

These contractual conditions apply to the Warehouse Services provided by F.J. Tytherleigh Logistics Pty Ltd. These Trading Conditions contain exclusions of liability and indemnities in favour of F.J. Tytherleigh Logistics Pty Ltd. You should read these Trading Conditions carefully.

While you should read the who document, we draw your attention to the following clauses:

Subcontracting – We may subcontract the performance of the Services and our Subcontractors will have the benefit of these Terms and Conditions. When subcontracting we will select the liability level that produces the lowest rates.

Liability Exclusions – General – Clause 12 contains a number of clauses that limit our liability more generally in respect of the Services.

Time limit for claims – Clauses 12.9 – 12.10 set out strict time limits on making claims against us. You should notify us immediately if you wish to make a claim against us.

Indemnities – Clause 13 sets out a number of instances where you are required to pay us for Loss or damage that we incur in providing the Services. Sometimes these costs will not be your fault, such as if a Government inspection delays the release of the Goods and storage charges are incurred.

Lien – Clause 15 gives us the right to hold your Goods and sell them if you do not pay our Fees.

Security Interest – Under clause 16 you grant us a registerable security interest in the Goods for payment of all amounts you owe us under this contract.

Fee increases – Under clause 6 we can increase our Fees if the amount charged by Subcontractors or other third parties changes and we did not know of, or could not have prevented, that cost increase.

Disposal of goods – Clause 17 sets out where we can dispose of uncollected Goods. In most instances we have to notify you before disposing of any Goods.

1.1 Definitions

In this agreement:

Agreement means these Terms and Conditions, together with any Authority and Customer credit application.

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

Business Day means Monday to Friday and excludes any day which is declared a public holiday.

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

Carriage means carriage by vehicles and conveyances of all kind including acts in furtherance of an act of carriage by another or a specific means, whether by air, sea or land transport, or any combination of such transport modes.

Carrier means any Party involved in the carriage of Goods whether by airfreight, sea freight or land transport.

Claim includes a claim, notice, demand, action, proceeding, litigation, investigation, judgement, 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.

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 FJT.

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.

Customer means:

- (a) Where there is an Authority, the customer named in the Authority, including its employees, officers, agents and contractors;
- (b) Where there is no Authority, the person or entity instructing FJT to provide the Services, or where Services are requested by an agent, the person or entity on whose behalf the Services are provided.

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 FJT'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, disbursements, taxes, including goods and services tax, and any other amounts payable under these Terms and Conditions.

FJT means F.J. Tytherleigh Logistics Pty Ltd ABN 50 098 363 609 and its nominees, agents and employees.

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 Convention.

Loss means any loss, cost, damage, expense, claim, demand, action, proceeding or liability of any kind, (including legal costs on an indemnity basis).

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

Party means any person, individual, business, group, entity, organisation, corporation, association or partnership participating in this Agreement.

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).

Related Company means a related body corporate within the meaning of section 50 of the *Corporations Act 2001*.

Services means the work performed by FJT in relation to the Goods, whether as agent or principal, including facilitating the storage of the Goods, 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 FJT'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.

Terms and Conditions means these terms and conditions.

Transport Document includes a bill of lading, waybill, consignment note, or similar carriage document.

Warehouse means the storage facilities operated by FJT, and any other storage facility utilised by FJT to perform the Services.

Warehouse Hours means between 8:00am and 4:00pm on a Business Day.

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 FJT is not a common carrier. FJT will not be liable as a common carrier.
- 2.2 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. Any terms and conditions set out in any Transport Document issued by FJT (including by its agents) take priority over this Agreement..
- 2.3 The Agreement is governed by the laws of Victoria, Australia. FJT and the Customer submit to the jurisdiction of the courts of Victoria and of the Federal Court of Australia.
- 2.4 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.
- 2.5 Neither Party may assign its rights and obligations under the Agreement without the other party’s consent with such consent not to be unreasonably withheld.
- 2.6 Any notices under this Agreement must be in English and in writing.
- 2.7 All rights, indemnities and limitations of liability contained in this Agreement will have their full force and effect, despite any breach of term or condition of this Agreement, the Agreement, or any collateral Agreement by a Party or the expiry or termination of the Authority.

- 2.8 Without limiting the effect of clause 2.77, clauses 2.55, 2.12, 4.3, 6.13, 6.14, 9.3, 12, 13, 15, 16 and 17 of these Terms and Conditions will survive termination.
- 2.9 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.
- 2.10 A Party 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 that Party.
- 2.11 A reference in this Agreement to any Law includes any statutory modification, substitution or re-enactment of it.
- 2.12 If the Customer is a trustee of a trust, the Customer:
- (a) will provide FJT with a copy of the trust deed and any documents amending that trust deed;
 - (b) will notify FJT of any change in trustee of the trust;
 - (c) agrees that these Terms and Conditions apply to, and all requests for Services placed by the Customer with FJT are placed by, the Customer in its personal capacity and as trustee of the trust.
- 2.13 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.
- 2.14 This Agreement constitutes the entire understanding and agreement between the Parties regarding the Services. Each Party agrees that it did not rely on any representation, promise, warranty or condition made by the other Party that is not expressly part of this Agreement or any associated quotation for Services.

3. Services

- 3.1 Services provided by FJT are subject to the terms of this Agreement.
- 3.2 Without limitation to other methods of acceptance, by instructing FJT to provide the Services the Customer agrees to be bound by this Agreement.
- 3.3 The Goods are at the risk of the Customer at all times.
- 3.4 FJT may agree or refuse to provide Services at its reasonable discretion.
- 3.5 FJT is authorised by the Customer to choose the method for performance of the Services at FJT's reasonable discretion. Where FJT has a variety of options available in which to perform the Services, FJT will act reasonably in electing how the Services will be performed.
- 3.6 The Customer authorises FJT to open any package containing Goods and do any other thing in order to inspect or weigh the Goods as part of performing the Services.
- 3.7 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 FJT 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 FJT;
 - (c) FJT reserves the right to not make any declaration or take any action in respect of the Customer's Goods unless the Customer has provided FJT with sufficient notice, written instructions and the documents necessary to take that action in relation to those Goods.

- 3.8 FJT may deem that certain Goods are Dangerous Goods provided that there are reasonable grounds for doing so.
- 3.9 If Dangerous Goods are undeclared, or even if declared, pose a risk to people or property, FJT may in its reasonable discretion unload, store, destroy or otherwise deal with any Goods, without notice or compensation to the Customer. Where reasonably possible FJT will contact the Customer and try to agree on the action to be taken in respect of the Dangerous Goods.
- 3.10 FJT's delivery obligations are satisfied if FJT 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 makes the Goods available for collection by a Carrier nominated by the Customer. Where applicable, FJT will provide the Customer with notice of the non-delivery.
- 3.11 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 FJT to deal with the Goods at FJT's reasonable discretion, including storing, disposing of, or returning the Goods. FJT will reasonably attempt to give notice to the Customer before taking any action that may adversely affect the Customer.
- 3.12 If FJT believes it is necessary or desirable, FJT may deviate from the usual route or method of transport or take any action which it reasonably believes is necessary to protect the Goods.
- 3.13 Without limiting any other right under this Agreement, if the Customer is insolvent, placed under external administration, bankrupt or deceased, FJT is authorised to return any Goods to the shipper, exporter or supplier of the Goods, where FJT has not received Authority from the shipper, exporter or supplier of the Goods to release the Goods to the Customer.
- 3.14 The Customer appoints FJT with the power and Authority to take any reasonable action and execute any document in the name of and on behalf of the Customer as required for FJT to provide the Services.
- 3.15 The Customer agrees that FJT 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 FJT deals and that FJT 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.
- 3.16 Where the Services involve storing the Goods, the primary storage location will be a FJT Warehouse. The Goods may be stored at any place at the reasonable discretion of FJT at the Customers' expense. Where reasonably possible, FJT will provide the Customer with the expected costs of storage and the storage location.
- 3.17 The Goods may be consolidated, stored in bulk or separate lots in the reasonable discretion of FJT.
- 3.18 If FJT stores the Goods, and no further Services are to be performed, or the Customer has breached the Agreement, FJT may require the Customer to remove the Goods from storage by giving reasonable notice delivered to an address provided by the Customer to FJT.
- 3.19 Services performed at the Warehouse will be performed during the Warehouse Hours.
- 3.20 The Customer may request to access the Warehouse to inspect the Goods during Business Hours.
- 3.21 All goods will be tallied into FJT's register upon receipt by FJT. All Goods will be tallied out from FJT's register on delivery by FJT, or when collected from the Warehouse at the direction of the Customer.
- 3.22 Any tallying in or out of Goods by FJT will be accepted as final unless the Customer is present and objects to FJT's tally.
- 3.23 If requested, the Customer will provide FJT with periodic forecast of the volume of Goods to be delivered to the Warehouse. The Customer will update FJT if the forecast changes by more than 10%.
- 3.24 The Customer will provide a minimum of 24 hours' notice for any deliveries of Goods to the Warehouse arranged by the Customer.

- 3.25 The Customer will not require orders to be fulfilled outside of the order fulfillment timeframes notified by FJT 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 FJT receiving the order.
- 3.26 FJT will provide the Customer with its electronic record of inventory of the Goods on request.
- 3.27 The Customer may on 2 Business Days notice to FJT:
- (a) require FJT 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 FJT to conduct a Stocktake at the Customer's cost, not being a Stocktake required to be undertaken pursuant to the Services.
- 3.28 FJT 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.
- 3.29 Where FJT 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.

4. Customer Obligations

- 4.1 The Customer will provide FJT with all reasonable assistance, information and documentation necessary to enable FJT to provide the Services, and punctually comply with any Law or request from a Government Authority. Without limitation, this includes verifying the weight of any packed Containers and providing the verified weight prior to any verified gross mass cut off time / date.
- 4.2 The Customer is under a continuing obligation to provide any information which may materially affect the capacity of the Customer or FJT to perform its obligations under the Agreement.
- 4.3 The Customer will keep confidential FJT's Fees or charges and any waiver, discount, release or indulgence provided by FJT in relation to the provision of the Services.
- 4.4 The Customer will comply with all reasonable directions of FJT in relation to the provision of the Services.
- 4.5 Unless expressly agreed by FJT, 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 FJT's employees involved in the provision of the Services, either directly as an employee or as a contractor or Subcontractor.
- 4.6 The Customer will take reasonable precautions to ensure that any containers or 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).

5. Instructions

- 5.1 Any instructions given by the Customer must be in writing in English and be legible.
- 5.2 FJT has the discretion to refuse to accept the Customer's instructions. FJT will inform the Customer if it does not accept its instructions.
- 5.3 Sufficient notice of instructions must be given by the Customer to FJT to enable FJT to follow those instructions.
- 5.4 If FJT accepts the Customer's instructions on one occasion, FJT will not be bound by those instructions when providing Services in the future.
- 5.5 If FJT accepts the Customer's instructions to perform the Services in a particular way, it will give priority to that method, but may need to depart from that method due to unexpected event, action or inaction by a third party, unexpected cost or other reasonable reason.

6. Fees

- 6.1 In consideration for the provision of Services, the Customer will pay the Fees to FJT.
- 6.2 FJT'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 FJT or its Subcontractors. All other Fees are earned as the Service is performed.
- 6.3 FJT's Fees may include any disbursements and other amounts that FJT is required to pay third parties in connection with the Services. FJT at its reasonable discretion may vary its Fees if the amount of any such disbursements change and the disbursement change could not have been reasonably known at the time of providing a quote or could not have been avoided. Where reasonably practicable, FJT will provide notice of any material change in the Fees.
- 6.4 FJT's Fees must be paid within 7 days of an invoice or as otherwise agreed in writing (the **Due Date**). Time is of the essence in respect of the Customer's obligations to make any payment to FJT in connection with this Agreement.
- 6.5 FJT at its discretion may determine its Fees, including by weight, measurement or value, including by volumetric conversion. On request FJT will inform the Customer of the basis upon which its Fees are determined.
- 6.6 FJT may re-weigh, re-measure or re-value the Goods at any time, and amend its Fees at its reasonable discretion if the Fees were based on incorrect information. FJT will provide notice of any change in its Fees.
- 6.7 Any information contained in a quotation provided by FJT 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.
- 6.8 A quotation is not an offer and is not binding on FJT. A quotation may change based on changes to freight, insurance, warehousing, Fees, and any other charges. Quotations will be confirmed by FJT if the Customer wishes to proceed with the quoted Service.
- 6.9 Fees due to FJT are payable in Australian dollars unless otherwise agreed. FJT is entitled to charge a currency conversion fee when it receives payment in a currency other than Australian dollars.
- 6.10 Unless otherwise stated, FJT's Fees are exclusive of goods and services tax.
- 6.11 The Customer agrees that FJT may charge its Fees and/or recover its administrative costs by way of increasing the amount charged to it by third parties, such as disbursements, when invoicing those amounts to the Customer and that there is no obligation on FJT to separately show this portion of the Fee on any invoice.
- 6.12 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. However, the payment of Fees will not be taken as a waiver of any rights of the Customer.
- 6.13 If the Fees are not paid in full within 7 days of the Due Date then, without limitation to its rights, FJT may charge interest on the late payment at the published business overdraft rate of the Commonwealth Bank of Australia.
- 6.14 A Party will not defer, set-off or withhold payment of any amount payable to the other Party by reason of any claim the Party has, or claims it has, against the other Party.
- 6.15 Any credit terms provided by FJT may be terminated by FJT with immediate effect if the Customer does not pay the Fees by the Due Date or otherwise materially breaches this Agreement.

7. No employment relationship

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

8. Force majeure

8.1 The obligation 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 casual 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 case 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.

8.2 The Customer shall not be liable to pay for Services which are unable to be provided by FJT during the Force Majeure Event, but will remain liable for disbursements incurred by FJT 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.

8.3 A Party will not be liable to the other Party for any delay or failure to perform an obligation under the Agreement or Loss suffered by the other Party to the extent caused by a Force Majeure Event.

8.4 If a Force Majeure Event prevents or causes a delay in the performance of a party's obligation exceeding 28 days, either Party may terminate the provision of the Services by notice to the Other Party.

8.5 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.

9. Subcontractors and agency

9.1 The Customer authorises FJT 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 ordinary commercial terms, including terms that limit or exclude the liability of the third party service provider.

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

9.3 All exclusions or limitations on the liability of FJT in this Agreement extend to protect:

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

9.4 For the purpose of clause 9.3, FJT 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.

10. Intellectual Property

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

11. Warranties

11.1 The Customer (on behalf of itself, the Owner, and any Connected Parties) warrants to FJT 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 has 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 FJT, it will not procure FJT to perform any act in breach of any Laws including any trade sanctions;
- (f) it will observe all Laws and requirements of Government Authorities;
- (g) all information and documentation provided by or on behalf of the Customer to FJT is accurate and complete, and it has not omitted to provide any requested or material information;
- (h) other than where FJT is responsible for packing the Goods, 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 FJT 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;
- (k) all Goods are adequately and accurately marked, labelled or branded; and
- (l) it will ensure, so far as is reasonably practicable, the safety of any road transport performed for or on behalf of the Customer and it will meet its obligations under the Heavy Vehicle National Law where the Customer is the consignor, consignee, packer or loader of the Goods.

12. Liability

12.1 FJT will exercise due care and skill in the selection of third party Carriers and service providers. However, FJT excludes all liability for Loss, damage or delay to the Goods that occurs while the Goods are in the physical custody of a third party, including a Subcontractor, unless such Loss or damage was caused by

FJT or could have been prevented by the exercise of due care and skill by FJT. Subject to the application of any mandatory legislation, FJT will not be liable in any circumstances (whether in tort, contract, bailment or otherwise) for Loss, damage or mis-delivery of the Goods unless it is demonstrated that such Loss, damage or mis-delivery was due to the negligence, breach or wilful default of FJT.

- 12.2 Neither Party is liable for Consequential Loss suffered by the other Party unless the Party had actual knowledge that such Consequential Loss would be incurred.
- 12.3 FJT 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**).
- 12.4 To the extent permitted by Law, FJT's liability for any breach of a Non-Excludable Condition is limited, at FJT's option, to supplying the particular Services again, or the cost of supplying the particular Services again.
- 12.5 FJT 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 FJT with written instructions to take that action in relation to those Goods and FJT accepts those instructions.
- 12.6 Where the liability of FJT is not limited or fully excluded by a Convention, the Agreement, Law or otherwise, the liability of FJT is limited to the lesser of:
- (a) the actual Loss or damage suffered by the Customer;
 - (b) Australian \$200,000;
 - (c) the value of the Goods at the time the Goods were received by FJT.
- 12.7 The liability limits in clause 12.6 do not apply to the extent that the Loss or damage results from any act or omission which constitutes fraud, wilful misconduct or gross negligence.
- 12.8 FJT will not be in breach of any of its obligations to the Customer or liable for any Loss including Consequential Loss (excluding Loss caused by its negligence) suffered by the Customer arising from or connected with FJT's compliance with any Law, including without limitation disclosing confidential information to a Government Authority.
- 12.9 Where a Convention or Law imposes a timeframe on the making of claims against FJT, FJT relies on and does not extend that timeframe.
- 12.10 Without limitation to any other clause of the Agreement, a Party will be discharged from all liability in connection with:
- (a) damage to or non-delivery or late delivery of the Goods unless:
 - (1) notice of any claim is received by the other Party within 7 days of the earlier of the delivery of Goods or the date the Goods should have been delivered; and
 - (2) suit is brought and written notice is received by the other Party within 9 months of the earlier of the delivery of the Goods or the date the Goods should have been delivered.
 - (b) claims unrelated to damage to, non-delivery of or late delivery of the Goods unless suit is brought and written notice is received by the other Party within 3 years of the event giving rise to the claim.
- 12.11 Clause 12.10 does not apply where the making of a claim or commencement of a proceeding outside of the stated timeframes, does not prejudice FJT in any claim it may have against a third party in respect of, or in determining the cause of, the Loss or damage to the Goods or delay in delivering the Goods.

13. Customer Indemnities

- 13.1 The indemnities in this clause do not apply to the extent that the Loss was caused by a breach of contract or a negligent, unlawful, reckless or wilful act or omission by FJT or its employees, agents and contractors unless FJT was following a specific direction provided by the Customer.
- 13.2 When seeking to rely on an indemnity, FJT is under an obligation to act reasonably to minimise the Loss incurred.
- 13.3 The Customer indemnifies FJT 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) caused by an act or omission of the Customer or which was beyond the reasonable control of FJT.
- 13.4 Without limitation to clause 13.3 the Customer indemnifies FJT from and against (and must pay on demand for) any Loss arising from:
- (a) the Customer's or Owner's failure to return, return by the due date, return within the "free" period and/or return empty, clean, or undamaged any Container or transport equipment involved in the performance of the Services under any agreement with the supplier of that container or transport equipment;
 - (b) any claim against FJT by a person who claims to have an interest in the Goods (other than the Customer);
 - (c) breach of this Agreement, including any warranty provided by the Customer;
 - (d) any Loss, cost or liability incurred or suffered by FJT as a result of releasing or delivering the Goods to the Customer or at the direction of the Customer;
 - (e) FJT performing the Services in a manner specifically directed by the Customer;
 - (f) any feature or characteristic of the Goods not disclosed to, or made known to, FJT;
 - (g) any inspection of, or treatment of, the Goods by, or directed by, a Government Authority;
 - (h) all duty, GST, and any other Fees and taxes incurred in connection with the Goods payable to a Government Authority;
 - (i) any costs or charges incurred as a result of any delay in loading or unloading, or collecting or delivering, the Goods;
 - (j) all costs payable to third parties in relation to the Carriage, storage, treatment or entry of the Goods other than costs that were known by FJT as expenses that would be incurred in respect of the Carriage or Goods at the time FJT provided a quote to the Customer and those costs were either not included in the Quote or were not of a nature which the Customer would have expected to be incurred.
- 13.5 The indemnities in this clause 13 continue whether or not the Goods are pillaged, stolen, lost or destroyed. However, the payment of any amount by the Customer will not constitute a waiver of any rights held by the Customer.

14. Insurance

- 14.1 FJT will not arrange insurance in respect of the Goods. The Customer is responsible for arranging insurance in respect of the Goods while the Goods are under the control of FJT or its Subcontractors. If FJT refers the Customer to an insurance company or broker, FJT makes no warranty or representation in respect of the insurer or broker or the insurance offered.

15. Lien

15.1 FJT 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 FJT's discretion) and apply the proceeds of sale;

in respect of all sums due and owing from the Customer or a Related Company of the Customer.

15.2 Before selling any Goods or documents FJT will give the Customer at least 14 days' written notice of its intention to do so. However, lesser, or no, notice may be given where:

- (a) the Goods or documents may materially deteriorate during any notice period; and/or
- (b) the storage or other costs that will be incurred in respect of the Goods or documents during the notice period will exceed the likely net sale price of the Goods or documents.

15.3 The lien will also cover FJT's costs and expenses relating to the exercise of its lien and right of sale, including FJT's reasonable legal Fees.

15.4 For the purposes of the lien, FJT will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods or the transfer of the Goods to a Subcontractor. FJT is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.

16. PPSA

16.1 Terms used in clause 16 that are defined in the PPSA have the same meaning as in the PPSA.

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

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

16.4 To the extent permitted by Law, the Customer waives any right it may have to receive a verification statement.

16.5 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 FJT in connection with the PPSA.

17. Uncollected goods

17.1 FJT may at its reasonable discretion sell or return Goods that cannot be delivered because they are insufficiently or incorrectly addressed, are not identifiable, are uncollected or not accepted after 21 days' notice to the Customer or where the Customer fails to pay any cost or do any action reasonably necessary for FJT to deliver the Goods.

17.2 The notice period in clause 17.1 does not apply where either:

- (a) the Goods will materially deteriorate or lose value during the notice period; or
- (b) the costs of storing or maintaining the Goods during the notice period exceeds the likely net proceeds from the sale of the Goods.

17.3 Where FJT sells Goods under clauses 15 or 17;

- (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 reasonable costs, charges and expenses incurred by FJT 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) FJT is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to FJT;
- (d) any surplus proceeds will be paid to the Customer (provided that the Customer can be identified).

18. Systems and data

- 18.1 FJT and the Customer will provide each other with access to their Systems to the extent necessary for FJT to perform the Services, but only once appropriate functions have been incorporated into such Systems in relation to the Services.
- 18.2 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.
- 18.3 Each Party must follow the reasonable instructions of the other Party when accessing the Systems of the other Party.

19. Modifications for Particular Contracts

- 19.1 This clause 19 applies where any of the following are met:
 - (a) this Agreement is not a Consumer Contract or Small Business contract as defined in section 23 of schedule 1 of the *Competition and Consumer Act 2010* (Cth);
 - (b) this Agreement is not a Standard Form Agreement; or
 - (c) this Agreement is a contract to which Part 2-3 of schedule 1 of the *Competition and Consumer Act 2010* (Cth) does not apply.
- 19.2 Where this clause 19 applies, this Agreement is read as follows:
 - (i) clause 12.6 is replaced with the following wording:

“12.6 In all cases where liability has not been limited or excluded by mandatory applicable statute, Convention or Law, the liability of FJT is limited to the lesser of:

 - (a) the actual Loss or damage suffered; or
 - (b) \$1,000 per Loss causing event and in the aggregate of all claims by the Customer against FJT during a calendar year.”
 - (ii) clause 13.1 does not apply.