from the Carrier do anything for the purposes of ensuring that any lien or security interest created under, or provided for by, these terms and conditions is enforceable, perfected (including but not limited to perfection by registration), maintained and is otherwise effective. Anything that is required by the Customer to be done under this clause will be done by the Customer at its own expense. The Customer agrees to reimburse the costs of the Carrier in connection with any action taken by the Carrier under or in connection with this clause.
- 10.7 The Carrier may by notice in writing to the Customer, deduct or set-off any monies due from the Carrier to the Customer for any reasons from amount owed by the Customer to the Carrier under these terms and conditions.
- 10.8 The Customer may not deduct or set-off any monies due from the Customer to the Carrier from any amount owed from the Carrier to the Customer, save for with the prior written consent of the Carrier.

11. SECURITY AND CHARGE

- 11.1 In consideration of the Carrier agreeing to supply Services, 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).
- 11.2 The Customer indemnifies the Carrier from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Carrier's rights under this clause.
- 11.3 The Customer irrevocably appoints the Carrier and each director of the Carrier as the Customer's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 11 including, but not limited to, signing any document on the Customer's behalf.

12. PERSONAL PROPERTY SECURITIES

- 12.1 In this clause financing statement, financing charge statement, security agreement, and security interest has the meaning given to it by the *Personal Property Securities Act 2009* (Cth) (**PPSA**).

- 12.2 Upon accepting these terms and conditions the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in:
- (a) all incidental items previously supplied by the Carrier to the Customer;
 - (b) all incidental items will be supplied in the future by the Carrier to the Customer; and
 - (c) 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 the Carrier for Services – that have previously been provided and that will be provided in the future by the Carrier to the Customer.
- 12.3 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 the Carrier 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 12.3(a)(i) and clause 12.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, the Carrier 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 incidental items from the security interest;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of the Carrier;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the incidental items in favour of a third party without the prior written consent of the Carrier.
- 12.4 The Carrier 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.
- 12.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 129, 130, 132, 134 and 135 of the PPSA.
- 12.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 12.7 Unless otherwise agreed to in writing by the Carrier, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 12.8 The Customer must unconditionally ratify any actions taken by O'Connors under clauses 12.3 to 12.7.
- 12.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

13. RIGHT TO SUBCONTRACT

- 13.1 The Carrier at its discretion may subcontract on any terms the whole or any part of the Services.
- 13.2 The Customer hereby authorises the Carrier, in its discretion, to arrange with a Subcontractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Customer upon delivery of the said Goods to such Subcontractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as the Carrier. In so far as it may be necessary to ensure that such Subcontractor shall be so entitled the Carrier shall be deemed to enter into these terms and conditions for its own benefit and also as agent for the Subcontractor.

14. EXTENSION OF EXEMPTIONS TO SUBCONTRACTORS

- 14.1 The Customer agrees that no claim or allegation may be made against any servant, agent, or Subcontractor of the Carrier that imposes or attempts to impose upon such Person any liability whatsoever arising out of or in any way connected with the Services, the Goods or the carriage of the Goods whether or not arising out of negligence or a wilful act or omission on the part of any of them and if such claim or allegation should nevertheless be made, to indemnify the Carrier against all consequences of any such claim or allegation.
- 14.2 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled under these conditions will also be available to and will extend to protect:
- (a) all Subcontractors;
 - (b) every servant or agent of the Carrier or of a Subcontractor;
 - (c) every other Person (other than the Carrier) by whom the Services or any part of them is undertaken; and
 - (d) all Persons who are or might be vicariously liable for the acts or omissions of any Person falling within clauses 14.2(a), 14.2(b) or 14.2(c).
- 14.3 For the purposes of clause 14.2 the Carrier is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such Persons and each of them and all such Persons and each of them will to this extent be or be deemed to be parties to these terms and conditions.

15. STATUTORY LIABILITY

- 15.1 Nothing in these terms and conditions is intended to have the effect of contracting out of any applicable laws of the Commonwealth and the States and Territories of Australia except to the extent permitted by those laws.
- 15.2 Where the Customer acquires Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.
- 15.3 The Services come with guarantees that cannot be excluded under the Australian Consumer Law (contained in the *Competition and Consumer Act 2010 (Cth)*) (**CCA**). For major failures with the Services the Customer is entitled to:
- (a) cancel the Services and the Customer's engagement with the Carrier; and
 - (b) a refund for the unused portion, or to compensation for any reduced value in the Services.

The Customer is also entitled to be compensated for any other reasonably foreseeable loss or damage.

If the failure does not amount to a major failure, the Customer is entitled to have problems with the Services rectified in a reasonable time and, if this is not done, to cancel the Services and terminate its engagement with the Carrier and obtain a refund for the unused portion of the Services.

This clause only applies to Customers who are “consumers” as defined under the CCA.

16. NEGATION OF LIABILITY AS A COMMON CARRIER

The Carrier is not a common Carrier and will accept no liability as such. All Goods are carried and all storage and other services are performed by the Carrier subject only to these conditions and the Carrier reserves the right to refuse to provide the Services to any Person and the carriage of any class of goods at its discretion.

17. LIABILITY OF CARRIER

17.1 The Customer acknowledges and agrees that neither the Carrier nor any servant or agent or Subcontractor of the Carrier nor any other Person who undertakes the carriage of the Goods at any time pursuant to these terms and conditions will in any circumstances (except where any statute otherwise requires) be under any liability whatever (whether in contract, tort or otherwise) for:

- (a) any personal injury; or
- (b) any loss of or damage to, deterioration, evaporation or contamination of the Goods, or
- (c) misdelivery, delay in delivery or non delivery of the Goods or any of them,

whether in the course of carriage or otherwise or for any Consequential Loss or injury of any kind whatever whether such personal injury, loss, damage, deterioration, evaporation, contamination or misdelivery, delay in delivery, non-delivery or Consequential Loss is caused or alleged to have been caused by the negligence or wilful act or default of the Carrier or its officers, servants or agents, its Subcontractors, or by any cause whatever.

17.2 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods the Customer will indemnify the Carrier against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by the Carrier in connection with the Goods.

17.3 The Carrier will be entitled to the benefit of the exclusion of liability provided for in clause 17.1 even if it is proved that the loss or damage resulted from an act or omission done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

17.4 Nothing whatsoever done or omitted to be done or other conduct by the Carrier in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling the Carrier from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of the Carrier contained in these conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

17.5 Where clauses 17.1, 17.2 or 17.4 cannot legally operate and to the extent permitted by law, the Carrier's liability for breach of any warranty, guarantee or any term implied by law into these terms and conditions is limited to:

- (a) in the case of the supply of the Services, the cost of having those services supplied again; or
- (b) in the case of the supply of Goods, the lowest of the cost of replacing the Goods, acquiring equivalent goods or having the Goods repaired.

17.6 The Carrier may refuse any Goods that the Carrier determines are or may become Dangerous Goods.

18. CANCELLATION

18.1 The Carrier may cancel any contract to which these terms and conditions apply or cancel delivery of Goods at any time before the Goods are delivered by giving written notice to the Customer. On giving such notice the Customer shall repay to the Customer any sums paid in respect of the Price. The Carrier shall not be liable for any loss or damage whatever arising from such cancellation.

18.2 In the event that the Customer cancels the delivery of Goods or the provision of any Services then the Customer shall be liable for any loss incurred by the Carrier (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

19. DEFAULT AND CONSEQUENCES OF DEFAULT

19.1 Without prejudice to any other remedies the Carrier may have, if at any time the Customer is in breach of any obligation (including those relating to payment) the Carrier may suspend or terminate the supply of the Services to the Customer and any of its other obligations under these Terms and Conditions. The Carrier will not be liable to the Customer for any loss or damage the Customer suffers because the Carrier exercises its rights under this clause.

19.2 Without prejudice to the Carrier's other remedies at law, clause 19.3 applies in the event that:

- (a) any money payable to the Carrier becomes overdue, or in the Carrier's opinion the Customer is unable to meet its payments as they fall due;
- (b) there is an Insolvency Event concerning the Customer; or
- (c) there is a breach of any other obligation of the Customer under these terms and conditions.

19.3 The Carrier shall be entitled to, in addition to and without prejudice to any other remedies:

- (a) cancel all or any part of any order of the Customer which remains unperformed;
- (b) recover, without set-off of any kind whatsoever, all amounts owing to the Carrier; and
- (c) recover any outstanding debt or work in progress, whether or not it has fallen due for payment, and any amounts which are not yet due shall immediately become payable.

20. FORCE MAJEURE

The Carrier will not be liable for any failure or delay in performance of the Services if such failure or delay is due, in whole or in part to any cause whatsoever beyond its control.

21. NOTIFICATION OF CLAIM

21.1 Notwithstanding any other provision of these terms and conditions (other than clause 22), the Carrier will in any event be discharged from all liability whatsoever in respect of the Goods

unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to the Carrier within seven days of the date of delivery, or for non-delivery, within seven days of the anticipated date of delivery or the removal or destruction of the Goods.

- 21.2 The Carrier will, in any event, be discharged from all liability whatsoever in respect of the Goods unless notice of the claim is made within the time limits specified in clause 21.1 and failure to notify a claim within the time limits under clause 21.1 is evidence of satisfactory performance by the Carrier of its obligations.

22. APPLICABLE LEGISLATION

Notwithstanding anything contained in these terms and conditions, the Carrier will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation in so far as such may be applicable and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

23. CHANGE IN CONTROL

- 23.1 The Customer shall give the Carrier 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, contact phone or fax number/s, or business practice). The Customer shall be liable for any loss incurred by the Carrier as a result of the Customer's failure to comply with this clause.

24. PRIVACY ACT

- 24.1 The Customer agrees for the Carrier 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 the Carrier.
- 24.2 The Customer agrees that the Carrier 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 years.
- 24.3 The Customer consents to the Carrier being given a consumer credit report to collect overdue payment on commercial credit.
- 24.4 The Customer agrees that personal credit information provided may be used and retained by the Carrier for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or

(d) (d) enabling the collection of amounts outstanding in relation to the Services.

24.5 The Carrier 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.

24.6 The information given to the CRB may include:

- (a) personal information as outlined in clause 24.1 above;
- (b) name of the credit provider and that the Carrier 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 the Carrier has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
- (g) information that, in the opinion of the Carrier, 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).

24.7 The Customer shall have the right to request (by e-mail) from the Carrier:

- (a) a copy of the information about the Customer retained by the Carrier and the right to request that the Carrier correct any incorrect information; and
- (b) that the Carrier does not disclose any personal information about the Customer for the purpose of direct marketing.

24.8 The Carrier 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 these terms and conditions or is required to be maintained and/or stored in accordance with the law.

24.9 The Customer can make a privacy complaint by contacting O'Connors via e-mail. The Carrier 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.

25. ENTIRE AGREEMENT

25.1 These terms and conditions set out the entire agreement of the parties with respect to its subject matter. No other agreement, warranty or representation, express or implied has been given or made by the parties with respect to the Services.

- 25.2 The Carrier will not be bound by any agreement purporting to vary these terms and conditions unless such agreement is in writing and signed on behalf of the Carrier by an authorised officer of the Carrier.

26. GENERAL

- 26.1 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.
- 26.2 Headings are included for convenience only and do not affect interpretation of these terms and conditions.
- 26.3 Words importing the singular include the plural and vice versa and words importing a gender include other genders.
- 26.4 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 26.5 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of New South Wales.
- 26.6 The Carrier reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Carrier notifies the Customer of such change. Except where the Carrier supplies further Services to the Customer and the Customer accepts such Services, the Customer shall be under no obligation to accept such changes.
- 26.7 The failure by the Carrier to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Carrier right to subsequently enforce that provision.
- 26.8 Where the Customer comprise two or more Persons an Agreement or obligation to be performed or observed by the Customer binds those Persons jointly and severally.