



**FJT Logistics Warehouse general terms and conditions of trade**

These contractual conditions apply to the Services provided by FJT Logistics. These Trading Conditions contain exclusions of liability and indemnities in favour of FJT Logistics. You should read these Trading Conditions carefully.

**1. Definitions and interpretation**

**1.1 Definitions**

In this agreement

**Agreement** means this agreement, together with any Authority and Customer credit application.

**Authority** means any authority by which the Customer appointed FJTL to act on its behalf.

**Business Day** means Monday to Friday and excludes any day which is declared a public holiday in Melbourne, Victoria.

**Business Hours** means between 10:00am and 4:00pm on a Business Day.

**Connected Party** means in relation to the Goods the Owner, exporter, importer, supplier, purchaser, carrier or any agent of any of the aforementioned parties, other than FJTL.

**Consequential Loss** means any loss or damage which:

- (a) does not arise naturally or in the usual course of things; or
- (b) constitutes, or arises from or in connection with, a loss in revenue, profit or opportunity or a loss of goodwill or business reputation, even if such loss or damage arises naturally or in the usual course of things.

**Claim** includes a claim, notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a third party or a party to this Agreement.

**Customer** mean the entity that requests that FJTL perform the Services, or where Services are requested by an agent, the entity on whose behalf the Services are performed.

**Dangerous Goods** means any Goods which are, or may become, hazardous, volatile, explosive, flammable, radioactive, likely to harbour or encourage vermin or pests, or capable of posing a risk or causing damage to any person or property.

**Fee** means the Company's fees for the Services as set out in any quotation, rates schedule, tariff or as otherwise notified to the Customer or a Connected Party and any other amounts payable under these Terms and Conditions.

**FJTL** means F.J. Tytherleigh Logistics Pty Ltd ABN 50 098 363 609.

**Goods** means the goods, including packaging, pallets or containers, the subject of the Services.

**Government Authority** means any government agency, authority, department or body, exercising jurisdiction in any nation, state, port or airport.

**Law** means any law, regulation, rule or international convention.

**Loss** means any loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind, (including legal costs on an indemnity basis) and whether actual, prospective or contingent and whether ascertained or unascertained.

**Owner** means the owner, importer or exporter of the Goods, or a person authorised to act on behalf of the owner or importer of the Goods.

**Perishable Goods** means any Goods liable to waste, deterioration or spoilage, and includes without limitation fruit, vegetables, dairy products, meat, and animals.

**PPSA** means the *Personal Property Securities Act 2009* (Cth).

**SBC Contract** means a contract that is either a "small business contract" or a "consumer contract" as defined in section 23(3) of Schedule 2 to the Competition and Consumer Act 2010 (Cth), but does not include:

- (a) a contract of marine salvage or towage;
  - (b) a charter party of a ship;
  - (c) a contract for the carriage of goods by ship;
  - (d) a contract that is not a standard form contract; or
  - (e) a "small business contract" where the Customer does not employ fewer than 20 persons
- Services** means the services performed by FJTL in relation to the Goods including storage of the Goods, order fulfillment, loading and unloading Goods at the Warehouse, domestic freight, order processing and fulfillment and inventory management together with any ancillary acts for those purposes, including preparing any documentation or providing any information to a Government Authority.
- Stocktake** means a count of the physical holding of the Goods reconciled against FJTL's stock records including receipts, issues and inventory balance.
- Subcontractor** means a third party (and their employees, agents and contractors) engaged to provide all or part of the Services.
- Systems** means the computer systems of a Party which are made available to the other Party to use, access, send to or receive data from in connection with the performance of the Services including all software, hardware, equipment, communications services and websites operated by a Party.
- Transport Document** includes a bill of lading, waybill, consignment note, or similar carriage document.
- Warehouse** means the storage facilities located at 16 Reid Way Melbourne Airport VIC 3045, and any other storage facility utilised by FJTL to perform the Services.
- Warehouse Hours** means 8 am to 4 pm on Business Days.
- A reference to FJTL's Fees includes any taxes, including goods and services tax, payable in respect of the Services.

## 1.2 Interpretation

In this agreement:

- (a) headings and clause numbers are for convenience only and do not form part of the document or affect its interpretation;
- (b) the singular number includes the plural and vice versa, unless the context requires otherwise;
- (c) a reference to "includes" or "including" means "includes, without limitation" and "including, without limitation" respectively;
- (d) a reference to the whole includes a part of the whole;
- (e) a reference to a party includes that party's executors, administrators, trustees, successors and permitted assigns;
- (f) a reference to a person includes an individual, corporation, unincorporated association, partnership, joint venture or government body;
- (g) a reference to any statute, ordinance or other law includes all regulations and other instruments under it and all consolidations, amendments, re-enactments or replacements of it;
- (h) money references are in Australian dollars, unless otherwise provided; and
- (i) if a party is a corporation, a reference to that party's authorised officer includes an "officer" of the corporation as defined in the *Corporations Act 2001* (Cth), or any other person authorised to act on its behalf.

## 2. General

- 2.1 Without limitation to other methods of acceptance, by instructing FJTL to provide the Services the Customer agrees to be bound by this Agreement.
- 2.2 FJTL is not a common carrier. FJTL will not be liable as a common carrier. The Goods are at all times at the risk of the Customer.
- 2.3 This Agreement takes priority over and will prevail to the extent of any inconsistency with the Authority, any credit application made by the Customer, the Customer's terms and conditions or other document issued by the Customer, and any terms and conditions set out in any Transport Document, except a Transport Document issued by FJTL.
- 2.4 The Agreement is governed by the laws of Victoria, Australia. FJTL and the Customer submit to the jurisdiction of the courts of Victoria and of the Federal Court of Australia.
- 2.5 A variation of this Agreement will only be valid if in writing and signed by each party or signed by a person with the authority to bind each party.
- 2.6 FJTL may assign its rights and obligations under the Agreement without the Customer's consent. The Customer must not assign its rights and obligations under the Agreement without FJTL's written consent.
- 2.7 Any notices under this Agreement must be in English and in writing.
- 2.8 All rights, indemnities and limitations of liability contained in this Agreement will have their full force and effect, despite:
  - (a) any breach of term or condition of this Agreement, the Agreement, or any collateral agreement by FJTL;

- (b) the performance of the Services;
  - (c) the delivery of the Goods; or
  - (d) the expiry or termination of the Authority.
- 2.9** Without limiting the effect of clause 2.8, clauses 2.13, 3.11, 7.12, 10, 11, 13, 14, 16, 18, and 20 of this Agreement will survive termination.
- 2.10** If a condition or part of a condition of this Agreement is unenforceable, it must be severed from and does not affect the rest of the Agreement.
- 2.11** FJTL is not bound by any waiver, discharge or release of a condition or any agreement which purports to change this Agreement, unless it is in writing and signed by or for FJTL.
- 2.12** A reference in this Agreement to any law includes any statutory modification, substitution or re-enactment of it.
- 2.13** If the Customer is a trustee of a trust, the Customer:
- (a) will provide FJTL with a copy of the trust deed and any documents amending that trust deed;
  - (b) notify FJTL of any change in trustee of the trust;
  - (c) agrees that these Conditions apply to, and all requests for Services placed by the Customer with FJTL are placed by, the Customer in its personal capacity and as trustee of the trust.
- 2.14** Any party that enters this Agreement as a disclosed or undisclosed agent agrees to be joint and severally liable for the debts, liabilities and obligations of the principal under this Agreement.
- 3. Services**
- 3.1** All Services provided by FJTL are subject to the terms of this Agreement.
- 3.2** FJTL is authorised by the Customer to choose the method for performance of the Services at FJTL's complete discretion. Where FJTL has a variety of options available in which to perform the Services, FJTL will act reasonably in electing how the Services will be performed.
- 3.3** FJTL may agree or refuse to provide Services at its discretion.
- 3.4** The Customer authorises FJTL to open any package containing Goods and do any other thing in order to inspect or weigh the Goods.
- 3.5** The Customer agrees that:
- (a) the value of the Goods will not be declared or inserted into a Transport Document or contract for the purpose of extending a carrier's liability unless the Customer provides express written instructions to FJTL to do so, and if required, the carrier agrees;
  - (b) where a Subcontractor's or carrier's charges may be determined by the extent of liability assumed by the Subcontractor or carrier, no declaration of value will be made for the purpose of extending the liability of the Subcontractor or carrier, and the Goods will be dealt with at the Customer's risk for minimum charges, unless the Customer provides written instructions to the contrary to FJTL;
  - (c) FJTL reserves the right to not make any declaration or take any action in respect of the Customer's Goods unless the Customer has provided FJTL with sufficient notice, written instructions and the documents necessary to take that action in relation to those Goods.
- 3.6** At any time, FJTL may, acting reasonably, deem that certain Goods are Dangerous Goods.
- 3.7** FJTL at its reasonable discretion may destroy or otherwise deal with any Goods FJTL considers are Dangerous Goods, without notice or compensation to the Customer.
- 3.8** FJTL's delivery obligations are satisfied if FJTL:
- (a) delivers the Goods to the delivery address instructed by the Customer, and a person at that address provides a receipt or signs a delivery docket, or if authorised by the Customer, the Goods are left at the delivery address without obtaining a receipt or signed delivery docket; or
  - (b) makes the Goods available for collection by a carrier nominated by the Customer.
- 3.9** If a person at the delivery address cannot or refuses to take delivery of the Goods, or the Goods cannot be delivered for any other reason, the Customer authorises FJTL to deal with the Goods at FJTL's reasonable discretion, including storing, disposing of, or returning the Goods.
- 3.10** If FJTL believes it is necessary or desirable, FJTL may deviate from the usual route or method of transport or take any action which it reasonably believes is necessary to protect the Goods.
- 3.11** Without limiting any other right under this Agreement, if the Customer is insolvent, placed under external administration, bankrupt or deceased, FJTL is authorised to return any Goods to the shipper, exporter or supplier of those Goods, where FJTL has not received authority from the Shipper, exporter or supplier of the Goods to release the Goods to the Customer.
- 3.12** The Customer irrevocably appoints FJTL with the power and authority to take any action and execute any document in the name of and on behalf of the Customer as required by FJTL to provide the Services.
- 3.13** The Customer agrees that FJTL may receive and retain for its own account allowances, brokerages and commissions from shipping and forwarding agents, shipping lines, insurance brokers, airlines and any

other person with whom FJTL deals and that FJTL is not required to disclose the receipt and retention of such amounts to the Customer, even, without limitation, if acting as agent for the Customer.

#### **4. Services – Warehousing**

- 4.1 Where the services involve storing the Goods, the primary storage location will be the Warehouse. However, the Goods may be stored at any place at the absolute discretion of FJTL at the Customers' expense.
- 4.2 The Goods may be consolidated, stored in bulk or separate lots at the discretion of FJTL.
- 4.3 When FJTL stores the Goods, FJTL may require that the Customer remove the Goods from storage by giving reasonable notice delivered to an address provided by the Customer to FJTL.
- 4.4 Services performed at the Warehouse will be performed during the Warehouse Hours.
- 4.5 The Customer may request to access the Warehouse to inspect the Goods during Business Hours.
- 4.6 All Goods will be tallied into FJTL's register upon receipt by FJTL. All Goods will be tallied out of FJTL's register on delivery by FJTL or when collected from the Warehouse at the direction of the Customer.
- 4.7 Any tallying in or out of Goods by FJTL will be accepted as final unless the client or representative is present and objects to FJTL's tally.
- 4.8 If requested, the Customer will provide FJTL with periodic forecast of the volume of Goods to be delivered to the Warehouse. The Customer will update FJTL if the forecast changes by more than 10%.
- 4.9 The Customer will provide a minimum of 24 hours' notice for any deliveries of Goods to the Warehouse arranged by the Customer.
- 4.10 The Customer will not require orders to be fulfilled outside of the order fulfillment timeframes notified by FJTL to the Customer. If no order fulfillment timeframes are notified, orders will be fulfilled and available for collection or delivery within 3 Business Days of FJTL receiving the order.
- 4.11 FJTL will provide the Customer with its electronic record of inventory of the Goods on request.
- 4.12 The Customer may on 2 Business Days' notice to FJTL:
- (a) require FJTL to provide to the Customer, or a representative of the Customer, access to a Warehouse for the purpose of conducting a Stocktake and, at the Customer's cost, give all reasonable assistance required by the Customer in connection with the conduct of any such Stocktake; or
  - (b) require FJTL to conduct a Stocktake at the Customer's cost, not being a Stocktake required to be undertaken pursuant to the Services.
- 4.13 FJTL accepts pallets or any other packing device or material provided with the Goods (**Packaging**) only on the condition that all charges relating to the Packaging are to be paid by the Customer.
- 4.14 Where FJTL signs for the receipt of any Packaging, it does so only on behalf of the Customer and does not accept liability for the return of any Packaging supplied with the Goods.

#### **5. Customer Obligations**

- 5.1 The Customer will provide FJTL with all assistance, information and documentation necessary to enable FJTL to provide the Services, and punctually comply with any Law or request from a Government Authority.
- 5.2 The Customer is under a continuing obligation to provide any information which may materially affect the capacity of the Customer to perform its obligations under the Agreement.
- 5.3 The Customer will keep confidential the Fees or charges and any waiver, discount, release or indulgence provided by FJTL in relation to the provision of the Services.
- 5.4 The Customer will comply with all reasonable directions of FJTL in relation to the provision of the Services.
- 5.5 Unless expressly agreed by FJTL, the Customer will not during the Term and for a period of 12 months after the end of the Term solicit or attempt to solicit any of FJTL's employees involved in the provision of the Services, either directly as an employee or as a contractor or subcontractor.
- 5.6 The Customer will take reasonable precautions to ensure that any containers and pallets loaded or transported by or on behalf of the Customer will be loaded, secured and transported in a manner that complies with the Schedule to the *Heavy Vehicle National Law Act 2012* (Qld).

#### **6. Instructions**

- 6.1 Any instructions given by the Customer must be in writing in English and be legible.
- 6.2 FJTL has the discretion to refuse to accept the Customer's instructions.
- 6.3 Sufficient notice of instructions must be given by the Customer to FJTL to enable FJTL to follow those instructions. If insufficient notice is given and FJTL attempts to adopt the Customer's instructions, FJTL is not deemed to have accepted the instructions.
- 6.4 If FJTL accepts the Customer's instructions on one occasion, FJTL will not be bound by those instructions when providing Services in the future.

6.5 If FJTL accepts the Customer's instructions to perform the Services in a particular way, it will give priority to that method, but may depart from that method at its reasonable discretion.

## 7. Fees

7.1 In consideration for the provision of Services, the Customer will pay the Fees to FJTL.

7.2 FJTL's fees are earned on the earlier of the commencement of the performance of the Services (or part thereof), or when the Goods are delivered to FJTL or its subcontractors.

7.3 The Fees may include any disbursements and other amounts that FJTL is required to pay third parties in connection with the Services. FJTL at its discretion may vary its Fees if the amount of any such disbursements changes. Where an amount charged by FJTL is described as a disbursement (or otherwise describes an amount paid to a third party), such amount may also include FJTL's handling and administration fee in respect of the disbursement and that fee is not required to be separately disclosed.

7.4 The Fees must be paid immediately on receipt of an invoice or as otherwise agreed in writing (**Due Date**).

7.5 FJTL at its discretion may determine its Fees, including by weight, measurement or value, including without limitation, by volumetric conversion.

7.6 FJTL may re-weigh, re-measure or re-value the Goods at any time, and amend its Fees at its reasonable discretion.

7.7 Any information contained in a quotation provided by FJTL in relation to the Fees applies to the specific item, weight and volume quoted, designated Services and standard of Services, and is only valid until the earlier of 14 days after being provided, the quote being withdrawn or the quote expiring.

7.8 A quotation is not an offer and is not binding on FJTL. A quotation may change based on changes to freight, insurance, warehousing, Fees, and any other charges, with or without notice to the Customer.

7.9 Unless otherwise stated, FJTL's prices are exclusive of goods and services tax.

7.10 The Customer remains responsible for the payment of Fees:

- (a) even where an arrangement is made for the Fees to be paid by another person;
- (b) whether or not the Goods are delivered or damaged or the Services performed as instructed.

7.11 If the Fees are not paid in full within 7 days of the Due Date then, without limitation to its rights, FJTL may charge interest on the late payment at the published business overdraft rate of the Commonwealth Bank of Australia.

7.12 The Customer will not defer, set-off or withhold payment of any amount payable to FJTL by reason of any claim the Customer has, or claims it has, against FJTL.

7.13 Any credit terms provided by FJTL may be terminated at any time by FJTL.

## 8. No employment relationship

Nothing in this Agreement constitutes the relationship of employer and employee, partnership or joint venture between FJTL and the Customer. It is the express intention of the Parties that any such relationships are denied.

## 9. Force majeure

9.1 The obligations of either Party under this Agreement (except for the payment of Fees) are to be suspended for the duration of any event resulting in either Party being prevented from or delayed in performing any obligation under this Agreement where the causal event is not within the reasonable control of the affected Party, including without limitation:

- (a) an act of God, force of nature or climatic conditions, unavoidable accidents;
- (b) war, revolution, riot, insurrection, terrorism, vandalism, sabotage or any other unlawful act against public order or authority;
- (c) governmental restraint;
- (d) a computer software or hardware defect, problem or virus that materially interrupts the business of a Party;
- (e) equipment or vehicle breakdown or malfunction;
- (f) pandemic, epidemic or Government measure relating to a pandemic or epidemic; and
- (g) an industrial dispute;

### (Force Majeure Event)

provided that in any of these circumstances the Party seeking to rely on the benefit of this clause must use its reasonable endeavours to put itself in a position where it is able to meet its obligations under this Agreement as soon as possible.

9.2 The Customer shall not be liable to pay for Services which are unable to be provided by FJTL during the Force Majeure Event, but will remain liable for disbursements incurred by FJTL in respect of the Goods, even if the incurring of that disbursement is caused by the Force Majeure Event, provided that where reasonably possible such disbursements were approved by the Customer prior to them being incurred.

**9.3** If the Force Majeure Event persists for more than 14 days either party may terminate this Agreement on 5 Business Days' notice.

**9.4** For the avoidance of doubt, the Customer will be liable for storage costs even where a Force Majeure Event prevents the Customer accessing Goods or removing the Goods from the Warehouse.

## **10. Subcontractors**

**10.1** The Customer authorises FJTL to:

- (a) subcontract all or part of the Services to a Subcontractor; and / or
- (b) as the agent of the Customer, contract with a third party service provider on behalf of the Customer on any terms whatsoever, including terms that limit or exclude the liability of the third party service provider.

**10.2** The Customer authorises a Subcontractor to subcontract all or part of the Services.

**10.3** All exclusions or limitations on the liability of FJTL in this Agreement extend to protect:

- (a) all Subcontractors;
- (b) the agents, employees and servants of any Subcontractor or FJTL; and
- (c) any person engaged to provide all or part of the Services.

**10.4** The Customer undertakes that it will not make any claim against, or impose any liability upon, any Subcontractor in connection with the provision of the Services or the Goods.

**10.5** The Customer undertakes that it will indemnify any Subcontractor from and against any Loss if a claim is made against a Subcontractor by any party (including the Customer) in connection with the provision of the Services or the Goods.

**10.6** For the purpose of clauses 13.3 and 13.5, FJTL acts as trustee on behalf of and for the benefit of any Subcontractor, and to this extent each Subcontractor is deemed to be a party to this Agreement.

## **11. Intellectual Property**

The Customer agrees that the retains all copyright and intellectual property subsisting in all documents and things created by, or for, FJTL in connection with the performance of the Services, including copyright and intellectual property that now exists or that later comes into existence.

## **12. Warranties**

**12.1** The Customer (on behalf of itself, the Owner, and any Connected Parties) warrants to FJTL that:

- (a) it is the owner of the Goods, or is the authorised agent of the owner of the Goods and is authorised to complete and sign documentation related to the Goods and the Services;
- (b) it enters into the Agreement on its own behalf, or in its capacity as the authorised agent of the owner of the Goods;
- (c) it has fully and adequately described the Goods, their nature, weight and measurements and that, given their nature;
- (d) it and all Connected Parties have complied with all Laws relating to the Goods, including the nature, condition, packaging, handling, storage and carriage of the Goods;
- (e) in engaging the Services from FJTL, it will not procure FJTL to perform any act in breach of any Laws;
- (f) it and all Connected Parties will observe all Laws and requirements of Government Authorities;
- (g) all information and documentation provided by the Customer and Connected Parties to FJTL is accurate and complete, and neither it nor a Connected Party has omitted to provide any requested or material information;
- (h) the Goods are packed to endure the ordinary risks of handling, storage and the Services, having regard to the nature of the Goods;
- (i) the Goods are not Dangerous Goods, unless FJTL has agreed in writing to provide the Services in respect of those particular Dangerous Goods, and in which case, warrants that it has made full disclosure of Dangerous Goods and such Goods are distinctly marked;
- (j) unless previously notified in writing, the Goods are free of any deleterious or objectionable matter or odour which may affect other goods; and
- (k) all Goods are adequately and accurately marked, labelled or branded.

## **13. Liability**

**13.1** FJTL is not liable for Consequential Loss suffered by the Customer, regardless of whether or not FJTL had knowledge that such damage may be incurred.

**13.2** To the extent permitted by Law, FJTL excludes all liability in respect of any claim made against FJTL, its employees, agents and Subcontractors, including without limitation, liability for fundamental breach of contract, or a negligent, unlawful, reckless or wilful act or omission.

- 13.3** FJTL excludes from this Agreement all conditions, warranties, terms and consumer guarantees implied by Laws, general law or custom except any the exclusion of which would contravene any Laws or cause this condition to be void (**Non-Excludable Condition**).
- 13.4** FJTL's liability for any breach of a Non-Excludable Condition is limited, at FJTL's option, to supplying the Services again, or the cost of supplying the Services again.
- 13.5** FJTL will not be liable for omitting to inspect or take any other action in respect of Goods where Goods have been damaged or pillaged, unless the Customer provides FJTL with written instructions to take that action in relation to those Goods and FJTL accepts those instructions.
- 13.6** Where the liability of FJTL is not excluded by the Agreement, Law or otherwise, the liability of FJTL is limited to the lesser of Australian \$100 or the value of the Goods at the time the Goods were received by FJTL.
- 13.7** FJTL will not be in breach of any of its obligations to the Customer or liable for any Loss (including Consequential Loss) suffered by the Customer arising from or connected with FJTL's compliance with any Law, including without limitation disclosing confidential information to a Government Authority.
- 13.8** Without limitation to any other clause of the Agreement, FJTL will be discharged from all liability in connection with the performance of the Services or the Goods unless:
- (a) notice of any claim is received by FJTL within 7 days of the earlier of the delivery of Goods, the date the Goods should have been delivered, or where the claim does not relate to loss or damage to Goods, the event giving rise to the claim; and
  - (b) suit is brought and written notice is received by FJTL within 9 months of the earlier of the delivery of the Goods, the date the Goods should have been delivered, or where the claim does not relate to loss or damage to Goods, the event giving rise to the claim.
- 13.9** FJTL will not be liable for any delay or failure to perform an obligation under the Agreement caused by a Force Majeure Event.

## **14. Indemnities**

- 14.1** The Customer indemnifies FJTL from and against (and must pay on demand for) all Loss arising directly or indirectly from or in connection with the Goods or the performance of the Services (including Consequential Loss).
- 14.2** Without limitation to clause 17.1 the Customer indemnifies FJTL from and against (and must pay on demand for) any Loss arising from
- (a) the Customer's or Owner's failure to return any container or transport equipment involved in the performance of the Services by the date required under any agreement with the supplier of that container or transport equipment;
  - (b) any claim against FJTL by a person who claims to have an interest in the Goods;
  - (c) breach of this Agreement, including any warranty provided by the Customer;
  - (d) any Loss, cost or liability incurred or suffered by FJTL as a result of releasing or delivering the Goods to the Customer or at the direction of the Customer;
  - (e) FJTL performing the Services in a manner specifically directed by the Customer; and
  - (f) any feature or characteristics of the Goods not disclosed to, or made known to, FJTL.
- 14.3** The Customer indemnifies FJTL from and against (and must pay on demand the amount of) all duty, GST, and any other Fees and taxes incurred in connection with the Goods payable to a Government Authority.
- 14.4** The Customer indemnifies FJTL from and against (and must pay on demand for) all costs payable to third parties in relation to the carriage, storage, treatment or entry of the Goods.
- 14.5** The indemnities in this Agreement continue whether or not the Goods are pillaged, stolen, lost or destroyed.

## **15. Insurances**

- 15.1** FJTL will not arrange insurance in favour of the Customer in respect of the Goods.
- 15.2** The Customer is required to arrange its own insurance in respect of loss or damage to the Goods while the Goods are under the control of FJTL or its Subcontractors.

## **16. Lien**

- 16.1** FJTL has:
- (a) a particular and general lien on all Goods and documents relating to the Goods; and
  - (b) a right to sell those Goods and documents by public auction or private sale (at FJTL's discretion) without notice and apply the proceeds of sale;
- in respect of all sums due and owing from the Customer.
- 16.2** The lien will also cover FJTL's costs and expenses relating to the exercise of its lien and right of sale, including FJTL's reasonable legal fees.

**16.3** For the purposes of the lien, FJTL will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods. FJTL is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.

## **17. PPSA**

**17.1** Terms used in this clause that are defined in the PPSA have the same meaning as in the PPSA.

**17.2** Without limitation to other rights of FJTL, from the time the Goods are in the possession of FJTL or a Subcontractor, the Goods are subject to a continuing security interest in favour of FJTL for the payment of all amounts due and owing by the Customer under the Agreement.

**17.3** The Customer acknowledges and consents to FJTL's registration and perfection of FJTL's security interest under the Agreement for the purposes of the PPSA.

**17.4** The Customer will not grant a security interest to another person, or allow any encumbrance to arise, in respect of the Goods.

**17.5** To the extent permitted by law, the Customer irrevocably waives any right it may have to:

(a) receive notices or statements under sections 95, 118, 121(4), 124(4), 125, 130, 132(3)(d) 132(4) and 135 of the PPSA; and

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

(c) reinstate this Agreement under section 143 of the PPSA; and

(d) receive a verification statement.

**17.6** The Customer will do all things and execute all documents reasonably necessary to give effect to the security interest created under this Agreement or comply with any reasonable request by FJTL in connection with the PPSA.

## **18. Uncollected Goods**

**18.1** FJTL may at its reasonable discretion sell or otherwise dispose of Perishable Goods where the Goods cannot be identified, delivered or delivery of the Goods is refused. FJTL will give notice of the sale or disposal to the Customer unless it is not reasonably practicable or the Goods will deteriorate or material loss value while attempting to give notice.

**18.2** Without limitation to clause 21.1, on the giving of 21 days written notice to the Customs, FJTL may at its reasonable discretion sell or return Goods that are insufficiently or incorrectly addressed, are not identifiable or where being delivered by FJTL, are uncollected or where the Customer fails to pay any cost or do any action reasonably necessary for FJTL to deliver the Goods.

**18.3** Where FJTL sells Goods under this Agreement;

(a) it does so as principal, not as agent, and is not the trustee of the power of sale;

(b) the Customer must pay all costs, charges and expenses incurred by FJTL in connection with the storage, sale or return of the Goods, which may be deducted from the proceeds of the sale of the Goods;

(c) FJTL is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to FJTL.

## **19. Systems and data**

(a) FJTL and the Customer will provide each other with access to their Systems to the extent necessary for FJTL to perform the Services, but only once appropriate functions have been incorporated into such Systems in relation to the Services.

(b) Each Party agrees that it will only access the Systems of the other Party for the purpose of performing the Services and will do so in a manner that does not damage the Systems of the other Party.

(c) Each Party must follow the reasonable instructions of the other Party when accessing the Systems of the other Party.



## 20. SBC Contracts

The Company does not exclude or limit the application of any compulsory applicable Laws, including Schedule 2 of the *Competition and Consumer Act 2010* (Cth), where to do so would contravene those Laws or cause any part of this Agreement to be void.

If the Agreement is a SBC Contract, then:

- 20.1** The definition of "Loss" is amended to mean any actual or ascertainable loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind (including legal costs on an indemnity basis).
- 20.2** Clause 2.6 is modified, so that neither party may assign its rights or obligations under the Agreement without the written consent of the other party, which must not be unreasonably withheld.
- 20.3** Clause 4.1 is amended so that "absolute" is replaced with "reasonable".
- 20.4** Clause 7.2 is modified, so that the Fees are earned when the corresponding Service is performed or attempted to be performed, or where applicable, the corresponding disbursement is incurred.
- 20.5** If a variation to a quote or Fee under clauses 7.8 is material, where it is reasonably practical, the Company shall give notice to the Customer of that variation.
- 20.6** If the Customer objects to a variation to a quote or Fee, but does not provide the Company with acceptable alternative directions in respect of the goods, the Company in its discretion may, deliver, return, store or otherwise deal with the Goods, and the Customer shall be liable for all Fees earned and costs incurred by the Company in doing so.
- 20.7** Clauses 10.4 and 10.5 are modified, so that the Customer:
- (a) may make a claim against or impose liability upon any Subcontractor; and
  - (b) is not required to indemnify any Subcontractor from and against any Loss, to the extent that the claim, liability or Loss was caused by, or in connection with, a negligent, unlawful, or wilful act or omission by the Subcontractor.
- 20.8** Clause 13.2 is modified so that the Company's liability is not excluded to the extent that it was directly caused by or in connection with a negligent, unlawful, or wilful act or omission by the Company or its employees, agents and contractors. However, the Company's maximum liability is capped at the lesser of the actual loss suffered by the Customer or \$100,000.
- 20.9** Clause 13.1 modified so that the Company will not be liable for Consequential Loss or indirect Loss, unless the Company had actual knowledge that such loss might be incurred. However, the Company's maximum liability is capped at the lesser of the actual loss suffered by the Customer or \$100,000.
- 20.10** Clause 13.6 is modified so that the Company's liability is limited to the lesser of the actual loss suffered by the Customer or the value of the Goods at the time the Goods were received by the Company.
- 20.11** Clause 13.8 does not apply, and, without limitation to any other clause of the Agreement, the Company will be discharged from liability in relation to any claim:
- (a) where the loss to the Customer results from the act of a Subcontractor; and
    - (1) the Company's right to make a claim against that Subcontractor is subject to time limitations; and
    - (2) the Customer does not make its claim against the Company within a period reasonably sufficient to allow the Company to make a corresponding claim against the Subcontractor within any applicable time limitation period, or
  - (b) in all other cases, where the Customer does not make its claim within 2 years from the earlier of the delivery of the Goods, if the Goods are not delivered, the date the Goods should have been delivered or where the claim does not relate to loss or damage to Goods, the time of the event giving rise to the claim.
- 20.12** If requested by the Customer, the Company will inform the Customer of any time limitation referred to in clause 20.11(a)(c).
- 20.13** The Customer is not required to indemnify the Company under clause 14 to the extent that the Loss was caused by or in connection with a breach of contract, or a negligent, unlawful reckless or wilful act or omission by the Company or its employees, agents and contractors.
- 20.14** Despite clause 20.13, the Customer remains liable to indemnify the Company where the Company was following a specific direction provided by the Customer.
- 20.15** Clause 16.1 is modified so that the Company may only exercise its right of sale under a lien over Goods after the Company has given 21 days' notice in writing to the Customer of its intention to do so.