

TERMS AND CONDITIONS OF TRADE (v08/2024)

To the fullest extent legally possible, all contracts, dealings and/or arrangements made between Tasman and the Customer relating to the Services are subject to the following Terms and Conditions of Trade unless otherwise agreed in writing.

1. Definitions:

In these Terms, unless the context otherwise requires:

- (a) **"Acknowledgement"** has the meaning given to it at clause 4(a);
- (b) **"ACL"** means Australian Consumer Law Schedule of the Competition and Consumer Act 2010 (C'th);
- (c) **"Consequential Loss"** means loss or damage, whether direct or indirect, in the nature of loss of profits, loss of revenue, loss of production, liabilities in respect of third parties (whether contractual or not), loss of anticipated savings or business, pure economic loss, loss of opportunity and any form of consequential, special, indirect, punitive or exemplary loss or damages, whether or not a party was advised of the possibility of such loss or damage;
- (d) **"Container"** means any container, trailer, transportable tank, pallet, flat rack, bolster or any device used to consolidate and/or carry cargo (including but not limited to shipping containers);
- (e) **"Contract"** means:
 - (i.) these Terms;
 - (ii.) any contract to which these Terms are expressed to form part;
 - (iii.) any Tasman generated quotation or rates schedule (whether agreed with the Customer, or applying from time to time); and
 - (iv.) the contract formed for the supply of the Services to the Customer upon an Acknowledgement or otherwise;
- (f) **"Customer"** means the customer specified in the application for commercial credit that these Terms accompanies or if there is no such application, the person or entity placing the Order, or on whose behalf the Order is placed with Tasman, or any other person or entity that delivers Goods to Tasman for Services to be carried out;
- (g) **"Dangerous Goods"** means dangerous goods as defined in the Australian Dangerous Goods Code or the IATA Dangerous Goods Regulations, and any Goods which are dangerous, volatile, explosive, inflammable, or offensive or which may become so, or which may become harmful to any person, property or the environment whatsoever;
- (h) **"Goods"** cargo and/or product that is accepted from, or on behalf of, the Customer and includes (without limitation), Containers and equipment for use in connection with the storage, handling and carriage of that cargo and/or product;
- (i) **"GST"** means any tax imposed on the supply of any goods, services, real or personal property or other things or similar tax under any GST Law;
- (j) **"GST Law"** at any present or future time means any GST Law as defined in section 195-1 of A New Tax System (Goods and Services Tax) Act 1999, as affected or interpreted by any other applicable legislation and any public or private ruling of the Commissioner of Taxation, as at that time;
- (k) **"Loss"** means, in relation to any person or entity, any damage, loss, cost, expense or liability incurred by the person or entity or arising from any claim, action, proceeding or demand made against the person or entity, however arising and whether present or future, fixed or unascertained, actual or contingent;
- (l) **"Order"** includes any order, standing appointment, and/or engagement, for the supply of the Services;
- (m) **"PPSA"** means the Personal Property Securities Act 2009 (C'th);
- (n) **"Privacy Act"** means the Privacy Act 1988 (Cth);
- (o) **"Security Interest"** has the meaning given to it under, or in the context of, the PPSA;
- (p) **"Services"** means all of the services and operations (including without limitation, cartage, transport, and storage) that Tasman undertakes in any capacity (including without limitation, as forwarding agent, shipping agent, forwarder, carrier or bailee) whether in relation to the Goods or otherwise;
- (q) **"Tasman"** means Tasman Logistics Services Pty Ltd ABN 37 103 193 979;
- (r) **"Tasman Group"** means Tasman and each of its subsidiaries, affiliates, associated companies and related entities;
- (s) **"Temperature Controlled Goods"** means Goods which require temperature control; and
- (t) **"Terms"** means these terms and conditions of trade.

2. Payments:

- (a) Payments are to be made by the Customer to Tasman without deduction or set-off of any kind and within 7 days of date of Tasman's invoice unless otherwise agreed in writing by Tasman.
- (b) Tasman may apply a payment received from the Customer to any amount owing by the Customer (including part payment of an invoice, administration, collection and other costs) in any order.

- (c) Tasman may require the Customer to pay a credit card surcharge (in addition to any payment) of up to 2% plus GST of the payment amount where payment is made by credit card.
- (d) The Customer must pay Tasman's standard administration costs for dishonoured payments and cheques of \$25 for the first dishonoured payment/cheque and \$50 for each subsequent dishonoured payment/cheque.
- (e) The Customer must pay Tasman interest on overdue accounts at a rate of 12% per annum calculated daily.

3. Charges:

- (a) Tasman's charges do not include (unless otherwise explicitly agreed in writing by Tasman), and the Customer shall be and remain responsible for payment to Tasman for, all its proper charges incurred for any reason, including taxes, GST, duties, levies, port fees, detention charges, demurrage, imposts, deposits or charges incurred in respect of, or related to, transport or storage of the Goods.
- (b) The Customer is responsible for understanding Tasman's applicable rates and charges prior to placing an Order as they are subject to change at any time.
- (c) Services are provided by Tasman at its then current ruling price unless otherwise agreed in writing by Tasman.
- (d) Any discount offered by Tasman is at its complete discretion and will only be available provided the Customer is not in breach of any part of these Terms or in default in any of its dealings with Tasman.
- (e) Rates and charges are stated in, and payment must be made in, Australian dollars unless otherwise agreed in writing by Tasman.
- (f) Tasman may amend an invoice at any time by notice to the Customer where Tasman acting reasonably, determines that an error or omission exists.
- (g) Tasman's charges shall be considered earned as soon as the Goods arrive at the destination or in the case of storage, are received for storage. The Customer will be and remain responsible to Tasman for all its proper charges incurred for any reason.

4. Orders:

- (a) An Order can be made by the Customer in writing, orally, or electronic transmission and is accepted when:
 - (i.) the Customer receives an acknowledgment of the Order from Tasman; or
 - (ii.) Tasman collects / accepts part or all of the relevant Goods from the Customer, whichever first occurs ("**Acknowledgement**").
- (b) These Terms apply to every Order unless otherwise agreed in writing by Tasman. Without limitation, acceptance of Goods by Tasman is conclusive evidence that these Terms apply and are binding on the Customer.
- (c) Tasman may set specific terms from time to time in relation to Orders such as, without limitation, a requirement that the Customer pay a deposit, make full pre-payment in relation to an Order etc. even if Tasman has previously agreed to extend the Customer credit.

5. Tasman Not a Common Carrier:

Tasman is not a common carrier and accepts no liability as such. The Services are provided by Tasman subject to these Terms and Tasman may refuse to provide the Services, and/or handle, transport, or storage of Goods for the Customer for any reason and without Tasman having any liability to the Customer by reason of that refusal.

6. Instructions:

The Customer must provide Tasman with prior written notice and instructions regarding any special handling requirements for the storage and/or transport of Goods including a full and accurate written description of them.

7. Information and advice:

Tasman will not be liable in tort, contract, statute or otherwise howsoever if its quotation, advice, representation or information is incorrect due to incorrect information provided by the Customer or its representatives.

8. Quotations:

- (a) Formal quotations will be writing unless otherwise agreed by Tasman;
- (b) Tasman shall not be bound by any quotation if an order is placed outside the period of the quotations validity noted thereon and in the absence of such period being noted, 14 days from the date of the quotation.
- (c) Prior to receipt of any order Tasman may withdraw or amend a quotation.
- (d) Tasman shall not be bound by any quotation if:

- (i.) it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and those circumstances have materially changed; or
 - (ii.) the Customer is in breach of these Terms or any Contract;
- (e) A quotation is not to be construed as an offer by, or an obligation on, Tasman to supply Services.
- (f) Should there be any variations between the actual measurement of the Goods, loading or unloading requirements, delivery times, dimensions, or route reviewed in formulating a quotation, Tasman may revise its charges and/or quotation accordingly.
- (g) Tasman will not be liable in tort, contract or otherwise for any, or the consequences of any loss or damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation, or information given or made by or on behalf of Tasman to the Customer or others as to the classification of, or any matter, material to the valuation of, or the liability for, the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods which is the subject of, or relates to the Services. In giving or making any such quotation, advice, statement, representation, or information Tasman relies solely on the particulars provided by the Customer in relation to the Goods and in relation to the Services concerning the Goods.
- 9. Waiting Times, demurrage, port charges etc.**
- (a) Tasman may impose waiting time charges in respect of loading or unloading delays in excess of 30 minutes. Such delay period shall commence upon Tasman reporting for loading or unloading.
 - (b) Tasman will not be liable to the Customer (or any other person or entity) for detention, wharf storage, or demurrage charges, whether such charges were caused or contributed to by Tasman or otherwise.
 - (c) Tasman reserves the right to charge, and the Customer must pay, for demurrage at the rate charged to Tasman directly or indirectly by any railway or shipping authority or by any other person or entity.
 - (d) The Customer must give prior written notice to Tasman if any of the Goods are liable to port charges, shipping, or other supply chain costs and charges. The Customer must pay such charges or, if agreed in writing by Tasman, reimburse Tasman if it agrees to pay those costs and charges on behalf of the Customer.
 - (e) Tasman does not warrant or represent to the Customer that it will return Containers within the "free day/hire" period for their return. Tasman will not be liable to the Customer in any way for any failure to return Containers within their "free day/hire" period unless Tasman expressly agrees in writing otherwise.
- 10. Method of carriage:**
If the Customer explicitly or implicitly requests, or it is agreed, that Tasman will use a specific method for handling, storing, or transporting the Goods (whether by road, rail, sea, or air) or take a specific route, Tasman will prioritise that method over route, but the Customer authorises Tasman to handle, store, or transport the Goods by another method or route, if it cannot conveniently be adopted by Tasman.
- 11. Collection, loading and acceptance of Goods and suspension of Services:**
- (a) The Customer make sure that the Goods are ready for pickup when scheduled so Tasman is not delayed in performing the Services.
 - (b) Acceptance of Goods by Tasman for storage pending shipment does not bind Tasman to ship the Goods.
 - (c) Provision of labour to load and unload the Goods shall be the responsibility and expense of the Customer unless other arrangements have been agreed by Tasman in writing.
- 12. Removal of Goods:**
Tasman may at any time by notice to the Customer, require the Customer to remove the Goods from their location of storage with the costs of such removal to be at the Customer's expense (whether in the case of non-shipment or otherwise). If the Customer fails to remove the Goods within 7 days of such notice, then without limiting any other right of Tasman under these Terms or at law, the Customer will be liable to pay Tasman's reasonable costs of storage from the date of such notice until the date of their removal.
- 13. Delivery:**
- (a) The Customer authorises Tasman to deliver the Goods at the address nominated by the Customer for that purpose.
 - (b) Subject to clause 13(c), Tasman will be deemed to have delivered the Goods in accordance with these Terms and any Contract if at that address it obtains from any person a receipt or signed delivery docket for the Goods whether in writing, electronic form, or otherwise.
 - (c) If the nominated place of delivery is unattended, or if delivery cannot otherwise be reasonably effected by Tasman, then Tasman may, at its option, deposit the Goods at that place or store the Goods. If the Goods are deposited, the deposit shall be deemed to be due delivery. If the Goods are stored by Tasman, then the Customer must pay and indemnify Tasman for all reasonable costs and expenses incurred for such storage, and Tasman may re-deliver the Goods from the place of storage at the Customer's expense.
 - (d) Tasman reserves the right to extend the date for delivery of the Goods and/or the supply of Services by notice to the Customer.
- (e) Where the Goods are accepted for forwarding by rail to an address in a town or to a place where Tasman has no receiving depot, the Goods shall be deemed duly delivered, according to these Terms, if they are delivered to the nearest railroad.
- 14. Customer's warranties:**
The Customer warrants to Tasman that:
- (a) the Goods are not subject to sanctions, illegal, or contraband;
 - (b) it is either the owner of the Goods or the authorised agent of the owner of the Goods, with authority to bind the owner to these Terms or otherwise has authority to arrange for the carriage and/or storage of the Goods under these Terms;
 - (c) the Goods will at all times be free of objectionable matter or odours that may affect other Goods in storage, unless such condition has previously been notified in writing to Tasman in advance, and Tasman has accepted the Goods in that condition;
 - (d) the Goods are sufficiently packaged to withstand handling, transport and storage and are properly labelled, except where Tasman has accepted instructions to pack and/or label the Goods;
 - (e) the Customer has not asked Tasman to handle, transport or store the Goods in any way that could be unlawful;
 - (f) the actual handling, transport or storage of the Goods in the usual course by Tasman will not be unlawful;
 - (g) the Goods are received by Tasman within the correct temperature range (if applicable);
 - (h) a compliant container weight declaration will be supplied where the Customer is to provide the consignment documentation;
 - (i) it has accurately described and clearly marked the Goods and has provided Tasman all necessary instructions and information regarding the handling, care and control of the Goods having regard to the Goods nature and packaging; and
 - (j) it has complied with the requirements of all applicable laws relating to the condition, nature, packaging, handling, labelling, storage, and carriage of the Goods and that it will provide Tasman (at the Customer's cost) with all necessary assistance, information, and documentation to enable Tasman to comply with any of its obligations under such laws.
- 15. Compliance with Law:**
The Customer acknowledges that Tasman will not comply (and Tasman will not be liable for such noncompliance) with any instruction by the Customer that might cause, or contribute to, a breach of any applicable law, or prevents Tasman from taking all steps that it considers to be reasonably necessary to prevent any breach of any applicable law.
- 16. Credit and Suspension**
- (a) Tasman can vary or withdraw any credit facility or limit at any time at its discretion and without any liability to the Customer or any other party.
 - (b) Tasman may temporarily suspend or stop indefinitely supplying the Services at any time on 7 days' notice provided that the time for performance of the Services does not fall within that period.
- 17. Insurance:**
The Customer must at its own expense, arrange for, and maintain, insurance in relation to the Goods for their full insurable value and Tasman has no responsibility to ascertain whether insurance has been so effected. Unless Tasman otherwise expressly agrees in writing, the Goods are not insured by Tasman and nor will insurance be arranged by Tasman on behalf of the Customer.
- 18. Entitlement to open and inspect:**
Tasman is entitled to open any document, package or other Container in which any of the Goods are placed or carried to inspect the Goods to render them safe, determine their nature, to determine their ownership, to determine their destination where any consignment note or identifying document or mark is lost, damaged, destroyed or defaced, and/or ensure that the Customer has complied with the Contract.
- 19. Preservation of Goods:**
Tasman may at the Customer's cost, expend any amount it considers necessary or desirable to preserve the Goods or to secure the safety, storage, carriage, or shipment of the Goods.
- 20. Port and shipping:**
- (a) It is the Customer's responsibility to comply with all regulations or requirements of customs, port and other authorities, except where Tasman expressly agrees to undertake this on behalf of the Customer as part of its Services.
 - (b) Where provision of the Services involves transport by air or sea, then the provision of such services is subject to the availability of shipping space on applicable vessels, force majeure and other factors, and delivery times may vary from times quoted to the Customer.
- 21. Weight:**
Tasman may, at the Customer's request, weigh Goods on behalf of the Customer. While Tasman will take all care with respect to such weighing, Tasman does not warrant that the weights recorded or reported by it are accurate and it is the Customer's responsibility to independently verify that stated weights are correct.
- 22. Dangerous Goods, Perishable Goods, and/or Temperature Controlled Goods:**

- (a) Unless prior and express agreement in writing is first obtained from Tasman, the Customer must not deliver to Tasman, or cause Tasman to deal with or handle, Dangerous Goods or Temperature Controlled Goods.
- (b) Where Tasman has agreed to take delivery of Dangerous Goods or Temperature Controlled Goods, then:
- (i.) the Customer must provide Tasman with prior written notice and instructions regarding any special handling requirements (including without limitation, temperature) for the storage and transport of those Goods together with a full and accurate written description of them;
 - (ii.) (for Dangerous Goods) the Customer must provide Tasman with Material Safety Data Sheets in relation to those Goods; and
 - (iii.) if Tasman or any other person forms the view that those Goods constitute a risk to property, health, or life, Tasman may without notice or compensation to the Customer and without liability, destroy the Goods or otherwise deal with them in Tasman's absolute and sole discretion, at the expense of the Customer.
- (c) If in the opinion of Tasman, the Goods are Dangerous Goods, and:
- (i.) they do not meet legal requirements or recommendations of relevant government agencies relating to the Goods or Services; and/or
 - (ii.) are unsuitable to be handled by Tasman using the equipment and operating procedures normally employed by Tasman in providing the Services,
- then Tasman may in its absolute sole discretion:
- (iii.) refuse to provide the Services in respect of the Goods or any part of them;
 - (iv.) take whatever measures (including testing or analysis of the Goods) it deems reasonably necessary at the risk and expense of the Customer to cause the Goods to comply with the requirements of all such laws or to make the Goods suitable to be handled by Tasman; and/or
 - (v.) at the cost of the Customer, destroy, dispose of or render harmless the Goods without prejudice to any of Tasman's rights under these Terms (but only where Tasman deems it reasonably necessary to do so),
- and the Customer releases Tasman from, and will bear all risk of, Loss arising in connection with such Goods as result of such actions.
- (d) The Customer acknowledges if any Temperature Controlled Goods are to be transported or stored by Tasman, that temperature variations can occur. While Tasman will endeavour to ensure that transport or storage occurs at a temperature within accepted tolerance levels, it will not be liable to the Customer in any way if it fails to do so.
- (e) In relation to Temperature Controlled Goods and/or perishable Goods:
- (i.) the Customer is responsible for ensuring that the Goods do not exceed their expected shelf life. Each time the Customer brings new Goods into a Tasman storage facility, the Customer must (if the Goods are perishable) supply Tasman with full details of the expected shelf life and provenance of those Goods;
 - (ii.) the Customer is responsible for ensuring that all Goods received into storage facility are in a condition reasonably acceptable to Tasman at the time of delivery and are clearly labelled in durable freezer-resistant indelible ink and in packaging suitable for dry, chiller and/or freezer bulk storage;
 - (iii.) as it is unreasonable to expect Tasman to have knowledge of the condition of the Goods at the time of delivery, especially boxed or packaged Goods, Tasman cannot accept any liability, responsibility, or claims in respect of any alleged deterioration of the Goods whilst in the storage facility or being transported, except to the extent directly caused by Tasman's negligence or wilful misconduct;
 - (iv.) Tasman accepts no responsibility for any damages and losses that may occur to the Goods as a result of industrial action, defects in Tasman's premises, plant, equipment, breakdowns, power and water supply failures, lack of equipment and/or plant and any other events that are beyond the reasonable control of Tasman;
 - (v.) if in the sole opinion of Tasman any or all of the Goods are, or become, deteriorated, objectionable, contaminated, or a source of danger, the Customer must remove them from the storage facility immediately upon notification from Tasman. If the Customer fails to comply with this requirement the Goods may be removed and disposed of by Tasman (and at the Customer's cost) in any manner Tasman sees fit and without Tasman being liable to the Customer or any other parties for any claims or damages;
 - (vi.) unless otherwise specified, handling charges cover only the ordinary labour and duties incidental to receiving and delivering unitised goods on pallets at the storage facility dock during Tasman's normal business hours but do not include loading and unloading;
 - (vii.) the Customer must make sure that consignments are within 2 degrees of required temperature specification prior to collection by or tendering to Tasman on each and every occasion. Tasman has the right to reject any consignments upon collection or delivery into a Tasman facility if product temperatures vary more than 2 degrees Celsius from the required temperature. Additional charges will be levied for any returns and/or redeliveries as a result;
- (viii.) unless otherwise agreed by Tasman in writing, pallets tendered to Tasman for storage must not exceed 1.2m in height and 1,000kg in weight, otherwise additional charges will apply;
- (ix.) unless otherwise agreed by Tasman in writing, pallets tendered for transport exceeding 1,000 kg in weight (inc. 50kg for each pallet) and / or 2.1 metres in height, will be down stacked and charged at additional pallet rates;
- (x.) Tasman shall tally the Goods into the storage facility upon delivery and the Tasman's tally shall be sufficient proof of the quantity and condition of the Goods in the event that the Customer or their representative or agent is not present to sign Tasman's receipt of Goods document; and
- (xi.) the Customer agrees that Goods are received into Tasman's storage facility strictly on a "quality, quantity, contents and condition unknown" basis.
- 23. Default and Recovery Costs:**
- (a) To the extent permissible at law, default or breach by the Customer of these Terms, a Contract or in any dealings with Tasman will entitle Tasman to retain all monies paid, call-up all monies due or owing (whether currently due and owing or not) cease the provision of Services and recover from the Customer all loss of profits without prejudice to any other of its rights under these Terms, a Contract or at law.
 - (b) The Customer will pay (on a full indemnity basis) all costs and expenses of Tasman, its legal adviser, mercantile agents and others acting on its behalf in respect of anything instituted or being considered as a result of any breach of these Terms, a Contract or a breach of any dealings with Tasman.
- 24. Customer Indemnity in relation to breach and third party claims:**
To the extent permissible at law, the Customer indemnifies Tasman, and agrees to keep Tasman indemnified against all Loss arising from or related to a breach of these Terms by the Customer; and/or a claim by a person other than the Customer in relation to that person claiming any interest in the Goods, except to the extent caused by Tasman.
- 25. Force Majeure:**
- (a) If at any time by reason of war, storm, fire, flood or other act of God, pandemic, epidemic, strike, labour dispute, shipping delays, shortage of raw materials, utility interruption, damage or breakdown of plant and equipment, changed market conditions, order of any governmental or regulatory body, unavoidable collision or accident, or any other reason or cause beyond the reasonable control of Tasman, it becomes practically impossible or commercially unviable in the opinion of Tasman to supply the Services, then Tasman may suspend supply for the affected period and/or terminate the Contract, these Terms, and/or any Order, without penalty and on written notice to the Customer.
 - (b) Tasman will not be obliged to place the Customer's interests before Tasman's commercial interests.
- 26. Default/Termination by Customer or Tasman**
- (a) A party (**Non-Defaulting Party**) may terminate these Terms immediately in the event that the other party (**Defaulting Party**) commits:
 - (i) a breach of these Terms which in the reasonable opinion of the Non-Defaulting Party is incapable of remedy;
 - (ii) a breach of these Terms which is capable of remedy, but the Defaulting Party fails to remedy said breach within 14 days of written notification by the Non-Defaulting Party; or
 - (iii) an insolvency event. An insolvency event includes without limitation, bankruptcy, liquidation, receivership, administration.
Any accrued rights and obligations of the parties as at the date of termination will be unaffected by termination.
 - (b) All amounts owing to Tasman will, whether or not due for payment, immediately become due and payable by the Customer upon termination of these Terms.
- 27. Privacy disclosure and consent:**
The Customer irrevocably authorises Tasman to:
- (a) collect, use and disclose personal information of or relating to the Customer in accordance with the Contract and the Privacy Act;
 - (b) obtain credit information about its personal, consumer and commercial credit worthiness from any bank or trade referee disclosed in any application for commercial credit with Tasman completed by it and provided to Tasman and from any other credit provider or credit reporting agency for the purpose of assessing its application, or in connection with any guarantee given by the Customer;
 - (c) use, disclose or exchange with other credit providers and other members of the Tasman Group information about the Customer's credit arrangements in order to assess its application for credit, monitor credit worthiness and collect overdue accounts; and/or
 - (d) disclose the contents of any credit report on the Customer to any related entities of Tasman, and any of their solicitors, professional advisors or mercantile agents.
- 28. Lien:**
- (a) Goods are accepted by Tasman subject to a general and special lien for all charges due, or which may become due, to Tasman by the Customer in

respect of the Services. This lien is in addition to any right of lien that Tasman may be entitled under law.

- (b) If Tasman's charges are not paid when due, or the Goods are not collected when so required or designated under these Terms or otherwise, Tasman may, after first providing the Customer with 7 days prior notice of its intention to do so (or without notice in the case of perishable goods), sell or dispose of the Goods, and apply the proceeds (if any) to discharge the lien, any amounts owing to Tasman on any account, and the costs of sale or disposal, without being liable to the Customer or any other person for any loss or damage caused. If Tasman sells or otherwise disposes of Goods pursuant to this clause 28, it does so as principal and not as an agent or trustee. In addition, Tasman may remove all or any of the Goods and store them, in any manner it thinks fit (acting reasonably) at the Customer's risk and expense.
- (c) Notwithstanding that Tasman may exercise its lien and/or power of sale/disposal over Goods under this clause 28, the Customer must still pay Tasman any costs and charges of Tasman not recouped out of the proceeds of such sale/disposal.
- (d) Tasman will account to the Customer any surplus proceeds that are realised by it from a sale of any such items after discharging in full all monies outstanding to Tasman. No other compensation will be payable to the Customer for a sale or disposal of Goods under this clause 28.
- (e) Where Tasman exercises its power of sale or disposal under clause 28(b), Tasman may without limitation, sell the Goods (or part thereof) by public auction or private sale, and/or if in Tasman's reasonable opinion a sale of the Goods is not reasonable in the circumstances, dispose of Goods at the expense of the Customer (including but not limited to placing in landfill).
- (f) Tasman's lien extends to include all costs and expenses of Tasman exercising its lien, including without limitation, the costs of sale and/or disposal.

29. Subcontracting and Personnel:

- (a) Tasman may subcontract the whole of any part of the Services.
- (b) The Customer must not claim against any officers, employees, agents, or subcontractors of Tasman or attempt to impose upon any of them any liability whatsoever in connection with the Goods or Services. Notwithstanding, if such claim is made by the Customer, then the Customer undertakes to indemnify Tasman against all consequences thereof.
- (c) To the extent permitted by law, every exemption, exclusion, or limitation in these Terms and any Contract of whatsoever nature applicable to Tasman, or to which Tasman is entitled, will also be available and extend to protect Tasman's officers, employees, agents, and subcontractors and all persons who are or might be vicariously liable for the acts or omissions of any such persons. Tasman will, for the purposes of this clause 29(c), be deemed to be acting as an agent 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 deemed to be parties to these Terms.

30. PPSA:

- (a) The Customer must not register a Security Interest against Tasman without first providing Tasman with 7 days prior written notice.
- (b) The parties agree that they will not disclose information of the kind noted in section 275(1) of the PPSA, except in circumstances required by sections 275(7) (b) to (e). The Customer agrees that it will only authorise the disclosure of information under section 275(7)(c), or request information under section 275(7)(d), where Tasman has provided its prior consent in writing.
- (c) Nothing in clause 30 will prevent Tasman making any disclosure it believes is necessary in order to comply with its other obligations under the PPSA or pursuant to law.

31. The Competition and Consumer Act 2010 (Cth) and Fair Trading Acts:

- (a) Nothing in these Terms:
 - (i.) is intended to have the effect of contracting out of any applicable provisions of the ACL or the Fair Trading Acts in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable; or
 - (ii.) excludes, restricts or modifies any guarantee, right or remedy conferred on the Customer by the ACL, including without limitation, provisions relating to unfair contract terms, or any other applicable law insofar as they cannot be excluded, restricted or modified by agreement.
- (b) If the Customer is a consumer within the meaning of the ACL, it will be entitled to the benefit of guarantees which cannot be excluded.
- (c) To the extent permitted by law, if Tasman is liable for a breach of a guarantee imposed by the ACL then both Tasman and the Customer note that none of the Services are of a kind ordinarily acquired for personal, domestic or household use or consumption. Tasman's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at Tasman's option, to the supply of the Services again and/or the payment of the cost of having the Services supplied again.

32. Limitation of Liability – Goods/Delivery Times:

- (a) Goods are accepted by Tasman at the risk of the Customer and unless expressly agreed by Tasman in writing otherwise, Tasman will not be

liable (whether in tort, contract, statute, or otherwise) for any Loss, delay, contamination, evaporation, incorrect delivery, deterioration, mis-delivery, non-delivery or loss of any nature in respect of the Goods, or arising out of or incidental to the provision of the Services, unless directly caused by the negligent acts or omissions, or wilful act or default, of Tasman and then subject always to clause 33.

- (b) All delivery and collection times quoted by Tasman are indicative only unless expressly stated by Tasman in writing otherwise. Tasman will in no circumstances be liable for any delay in delivery or collection of the Goods or in the delayed supply of Services.

33. Limitation on Exclusions/Liability:

Notwithstanding any other clauses in these Terms, to the extent permitted by law, if any liability is found to attach to Tasman and/or if the exclusions of liability in these Terms (including but not limited to clause 32) are in any way reduced, void or not available, by operation of law then Tasman's liability will be, at Tasman's option, limited to the supply of the Services again and/or the payment of the cost of having the Services supplied again.

34. Time Limitation on Claims:

- (a) Any claim for loss of or damage to the Goods or relating to the performance of the Services must be notified in writing to Tasman within 7 days of delivery of the Goods or the date by which the Goods should have been delivered, and in the case of Services, within 7 days of the provision of the Services or the date by which the Services should have been provided.
- (b) To the extent permitted by law, Tasman will be discharged from all liability whatsoever unless suit is brought within 6 months of the provision of the Services, delivery of the Goods, or when the Services should have been provided or when the Goods should have been delivered.

35. No other warranties, representations etc.:

Except as expressly set out in these Terms or a Contract, no other term, condition, agreement, warranty, representation or understanding whether express or implied in any way extending to or otherwise relating to or binding upon Tasman is made or given except where expressly done so in writing and signed by an authorised officer of Tasman, or where mandatorily imposed by law and cannot be excluded (including under the ACL).

36. No Consequential Loss:

Notwithstanding any other part of these Terms, to the extent permissible by law, neither party will be liable to the other for Consequential Loss.

37. Pallets:

Where the carriage or storage of Goods involves using hired pallets, the Customer is responsible to raise any pallet transfer docket to effect a transfer of pallets to the recipient of the Goods. Hired pallets must not be transferred to Tasman's pallet hire account throughout the performance of the transport or storage services unless Tasman expressly agrees in writing otherwise.

38. Variation of Terms:

Tasman reserves the right to replace or vary these Terms (or any part of them) from time to time upon 30 day's notice. All Orders received by Tasman, and Contracts made, after the expiry of that 30 day's notice shall be deemed to be subject to the replacement or varied terms (however any Contracts made, or Orders placed, before the expiration of that 30 day period shall continue to be governed by the existing Terms in place at the time of placing that Order or making that Contract).

39. No solicitation of Tasman employees:

For period commencing on the date of the first provision of Services by Tasman to the Customer under a Contract and ending 1 year after the date of the last provision of Services by Tasman to the Customer pursuant to a Contract, the Customer must not, and must ensure that its related body corporates (as that term is defined in the Corporations Act 2001 C'th) do not, solicit the employment of any employee or officer employed or engaged by Tasman with whom the Customer has had contact in respect of the Services or attempt to entice any such person to leave their employment or engagement with Tasman. Nothing in this clause 39 will restrict or prohibit the Customer or its related body corporates from soliciting the employment of a person who:

- (a) responds to a general advertisement or bona fide recruitment campaign that is not targeted at the person; or
- (b) contacts the Customer or its related body corporates on his or her own initiative without any solicitation from the Customer or its related body corporates.

40. General:

- (a) **Notices:** Any notice under these Terms or any Contract must be in writing, and may be delivered, faxed or posted to a party at their address or facsimile number last notified by them to the other party. A party may change its address or number for notices by notifying the other party.
- (b) **Waiver:** If Tasman elects not to exercise any rights arising as a result of breach of these Terms or a Contract, it will not constitute a waiver of any rights relating to any subsequent or other breach.
- (c) **No Merger:** Termination of these Terms, a Contract and/or dealings between the Customer and Tasman will not end those provisions of these Terms that are capable of surviving termination.
- (d) **Entire Agreement:** The Contract for the supply of Services pursuant to an Order constitutes the entire agreement between Tasman and the Customer with respect to that Order. All prior negotiations, proposals,

previous dealings, correspondence, trade custom and/or trade usage are superseded by and will not affect the interpretation of that Contract. Any terms and/or conditions sought to be imposed by the Customer upon Tasman will not apply unless expressly agreed in writing by Tasman as overriding or replacing these Terms.

- (e) **Severability:** If a provision of these Terms or a Contract would but for this clause, be unenforceable, that provision must be read down to that extent necessary to avoid that result and if that provision cannot be read down to that extent, it must be severed without altering the validity and enforceability of the remainder of these Terms and Contract.
- (f) **Trusts:** The Customer agrees that these Terms and all Contracts bind it not only in its own capacity, but also as the Trustee of every trust of which it is a trustee.
- (g) **Set-Off:** Tasman will be entitled to set off against any money owing to the Customer amounts owed to Tasman by the Customer on any account whatsoever. The Customer must not set off any amounts owing to it by Tasman against any amount due by it to Tasman.
- (h) **Jurisdiction:** All contracts made with Tasman will be deemed to be made in the State of Victoria and the parties submit to the non-exclusive jurisdiction of the appropriate Courts in or nearest Melbourne in that State.