

General Terms

1. APPLICATION

- 1.1 These General Terms (**General Terms**) apply to and govern the supply of Services by CTI Logistics Limited and any Affiliate or Related Entity (**CTI**), to the Customer and any Affiliate or Related Entity of the Customer (**Customer**) at all CTI Premises.
- 1.2 Any order, request or other instructions (whether oral or in writing) issued by or on behalf of the Customer for CTI to supply Services, or the Customer's acceptance of Services supplied by CTI, constitutes acceptance of these General Terms on the part of the Customer.
- 1.3 For the purposes of clause 1.2, a legally binding contract between the Customer and CTI is created for CTI to supply, and for the Customer to receive, the Services for the Fees at the Rates subject to these General Terms and any Services Document provided by CTI to the Customer in respect of the Services (**Agreement**).
- 1.4 CTI enters this Agreement as agent for its related parties. Only CTI directors, in writing, are authorised to make changes to this Agreement and bind CTI.
- 1.5 To the extent the Customer's terms and conditions are supplied with any purchase order, email or other communication, or by reference to any web site, those terms and conditions will be of no legal effect and will not constitute part of the Agreement (even if CTI Personnel sign those terms and conditions).
- 1.6 The Agreement will commence on the Commencement Date and the Term continues until terminated in accordance with this Agreement.
- 1.7 Where there is more than one Customer, those Customers are jointly and severally liable for all money payable by either or all Customers under the Agreement.

2. SERVICES

- 2.1 The Customer engages CTI to provide, and CTI agrees to provide, the Services specified in the Agreement in consideration for the payment of the Fees on the terms of the Agreement.
- 2.2 In performing the Services CTI must use reasonable endeavours to:
 - (a) perform the Services in a professional manner and in accordance with all applicable Law;
 - (b) act in accordance with the Customer's reasonable instructions, subject to clause 12; and
 - (c) adequately handle the Goods whilst they are in CTI's possession.
- 2.3 CTI may engage a Subcontractor to perform all or any part of the Services. CTI is deemed to have entered into the Agreement as agent for any Subcontractor engaged by CTI. Unless authorised by CTI in writing, the Customer may not make any claim against any Subcontractor of CTI which attempts to impose any liability in connection with the Goods and, if any such claim be made, to indemnify CTI against all consequences of such a claim(s).
- 2.4 The Customer will comply with CTI's pallet policy available at www.ctilogistics.com.

3. RECEIVAL OF GOODS

- 3.1 Receival of Goods occurs in accordance with the Customer's Instructions and this clause 3.
- 3.2 Receival of Goods occurs when CTI's Personnel sign a delivery docket, waybill or receipt in respect of the Goods received, including by way of electronic signature or acknowledgement.
- 3.3 CTI may in its absolute discretion refuse to receive or transport any Goods for any reason or no reason and is not

bound to give any reason for its refusal to provide Services.

- 3.4 If CTI is required to attend any Customer's Premises to receive or collect any Goods, the Customer must:
 - (a) procure that CTI has access to the Customer's Premises to the extent necessary for CTI to perform the Services;
 - (b) ensure that CTI's Personnel receive appropriate safety training and site induction, and are provided with copies of all relevant policies and procedures applicable to Customer's Premises;
 - (c) comply with all workplace safety Law applicable to the Customer's Premises; and
 - (d) ensure that CTI's Personnel are provided with a safe working environment.

4. DELIVERY OF GOODS

- 4.1 If Transportation Services are specified in the Agreement CTI will transport and carry Goods in accordance with the Customer's Instructions and this clause 4.
- 4.2 The Customer authorises CTI to transport and deliver the Goods to the address given by the Customer to CTI (**Delivery Address**).
- 4.3 Delivery of Goods occurs when the Customer's or Consignee's Personnel at the Delivery Address signs a delivery docket, waybill or receipt in respect of the Goods delivered, including by way of electronic signature or acknowledgement.
- 4.4 If the Delivery Address is unattended or if CTI is otherwise unable to effect Delivery in accordance with clause 4.3:
 - (a) Unless otherwise directed in writing by the Customer, CTI may at its election in its absolute discretion:
 - (i) deposit the Goods at the Delivery Address, in which event Delivery shall be deemed to have occurred; and/or
 - (ii) store the Goods at any premises; and/or
 - (iii) return the Goods to the Customer at the Customer's expense; and/or
 - (iv) redeliver the Goods.
 - (b) The Customer must pay and indemnify CTI for all costs identified and incurred by CTI.
- 4.5 CTI may deliver the Goods by separate instalments (in accordance with the agreed Delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this agreement.
- 4.6 Delivery of the Goods to a third party nominated by the Customer is deemed to be Delivery to the Customer.
- 4.7 It is the Customer's sole responsibility to provide accurate addresses and written Delivery instructions to enable effective Delivery.
- 4.8 If the Customer instructs CTI to use a particular method of carriage, handling or storage then CTI will give priority to that method, however is determined by CTI in its sole discretion.
- 4.9 If any identifying document or mark is lost, damaged, destroyed or defaced then CTI may open any document or package or other container to inspect the Goods to determine its nature, condition, ownership or destination.
- 4.10 CTI may refuse to make a site Delivery for any reason whatsoever and clauses 4.4(a)(ii) and (iii) shall then immediately apply. This clause shall apply in particular if:
 - (a) site Delivery documentation in a form satisfactory to CTI has not been completed and executed by the Consignee; or
 - (b) the equipment required to unload the Goods is not available at Delivery site; or
 - (c) access at the Delivery location is restricted.
- 4.11 If the Consignee requests CTI to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts) then CTI shall only do so on

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the basis the Consignee accepts full liability for all property loss or damage, or injury to any person that may result from the actions of CTI in providing such assistance, notwithstanding that CTI may at its sole discretion return the Goods to their depot without any liability to the Consignee should they believe that the risk in providing such assistance is unacceptable.

- 4.12 The Customer (or Consignee) shall be deemed to have received all Goods in full and in good order and condition unless a written claim is lodged within two (2) days of the termination of any storage arrangements, Delivery of the Goods, or a request for removal of the Goods by CTI, whichever is the earlier.
- 4.13 Any time specified by CTI for the Delivery of Goods is an estimate only and CTI will not be liable for any loss or damage incurred by the Customer (or Consignee) because of Delivery being late. If CTI is unable to deliver the Goods as agreed due to any action or inaction of the Customer then CTI shall be entitled to charge the Customer any additional costs incurred by CTI.
- 4.14 If CTI accepts Goods from the Customer for forwarding to an address in a place which is not within the CTI delivery network, Delivery of Goods shall be deemed to have occurred if the Goods are delivered to a CTI Depot or CTI Designated Agent.

5. WAREHOUSING OF GOODS

- 5.1 If Warehousing Services are specified in the Agreement CTI will provide Warehousing Services to store the Goods as specified in any Services Document and this clause 5, clause 6 and clause 7.
- 5.2 Loss or Damage to the Goods caused by CTI will be handled in accordance with clause 13 and clause 14.
- 5.3 CTI will provide the Customer with access to the Goods stored in CTI's Premises on receipt of 48 hours' notice and subject to Customer's Personnel:
 - (a) providing to CTI proof of their identity; and
 - (b) complying with all of CTI's directions and requirements whilst on CTI's Premises.
- 5.4 No Goods will be:
 - (a) opened, unpackaged or otherwise handled; or
 - (b) removed from CTI's Premises, except:
 - (c) in the ordinary course of providing Warehousing Services;
 - (d) in accordance with Customer's Instructions; or
 - (e) as otherwise expressly provided for in the Agreement.
- 5.5 The Customer acknowledges and agrees that (unless specifically advised to CTI) the quality, quantity and condition of the contents of any packages tendered for storage are generally unknown to CTI.
- 5.6 The Customer shall ensure that all Goods (and/or containers in which the Goods are packaged) tendered for storage shall be clearly, distinctively and indelibly branded.
- 5.7 The Customer shall immediately notify CTI of any change of the ownership of any Goods which are stored on the Customer's behalf under this Agreement.
- 5.8 CTI reserves the right at any time to require the removal of any Goods held in storage on the Customer's behalf that contravene any of CTI's health and safety requirements, or where the identity/contents of the Goods was not declared by the Customer to CTI, by giving not less than one weeks' notice to the Customer that they wish them to do so.
- 5.9 CTI shall not be obligated to release the Goods from storage, until all Fees, Rates and other charges in connection with storage, handling, loading or unloading, palletising, re-palletising, re-packing and/or delivery of the Goods, have been paid in full.
- 5.10 The Customer is responsible for the return of any pallets (used during the provision of the Services) to the pallet owner

or any other nominated person as instructed by the pallet owner. The Customer agrees that they shall not transfer any pallets to any account that they may hold with a pallet hirer.

6. STOCK MANAGEMENT AND RECONCILIATION

- 6.1 In respect of Goods held in storage in CTI's Premises CTI will:
 - (a) maintain accurate stock counts of the Goods in the manner specified in any Services Document; and
 - (b) provide the Customer with reports of the storage and location of the Goods at the times and in the manner specified in any Services Document.

An inspection and count of the Goods (**Stock Count**) may be undertaken by CTI using CTI's Personnel and the Customer using the Customer's Personnel, or solely by CTI using CTI's Personnel, whilst the Goods are held in storage at such time as may be agreed by the Customer and CTI acting reasonably.
- 6.2 The provisions of clause 5.3 shall apply to the Customer Personnel engaged in any Stock Count.
- 6.3 A stock shrinkage allowance of 1% of stock value at landed cost or stock units (at CTI discretion) will apply.
- 6.4 CTI will provide Customer with a report of any Stock Count undertaken by CTI, if requested by Customer.
- 6.5 The Customer must reimburse CTI for any costs and expenses incurred by CTI in the Stock Count, including for the cost of CTI's Personnel engaged in the Stock Count.
- 6.6 If any Stock Count discloses any material Loss or Damage, CTI will use reasonable endeavours to:
 - (a) investigate any material Loss or Damage or discrepancy in the quantity of Goods stored; and
 - (b) implement such corrective or remedial action as may be reasonably necessary to prevent any further Loss or Damage.

7. TEMPERATURE CONTROLLED SERVICES

- 7.1 If provision of the Services requires the transportation or warehousing of Goods in temperature-controlled vehicles, containers or storage facilities:
 - (a) CTI will use reasonable endeavours to ensure the Goods are contained and stored in temperature-controlled vehicles, containers or facilities with the temperature maintained within a range of temperatures suitable for the Goods, subject to any specified tolerance levels specified in any Services Document; and
 - (b) the Customer acknowledges and agrees that fluctuations of temperature within vehicles, containers and facilities may occur.
- 7.2 Any record of temperature maintained by CTI of any temperature-controlled vehicle, container or facility shall be conclusive evidence of the actual temperature.

8. TITLE AND RISK

- 8.1 Title and risk in the Goods shall remain with the Consignor at all times.
- 8.2 CTI shall not be liable for any Loss or Damage to the Goods whatsoever, except in the circumstances specified in clauses 13 and 14.

9. FEES, RATES AND PAYMENT

- 9.1 **Fees and Rates**
 - (a) The Customer must pay CTI the Fees and all applicable GST in consideration for the Services, including a compliance, carbon emission and/or insurance levy if deemed applicable by CTI.
 - (b) The Fees shall be calculated and charged by CTI in accordance with the Rates, including ancillaries, and any provision for fees stated in any Services Document.
 - (c) The Rates may be increased in accordance with this clause 9.1. Where CTI costs increase due to events

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outside CTI's direct control, the Rates may be adjusted by CTI upon notice to the Customer. This includes changes to the fuel surcharge rate and frequency.

- (d) Unless otherwise agreed, as a minimum, Transportation Services Rates will increase on an annual basis by the higher of the percentage increase in the Consumer Price Index (All Groups) (CPI), as published by The Australian Bureau of Statistics, or the relevant TransEco index, after the Commencement Date.
- (e) Unless otherwise agreed, as a minimum, to cover property fixed cost increases, Warehousing Services Rates will increase on an annual basis by an amount equivalent to the higher of 4% and the percentage increase in Consumer Price Index (All Groups) (CPI), as published by The Australian Bureau of Statistics, after the Commencement Date.
- (f) In addition to any increase in accordance with clause 9.1(d) and 9.1(e) the Rates may be further increased by agreement between the parties.
- (g) In the event Additional Services have been requested by the Customer, or necessary Ancillary Services have been provided as determined by CTI, and are not itemised in the Rates, CTI is entitled to charge the Customer standard Rates for such Services. CTI may refuse to perform any Additional Services.
- (h) If at any time a Carbon Scheme is imposed or varied, CTI shall be entitled to pass onto the Customer the reasonable Carbon Costs that CTI incurs in providing Transport Services and/or Warehousing Services to the Customer. For the purposes of this clause, "Carbon Cost" shall mean any liability, cost or expense that CTI incurs directly or indirectly arising out of or incidental to the implementation of a Carbon Scheme. For the purpose of this clause and these terms and conditions "Carbon Scheme" shall mean any law, regulation or requirement with respect to greenhouse gas emissions, including without limitation, any statutory emissions trading scheme, carbon pollution reduction scheme, and the Safeguard Mechanism.
- (i) CTI's Fees for Transport Services shall be considered earned as soon as the Goods are loaded at the receival location (point of collection of the Goods).
- (j) At CTI's sole discretion, a deposit may be required, or payment before Delivery of the Goods.

9.2 Invoicing and payment

- (a) CTI may issue an invoice for Services any time after the commencement of Services.
- (b) CTI shall invoice the Customer for Services at a frequency determined by CTI.
- (c) Except as otherwise agreed in any Services Document, the Customer must pay the Fees and all other amounts specified by CTI in a tax invoice provided by CTI to the Customer within 14 days from the date of tax invoice. Where any of the Customer's invoices are overdue for payment, CTI may terminate all Services without notice and any Goods may be held until payment is received.
- (d) The Customer agrees CTI may in its discretion, allocate any payment received from the Customer towards any invoice that CTI determines. On any default by the Customer, CTI may re-allocate any payments previously received and allocated. In the absence of any payment allocation by CTI, payment will be allocated to preserve the maximum value of any Security Interest held by CTI.
- (e) If the Customer disputes any amount shown on a tax invoice given by CTI, or claims to be entitled to withhold or deduct any amount whatsoever from a tax

invoice, it must notify CTI within 7 days of receiving that tax invoice and must pay any amounts not in dispute in accordance with this clause 9.2.

- (f) CTI is, without limitation, entitled to payment by the Customer of interest on the overdue amount of a tax invoice at the Interest Rate, calculated daily on the basis of a 365-day year, for actual days elapsed, and compounded monthly. Interest accrues from the due date for payment until the date payment is received.
- (g) CTI may recover from the Customer all costs and expenses, incurred by CTI in recovering or attempting to recover any outstanding Fees or other monies owed to CTI by the Customer, including debt collection agency fees, legal costs and expenses incurred by CTI on a "solicitor and own client" basis and all fees, costs and expenses incurred in relation the securities or other documentation required hereunder or in relation to registering, maintaining or releasing any security interest, charge or caveat (including the cost of registering any financing statement or financing change statement).
- (h) Provided that the Consignee holds an account with CTI, any charges payable for any Consignment where the associated consignment note is marked "Receiver to Pay" will be invoiced by CTI directly to the Consignee. If the Consignee does not pay the full amount of the invoice by the due date, then the Customer shall be held liable for any unpaid amount together with any reversal fees charged by CTI to the Customer.

9.3 Credit Limit

- (a) Without prejudice to CTI's other remedies at law, CTI shall be entitled to cancel all or any part of any Service of the Customer which remains unfulfilled, hold any Goods until payment is received, and all amounts owing to CTI shall, whether or not due for payment, become immediately payable if:
 - (i) any money payable to CTI becomes overdue, or
 - (ii) the Customer has exceeded any applicable credit limit provided by CTI.
- (b) Any credit allowed by CTI under this Agreement is not unlimited. If no written notice of the credit allowed from time to time by CTI is provided to the Customer then the credit limit is reflected by the highest amount of credit extended under this Agreement at the immediate point in time. The credit limit stated herein, or on any notice from CTI, if any, does not limit or bind CTI in anyway whatsoever. Further, the Customer agrees they are liable to pay all Fees and Rates charged by CTI irrespective of whether the value of those services supplied, either alone or in conjunction with any accumulated debt of the Customer, exceeds the credit limit stated herein or on notice from CTI.

10. CUSTOMER OBLIGATIONS

10.1 Customer warrants to CTI that:

- (a) **ownership and authority:**
 - (i) it is the owner of the Goods or otherwise has the authority of the owner of the Goods to instruct CTI to perform the Services;
 - (ii) it has the power to enter into this Agreement and has obtained all necessary authorisations to allow them to do so, it is not insolvent and this contract creates binding and valid legal obligations.
- (b) **Service Information:**
 - (i) it will provide any Service Information, within reasonable time, as requested by CTI;

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- (ii) When requested by CTI, the Customer will provide forecasting data to CTI on a monthly basis for inbound and outbound activity;
 - (iii) all Service Information is true and correct and is not misleading. If, after providing the Service Information, the Customer becomes aware that it contains a false or misleading statement then the Customer must immediately notify CTI and rectify the Service Information accordingly;
 - (c) **government fees, charges, taxes, customs, duty and excise:**
 - (i) The Customer must pay all fees, charges, taxes, duties, excise and expenses incurred in respect of the receipt, delivery, transportation or storage of Goods that are charged or levied or required to be paid to any Governmental Authority or any other authority or company operating any railway, tramway, ship, harbour, dock, quarantine facility or customs facility, and the Customer must reimburse CTI or any such fee, charge, tax, duty, excise or expense incurred by CTI with respect to the Goods in the performance of the Services;
 - (d) **compliance with Laws and Heavy Vehicle National Law:**
 - (i) none of the Goods constitute goods where the transportation or storage of which is prohibited by Law;
 - (ii) where the Customer acts as a "Consignor", "Consignee", "Loader" or "Packer" of Goods (as those terms are defined in the Heavy Vehicle National Law) it must, so far as is reasonably practicable to do so, ensure the safety of any Personnel performing the Services and comply with all Laws including the Heavy Vehicle National Law;
 - (iii) Any reasonable compliance requests from the Customer that require the payment of any fees and/or CTI Personnel time will be paid by the Customer;
 - (e) **packaging:**
 - (i) the Goods are packed in a manner which complies with all applicable Laws for the packaging, transportation and storage of Goods;
 - (ii) the Goods are packaged in a manner which adequately protects the Goods from the risk of Loss or Damage that may be caused by the transportation or storage of the Goods in the ordinary course of the performance of the Services;
 - (iii) The Customer has informed CTI of any Goods which require particular handling or care including, but not limited to, the fragile or heavy nature of the Goods, potential of the Goods to cause harm or a high monetary (or otherwise) value of the Goods to an extent reasonably required to prevent the risk of Loss or Damage to the Goods or the risk of injury or harm to any person, property, vehicle or premises;
 - (f) **dangerous and hazardous goods:**
 - (i) except as expressly notified by the Customer to CTI prior to the performance of the Services, the Goods do not comprise any product or material which is explosive, inflammable, radioactive, corrosive, poisonous, infectious or noxious in nature or otherwise inherently capable of causing contamination/pollution, harm, injury or damage to any person, animal, property, vehicle, premises or the environment in general (either sudden or gradual);
 - (ii) at the time the Goods are collected by or delivered to CTI the Goods comply with the requirements of any applicable Law (including, if applicable, the Dangerous Goods Laws, the WHS Laws, any GHS Code and the *Australian Code for the Transport of Dangerous Products by Road and Rail* and the *Civil Aviation Safety Regulations 1998* (Cth)) relating to the Consignment, handling, transportation and packaging of the Goods;
 - (g) **Where the Customer is not the same Person as the Consignor:**
 - (i) The Consignor is bound in the same way as the Customer under this Agreement and are jointly and severally liable.
 - (ii) The Customer represents and warrants that it enters this Contract on its own account and as agent for the Consignor; and it has made the Consignor aware of this Agreement, the Consignor accepts these conditions and agrees to be a party to this Agreement.
 - (iii) If, for any reason, any provision in these conditions is not enforceable by CTI against the Consignor, the Customer shall indemnify CTI for any claims made against CTI by the Consignor.
 - (iv) CTI has entered into this Agreement in reliance upon this clause 10.1(g).
 - (h) **Modern Slavery Act:**
 - (i) The Customer complies with the Modern Slavery Act;
 - (ii) neither the Customer nor to the best of the Customer's knowledge, the Customer's Personnel, has anywhere in the world committed or been charged with an offence relating to Modern Slavery; and
 - (iii) Customer will comply with CTI's reasonable request for any information to determine the Customer's compliance with the Modern Slavery Act or to enable CTI to comply with the Modern Slavery Act.
- 11. INSURANCE**
- 11.1 The Customer acknowledges that the Goods are carried and stored at the Customer's or Consignor's risk and it is the Customer's or the Consignor's responsibility to insure and keep insured the Goods for the higher of full insurable or replacement value of the Goods whilst they are in the custody or control of CTI whilst performing the Services. The Customer's or Consignor's insurance policy must not provide for any rights of subrogation against CTI, and will include a principal indemnity extension in favour of CTI. No claim may be made against CTI for any failure to arrange or maintain insurance of the Goods. The Customer is responsible for the payment of any excess, deductible or self-insured retention applicable to the Customer's insurance.
- 11.2 If requested by CTI, the Customer will provide CTI with confirmation of insurance that complies fully with the requirements of clause 11.1, in the form of a certificate of currency, covering Goods in storage (Industrial Special Risk or similar), Goods in transit (Marine Cargo or similar), Workers Compensation and Public / Products Liability.
- 11.3 Customer to ensure that CTI is noted as an 'Interested Party' on the Customer's Insurance policies and certificates.
- 11.4 The Customer acknowledges:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of CTI;

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- (b) that CTI is under no obligation whatsoever to insure the Goods; and
- (c) under no circumstances will CTI be under any liability with respect to the arranging of any such insurance and no claim will be made against CTI for failure to arrange or ensure that the Goods are insured adequately or at all.

12. CTI'S COMPLIANCE WITH LAWS AND DIRECTIONS

- 12.1 CTI will comply with all applicable Laws and holds all necessary licences for the performance of the Services.
- 12.2 In the event a direction or instruction provided by the Customer would result in CTI breaching a Law, would prevent CTI taking action reasonably required to prevent a breach of a Law, or would risk harm or injury to its Personnel, then CTI need not comply with that direction or instruction and may suspend the performance of the Services.

13. LOSS OR DAMAGE TO GOODS

- 13.1 CTI's responsibility and Liability for any Loss or Damage to Goods shall be subject to the provisions of this clause 13 and clause 14.
- 13.2 CTI shall not be liable for any Loss or Damage to any Goods (except where the Law requires otherwise) to the extent caused or contributed to by the Customer, any of Customer's Personnel or the Consignor, where a clean (no issues identified by the Customer) Proof of Delivery (POD) is available, except where the Loss or Damage is a result of CTI's proven gross negligence or wilful default.
- 13.3 If CTI is aware of any Loss or Damage to the Goods in CTI's possession, CTI shall inform the Customer of that Loss or Damage and provide the Customer with reasonably requested and available information directly regarding the event.
- 13.4 If any provision of a Services Document specifies a limit or allowance for Loss or Damage that may occur whilst Goods are in CTI's custody or control, CTI will not be liable for Loss or Damage within that limit or allowance howsoever caused.
- 13.5 Any Claim by the Customer or Consignor for Loss or Damage is per Consignment and must be notified to CTI within 7 days of the Customer or Consignor becoming aware of the Loss or Damage.
- 13.6 If applicable, all claims for loss or damage are subject to the CTI FreightSafe Warranty terms (Service Document), available at <https://www.ctilogistics.com/cti-logistics-terms-and-conditions/>.

14. LIABILITY AND INDEMNITY

- 14.1 Notwithstanding any other provision of the Agreement, CTI shall only be liable for loss or damage suffered or incurred by the Customer with respect to the Goods, the Services or CTI's performance of the Agreement generally to the extent of this clause 14.
- 14.2 CTI is not a common carrier and does not accept any liability as such, other than where specified in the Agreement. CTI may refuse the carriage or transport of any goods or products for any person or company and the carriage or transport of any class of goods or products at its discretion.
- 14.3 The Customer acknowledges and agrees that to the fullest extent permitted by law, the obligations of a bailor are excluded and CTI will not be responsible for any loss of, or damage to, or incorrect delivery of, or delay in the delivery of, any Goods, except as expressly provided for in this Agreement.
- 14.4 Notwithstanding any other provision of this Agreement, the Customer acknowledges and agrees that CTI, or any Subcontractor, shall not in any circumstances (except where any Law otherwise requires or where the Agreement is a Consumer contract or a Small Business Contract) be under any liability whatsoever (whether in contract, tort or otherwise)

- for any:
- (a) personal injury or property damage caused or contributed by;
 - (b) Loss or Damage to; or
 - (c) mis-delivery, delayed delivery or non-delivery of, the Goods while performing the Services except to the extent where the foregoing is caused by the proven gross negligence or wilful default of CTI. For the avoidance of doubt, neither CTI nor its Subcontractor will be liable in circumstances where the foregoing is caused by a Force Majeure Event.

14.5 Except where any Law otherwise requires, or where the Agreement is a Consumer contract or a Small Business Contract, or except to the extent any Claim arises from CTI's proven gross negligence or wilful default, the Customer indemnifies CTI against any:

- (a) Claim, Liability, loss, damage, cost or expense, which is incurred by CTI whilst performing the Services, to the extent it is caused or contributed to by:
 - (i) the inherent nature, including any Dangerous Goods, or improper packaging of the Goods, including explosion/fires caused by batteries;
 - (ii) spillage, escape, leakage or discharge from the Goods or any contamination of any goods, premises or the general environment (either sudden or gradual) caused by the Goods;
 - (iii) the negligent act or omission or wilful default by the Customer, any Consignee or any other person or entity acting on behalf of the Customer; or
 - (iv) the Customer's breach of a warranty per clause 10, or which is otherwise necessarily incurred by CTI in the proper performance of the Agreement;
- (b) any Claim by:
 - (i) a Consignee (or owner of the Goods) which relates to, or arises out of, lost, damaged, mis-delivered, delivered late or non-delivered Goods; or
 - (ii) any third party whether in tort, contract, bailment or otherwise.

14.6 Without limiting clauses 14.4, 14.5 and 14.5, the Customer indemnifies CTI against all reasonable costs (including reasonable solicitor-client legal costs) incurred by CTI which may arise from any and all action taken in relation to any debt recovery arising from the Agreement.

14.7 Subject to the Law and notwithstanding any other provision of the Agreement to the contrary, and subject to where the Agreement is a Consumer contract or a Small Business Contract, the Customer agrees that it may only commence legal proceedings in relation to Loss or Damage if the Loss or Damage is notified to CTI in accordance with the Agreement, the claim is lodged within 30 days and the legal proceedings are commenced within 6 months of the date that:

- (a) the Goods are delivered to the Consignee;
- (b) the Goods were intended to be delivered to the Customer (in relation to Claims for lost Goods); or
- (c) the Customer first becomes aware of the Loss or Damage,

whichever occurs first.
The failure of the Customer to notify a claim within the time limits under this clause 14.7 is evidence of satisfactory performance by CTI of its obligations.

14.8 To the extent permitted by Law and notwithstanding any other provision of the Agreement to the contrary, or where the Agreement is a Consumer contract or a Small Business Contract, the maximum aggregated Liability of CTI to the Customer in relation to the Agreement or otherwise (including for negligence) is limited to the aggregate Fees of all Services provided by CTI to the Customer during the period 12 months prior to the date of any Claim and capped at \$10,000.

For the avoidance of doubt, nothing within this clause 14.8

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creates joint or several liability between CTI and its Affiliates. The maximum aggregated Liability of CTI or any Affiliate of CTI under this clause 14.8 is limited to the Services provide by each of them only. Where a Service is provided by CTI liability shall not attach to any of its Affiliates and vice versa.

14.9 If CTI is liable for a breach of a mandatory term, condition, guarantee or warranty implied in the Agreement by Law and for which Liability cannot be excluded or limited by the Agreement, including under clause 14.8, to the maximum extent permitted by Law, CTI's maximum Liability is limited to any one or more of the following at CTI's discretion, acting reasonably:

- (a) re-performing the Services, supplying equivalent services, or paying the cost of re-performing or procuring equivalent services; or
- (b) if the breach relates to loss or damage to the Goods, then replacement of the Goods, supplying equivalent Goods, or paying the costs of replacing, repairing, procuring or hiring equivalent Goods.

14.10 To the extent permitted by Law and notwithstanding any other provision of the Agreement to the contrary, neither party is liable to the other for any Economic Loss, whether arising directly or indirectly from: any breach by either party of its respective obligations arising under or in connection with the Agreement, any termination or cancellation of the Agreement, any negligence, misrepresentation or other act or omission on the part of either party, Subcontractors any other person or party or any other cause whatsoever.

14.11 CTI's Liability under the Agreement is reduced proportionately to the extent that any act or omission of the Customer, the Customer's Personnel or any third party whom CTI does not control, caused or contributed to the Liability.

14.12 The remedy of the Customer in relation to any cause of action that the Customer may have against CTI is, to the extent permitted by Law, limited to damages.

14.13 Subject to the Law and notwithstanding any other provision of the Agreement to the contrary, but subject to clause 14.7 in relation to Loss or Damage, any legal proceedings by the Customer against CTI must be commenced within 6 months after the cause of action has accrued.

14.14 Nothing in the Agreement is intended to have the effect of contracting out of any liability under the Competition and Consumer Protection Laws, except to the extent permitted by those Laws where applicable.

14.15 The Customer must indemnify CTI in respect of any liability suffered or incurred by CTI in respect of loss of, or damage to, pallets which are recorded on CTI's pallet account and which are in the care of or under the control of the Customer except to the extent that the liability or loss of, or damage to, the pallets is caused or contributed to by the negligent, fraudulent or wrongful act or omission of CTI or its Personnel.

14.16 Without limiting any other provision of this Agreement, if CTI agrees to pay any amount to the Customer in respect of a damaged Consignment, then upon payment of that amount, title in the Consignment will pass to CTI.

15. CONFIDENTIALITY

15.1 Each party (**Recipient**) must at all times during the Term of the Agreement and for the period of 5 years thereafter:

- (a) hold in strict confidence all Confidential Information of the other party (**Disclosing Party**);
- (b) not disclose or permit or cause the Confidential Information of the Disclosing Party to be disclosed to any person, other than on a confidential basis to those of its Personnel who require that Confidential Information for the purposes of performing the Recipient's obligations under, or receiving the benefit of, the Agreement; and
- (c) not make use of the Confidential Information of the Disclosing Party (including duplicating, reproducing, distributing, disseminating or directly or indirectly

deriving information from that Confidential Information) except and solely to the extent necessary for the performance of, or to obtain the benefit of, the Agreement.

- 15.2 The Recipient will not breach clause 15.1 to the extent that:
 - (a) at the time of disclosure, the relevant Confidential Information is in the public domain other than by breach of clause 15.1;
 - (b) the Disclosing Party has provided its prior written consent to the use or disclosure of the Confidential Information in a manner that would, but for the consent, be contrary to clause 15.1;
 - (c) disclosure of the relevant Confidential Information is required by Law, court order or the rules of a recognised securities exchange to be communicated to a person who is authorised by Law to receive it;
 - (d) the relevant Confidential Information is required to be disclosed to any bank or other financial institution in relation to the organisation of the Recipient's financial affairs; or
 - (e) disclosure of the relevant Confidential Information made to any legal counsel, accountant, insurance advisor or other professional adviser in relation to the Recipient's affairs provided that the professional advisor is bound by an obligation or confidentiality in relation to the information disclosed.

15.3 The parties agree that damages may not be an adequate remedy for breach of this clause 15.1 and a party will be entitled to injunctive relief.

15.4 The provisions of this clause 15 survive the termination of the Agreement.

16. PRIVACY

16.1 CTI will collect, store, use, handle, transfer and delete personal information (as that term is defined in the *Privacy Act 1988* (Cth)) collected while performing the Agreement in accordance with its Privacy Policy.

16.2 Personal information may be collected, stored, used, handled, transferred, and deleted by CTI in any manner permitted by applicable Law, including those permitted under the Australian Privacy Principles.

17. PPS ACT

17.1 The parties agree that the Agreement constitutes a security agreement for the purposes of the PPS Act.

17.2 The Customer consents to CTI registering a financing statement on the Personal Property Securities Register in relation to any Security Interest in CTI's favour arising under or in connection with the Agreement.

- 17.3 The Customer:
 - (a) must provide CTI with reasonable assistance to register and perfect any Security Interest arising under or in connection with the Agreement;
 - (b) undertakes not to:
 - (i) amend or seek to amend (including by way of removal); or
 - (ii) interfere, including exercise any right to object to, the registration or validity of any such Security Interest;
 - (c) must notify CTI in writing of any change to the Customer's name, contact details, the proprietorship of the Customer's trading name or a variation in the structure of the Customer's business (such as conversion to, or from, a trustee) within 5 days from the date of such change;
 - (d) must not create any Security Interest over Goods prior to payment of the full Fees of those Goods, or otherwise allow a Security Interest to come into existence which is inconsistent with the rights and interests of CTI under this clause 17;

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- (e) must keep all information of the kind mentioned in section 275(1) of the PPS Act confidential and will not authorise the disclosure of such information except in accordance with section 275(7) of the PPS Act;
- (f) waives its right under section 157 of the PPS Act to receive notice of any verification statement relating to the registration of any financing statement or any related financing change statement;
- (g) agrees that the following provisions of the PPS Act will not apply and the Customer will not have any rights under them: section 95 (to the extent that it requires the secured party to give notices to the grantor); section 121(4); section 125; sections 129(2) and (3); section 132; section 142; and section 143; and
- (h) agrees that CTI is required to give a notice under the PPS Act only if the notice is obligatory and the giving of the notice cannot be excluded under the PPS Act.

18. ANTI BRIBERY

18.1 Neither party shall, directly or indirectly, make a bribe or other illegal gift or payment or offer, promise or authorise a bribe or other illegal gift or payment to any public or private person or entity, in connection with this Agreement. The parties each represent and warrant that they have not taken, or permitted any of their Affiliates, agents, Sub-contractors, suppliers or employees to take, any action which would constitute a breach of this provision, and covenant to comply with (and require their respective Affiliates, agents and employees to comply with) this provision. This provision shall survive the termination of this Agreement.

19. PAYMENT OF FEES

- 19.1 Without limiting clause 17 or CTI's other legal rights, including under any Warehouseman's Lien Law, the PPSA Act and any other applicable Law, if CTI has not received the whole of the Fees for the Services, or the payment of Fees has been dishonoured, CTI will have a lien over the Goods (as a separate and distinct lien to that granted to CTI under any Warehouseman's Lien Law) and may do any of the following:
- (a) retain the Goods while CTI is in possession of them; or
 - (b) sell such Goods or cargo by public auction or private treaty after giving notice to the Customer; or
 - (c) stop the Goods in transit, whether or not delivery has been made or ownership has passed.
- 19.2 The Customer hereby charges, in favour of CTI, all of its present and future legal and equitable interests in any real property, as security for the due and punctual payment and full performance of all liabilities and obligations owed to CTI under this agreement or on any account whatsoever. The Customer further consents to CTI lodging one or more caveats to record its proprietary interest in such property.
- 19.3 The Customer grants a Security Interest in all of its present and after acquired property and in all of its present and future rights, title, estate and interest, whether legal and equitable, including in relation to any personal property including any debts owed to the Customer, in favour of CTI to secure the performance of its liabilities and obligations hereunder or on any account whatsoever.
- 19.4 CTI may appoint in writing any person or persons to be a receiver or receiver and manager of the property charged under clauses 19.2 and 19.3 above or any part of the charged property. The receiver so appointed shall be the agent of the Customer and the Customer shall be solely responsible for all acts and omissions by the receiver appointed under this clause and for the remuneration of the receiver. The receiver shall without the need for any consent on the part of the Customer have all the powers conferred on a receiver under the Corporations Act 2001.
- 19.5 The Customer indemnifies CTI from and against all CTI's costs and disbursements including legal costs on a solicitor

and own client basis incurred in exercising CTI's rights under this clause.

20. FORCE MAJEURE

20.1 Notwithstanding any other provision of this Agreement, to the extent permitted by Law, CTI will not be liable for any loss or damage to the Goods, or delay or failure to perform any of its obligations under the Agreement to the extent that such loss, damage, delay or failure is caused by a Force Majeure Event affecting CTI. If a Force Majeure Event causes the delay or non-performance of CTI's obligations for 30 days or more, either party may, by notice in writing, immediately terminate the Agreement.

21. DISPUTE RESOLUTION

- 21.1 The parties must comply with this clause 21 in resolving any dispute which arises between the parties in relation to the Agreement (**Dispute**).
- 21.2 If a Dispute arises, the party requiring it be resolved must promptly give to the other party notice identifying and giving details of the Dispute (**Dispute Notice**).
- 21.3 If a Dispute Notice is given then managers of the parties must meet within 5 Business Days of the Dispute Notice being received, with a view to negotiating a potential resolution of the Dispute.
- 21.4 If the Dispute is not resolved within 5 Business Days of the meeting of managers under clause 21.3, then the parties must engage senior representatives of the parties to meet with a view to resolving the Dispute. The senior manager must have the authority to settle the Dispute on behalf of the party that they represent and contractually bind such party to any settlement agreement.
- 21.5 If the Dispute is not resolved within 10 Business Days of the senior representatives of the parties meeting or within 20 Business Days of a Dispute Notice being received, whichever occurs first, then either party may refer the Dispute resolution by mediation by giving the other party notice (**Mediation Notice**). The parties must then participate in mediation in accordance with clause 21.6.
- 21.6 If a Mediation Notice is given the following shall apply:
- (a) the parties must endeavour to settle the Dispute by mediation;
 - (b) the mediation is to be conducted by a mediator who is independent of the parties and appointed by agreement of the parties or, failing agreement within 7 days of receiving any Mediation Notice, by a person appointed by the Chair of the Resolution Institute (**Chair**) or the Chair's designated representative; and the *Resolution Institute Mediation Rules* shall apply to the mediation.
 - (c)
- 21.7 A party claiming a Dispute has arisen must not commence any court or arbitration proceedings unless it has complied with the procedures in clauses 21.5 and 21.6.
- 21.8 If a party refuses to participate in a mediation of the Dispute under clause 21.6, then the other party may commence proceedings in a court of competent jurisdiction. The party that refuses to participate in a mediation of the Dispute must:
- (a) not take any steps to recover its costs in any court proceedings arising from or in connection with the Dispute; and
 - (b) consent to orders by the court in which the proceedings are commenced that the proceedings be referred to mediation to be conducted by:
 - (i) a mediator agreed between the parties; or
 - (ii) if the parties cannot agree with 7 days of the order being made, a Registrar of the court; and/or
 - (iii) consent to an order of a court of competent jurisdiction that it will specifically perform and carry out its obligations under clause 21.7.
- 21.9 Nothing in this clause 21 prevents a party from seeking urgent

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injunctive or interlocutory relief from a court of competent jurisdiction to enforce payment due under this Agreement.

21.10 Pending resolution of the Dispute in accordance with this clause 21, the parties must continue to perform their obligations under the Agreement, except to the extent of the matter in Dispute.

22. DEFAULT AND TERMINATION

22.1 Termination for default or insolvency

The Non-Defaulting Party may terminate the Agreement immediately by giving the Defaulting Party written notice to that effect if any of the following events occurs, and the Non-Defaulting Party will not be liable to the Defaulting Party for any loss or damage the Defaulting Party suffers due to exercising its rights under this clause:

- (a) the Defaulting Party breaches a material term of the Agreement and fails to remedy that breach within 30 days of written notice to do so from the Non-Defaulting Party, if such breach is capable of remedy;
- (b) the Defaulting Party breaches a material term of the Agreement and such breach is not capable of remedy;
- (c) the Defaulting Party suffers an Insolvency Event;
- (d) the Defaulting Party fails to pay any overdue invoice(s) in full; or
- (e) the Defaulting Party has exceeded any applicable credit limit.

22.2 Termination on notice

- (a) In relation to Transportation Services provided under this Agreement, or where the Services involve Dangerous Goods, either party may terminate the Agreement by giving the other party at least 7 days' (or such lesser period as the other party may agree to or accept) prior written notice to that effect.
- (b) In relation to Warehousing Services provided under this Agreement, or in circumstances where CTI has acquired any vehicle or equipment for the provision of the Services, or where the Services are dedicated to the Customer only, either party may terminate the Agreement by giving the other party at least 90 days' prior written notice to that effect.
- (c) During the period prior to termination under this clause 22, CTI shall continue to provide the Services and the parties must comply with the Agreement.
- (d) In the event the Customer cancels the Delivery of Goods or the provision of all or any part of the Services, then the Customer shall be liable, and will indemnify CTI, for any loss incurred by CTI up to the time of cancellation as a direct result of the cancellation.

22.3 Effect of termination

- (a) Termination of the Agreement is without prejudice to any rights or Claims that accrue to a party prior to the date of such termination.
- (b) On Termination of the Agreement the Customer must promptly remove in an orderly manner all Goods from the Storage Facility, subject to CTI's rights under clause 19.

23. GST

- 23.1 A reference in this clause 23 to a term defined or used in the GST Law has the meaning given to that term in the GST Law.
- 23.2 Any amount referred to in the Agreement which is relevant in determining a payment to be made by the Customer to CTI is exclusive of any GST unless stated otherwise.
- 23.3 The Customer must pay to CTI the amount equal to the GST liability on any taxable supply by CTI to Customer under the Agreement, at the same time as the Customer is required to pay the consideration for that taxable supply to CTI under the

Agreement.

23.4 The GST liability for any taxable supply is the amount equal to the consideration attributable to the taxable supply made by CTI to the Customer multiplied by the rate at which GST is imposed in relation to that taxable supply.

24. MISCELLANEOUS PROVISIONS

24.1 **Governing Law:** The Agreement is governed by the Laws of Western Australia. The parties submit to the non-exclusive jurisdiction of the courts of that State and the Customer waives any right to object to any proceedings being brought in those Courts.. Any dispute or legal proceedings in relation to the Agreement must be held in Perth, Western Australia.

24.2 **Variation:** The parties may vary the Agreement by an instrument in writing signed by each of the parties.

24.3 **Assignment:** A party must obtain the prior written consent of the other party before it transfers, assigns, novates or otherwise disposes of a right or obligation under the Agreement.

24.4 **Cumulative rights:** CTI's rights under the Agreement are in addition to its rights at Law.

24.5 **Severability:** If any provision of the Agreement is invalid, illegal or unenforceable, that provision must be severed from and ignored in the interpretation of the Agreement to the minimum extent necessary and to the intent that the remaining provisions of the Agreement remain in full force and effect. Further, if these terms and conditions are held to be a standard form Small Business Contract then any clause or term which is deemed to be unfair pursuant to the Australian Consumer Law by any competent authority or the Courts, will be severed from these terms and conditions.

24.6 **Entire agreement:** The Agreement constitutes the entire agreement between the parties and supersedes all previous, contemporaneous and future discussions, undertakings and agreements in relation to the subject matter of the Agreement.

24.7 **Implied terms:** All terms, conditions, guarantees and warranties (including as to the condition, suitability, quality, fitness for any purpose, safety of, or title to, goods or services) which would, but for this clause, be implied into the Agreement are excluded to the extent permitted by Law.

24.8 **Survival:** The warranties expressly stated in the Agreement survive the termination of the Agreement. Each indemnity expressly stated in the Agreement survives the performance of obligations relating to the Agreement and the termination of the Agreement.

24.9 **Further assurances:** Each party at its own expense must do everything necessary to give full effect to the Agreement.

24.10 **Relationship:** The parties acknowledge and agree that the relationship between them is that of principal and contractor. Nothing in the Agreement constitutes, or will be deemed to constitute, a relationship of agency or partnership between CTI and the Customer.

24.11 **Communications:** Each communication (including each notice, consent, approval, request and demand) given by a party to another party in relation to the Agreement:

- (a) must be in writing and in the English language;
- (b) must be signed by the party making it or by that party's lawyer, attorney, director, secretary or authorised agent;
- (c) must be delivered by hand, sent by prepaid post or sent by email to the recipient party using the contact details of the recipient party specified in the Agreement or as otherwise notified by the recipient party to each other party from time to time; and is taken to be received by the recipient party:
 - (i) in the case of delivery by hand, upon delivery;
 - (ii) in the case of prepaid post sent to a recipient party in the same country as the sending party, on the date of actual receipt or

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- otherwise the 3rd Business Day after the date of posting;
- (iii) in the case of prepaid post sent to a recipient party in another country to the sending party, on the date of actual receipt or otherwise the 7th Business Day after the date of posting; and
 - (iv) in the case of email, at the time it is delivered to the recipient party's host server.
- 24.12 **Receipt:** Notwithstanding clause 24.11(d), if a communication given under clause 24.11 is taken to be received on a day that is not a Business Day or after 5.00pm in the place where the communication is received, it will be taken to be received at 9.00am on the next Business Day.
- 24.13 **Counterparts and execution:** The Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same document. The Agreement is binding on the parties on the exchange of counterparts. Facsimile, email or other electronically delivered signatures of the Parties shall be deemed to constitute original signatures, and facsimile or electronic copies hereof shall be deemed to constitute duplicate originals. Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with the Electronic Transactions Act in the relevant state.
- 24.14 **Trusts:** If the Customer at any time upon or subsequent to entering into this Agreement is acting in the capacity of trustee of any trust ("Trust") then whether or not CTI may have notice of the Trust, the Customer covenants with CTI as follows:
- (a) this Agreement extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
 - (b) the Customer has full and complete power and authority under the Trust to enter into this Agreement and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) that they shall be bound by the terms and conditions of this Agreement in their individual capacity, or further or alternatively, in their several capacity as trustee;
 - (d) that the assets of the Trust shall be available to meet payment of their obligations to CTI; and
 - (e) the Customer will not without consent in writing of CTI (CTI will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.
- 24.15 **Waiver:** The failure by either party to enforce any provision of this Agreement shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. The waiver of any breach of this Agreement shall not be deemed to be a waiver of any subsequent breach or any other term, condition, or provision of this Agreement.

25. DEFINITIONS

"Additional Services" means any work or Services that may be performed or provided by CTI in addition to the Services already specified in the Agreement.

"Affiliate" in relation to a party, means a related party, corporation or other legal entity that directly or indirectly

Controls, is Controlled by, or is under common Control with, that party.

"Agreement" has the meaning given to that term in clause 1.3.

"Ancillary Services" means any work or Services that are to be performed or provided by CTI that are necessary to complete any Services requested by the Customer.

"Business Day" means a day which is not a Saturday, Sunday, public holiday or bank holiday in Perth, Western Australia.

"Claim" means an action, suit, proceeding or demand of any kind and any actual or alleged entitlement or right of any kind arising out of or in relation to the Agreement or a breach of it, whether arising at common law, in equity or under statute.

"Commencement Date" means the earlier of the date CTI first provides the Services, date of signing this Agreement or such other date as specified in any Services Document.

"Competition and Consumer Protection Laws" means the *Competition and Consumer Act 2010* (Cth) and the *Fair Trading Act* of the Commonwealth and each State or Territory of Australia where Services are performed, and any Law made under those statutes.

"Confidential Information" means information in whatever form:

- (a) relating to the Agreement, including negotiation of the same;
- (b) relating a party (including its Affiliates) or its business affairs;
- (c) that is disclosed by a party and is marked 'confidential' or is of a confidential, secret or proprietary nature, but does not include information to the extent that such information:
 - (d) is, on the date it is disclosed, already in the possession of the receiving party, in the public domain, or is generally available to participants in the industry in which a party operates on the date of the Agreement;
 - (e) becomes publicly available (except if it is in the public domain by reason of the failure of a party to perform and observe its covenants and obligations under the Agreement);
 - (f) is acquired from a third party entitled to disclose it on a non-confidential basis; or
 - (g) is independently developed without use of material which otherwise constitutes 'Confidential Information' under this definition, as demonstrated by contemporaneous written evidence.

"Consignee" means the person specified by the Customer in any Services Document to whom Goods are to be delivered.

"Consignor" means the person specified in any Services Document as the person who owns the Goods or, if no such person is specified, the Customer.

"Consignment" means all goods sent from a single consignor to a single consignee in a single load.

"Control", in relation to a body corporate entity, means either:

- (a) holding 50% or more of common voting shares or equivalent rights of the body corporate; or
- (b) the ability to (directly or indirectly) control the determination of the financial and operating policies of the body corporate.

"Corporations Act" means the *Corporations Act 2001* (Cth).

"CTI" means CTI Logistics Limited (ABN 69 008 778 925) and/or any Affiliate of CTI Logistics Limited as the case may be, which performs all or any of the Services.

"CTI Depot" means a depot that is owned or controlled by CTI and used for the purposes of accepting the Goods.

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“CTI Designated Agent” means a person, company or other entity that is authorised by CTI to act on CTI's behalf in the completion of the Services including the Delivery and acceptance of the Goods.

“CTI Premises” means any premises or Storage Facility under CTI's management and control.

“Customer” means the person or entity, and/or any Affiliate of the Customer, who orders or receives Services from CTI, including the Applicant on the credit application on page 1 and any Personnel acting on behalf of a Customer.

“Customer's Instructions” means the instructions of Customer with respect to Goods expressly stated in a Services Document.

“Customer's Premises” means any premises, facility or worksite of Customer or third-party other than CTI's Premises.

“Dangerous Goods” means any Goods which are dangerous or hazardous goods within the meaning of a Dangerous Goods Law.

“Dangerous Goods Law” means the *Dangerous Goods Act 2004 (WA)*, the *Dangerous Goods Safety Regulations 2007 (WA)* and any other analogous or applicable Law in any State or Territory of Australia where Services are performed with respect to the transportation, handling or storage of hazardous or dangerous goods.

“Default” means a Party that has not done what is required in the time allowed.

“Defaulting Party” means a Party with respect to which a Default has occurred.

“Delivery” means the delivery and unloading of Goods in accordance with clause 4.3 or clause 4.4(a)(i).

“Economic Loss” means any loss of profit, loss of revenue, loss of product, loss of expected savings, loss of income, rent or holding costs, loss of expected production, opportunity costs, loss of business (including loss or reduction of goodwill or opportunity), and damage to reputation from or related in any way to the Agreement or its subject matter, whether actual, direct, indirect, anticipated or otherwise.

“Fees” means the fee payable by the Customer to CTI for the supply of Services, exclusive of GST at the Rates.

“Force Majeure Event” means an event beyond a party's reasonable control which, by exercise of reasonable diligence and precautions, could not have been prevented or reasonably foreseen by that party, including any:

- (a) act of God, unusually severe weather (including a cyclone/hurricane), earthquake, fire, subsidence, land slide, flood, storm, lightning, mud slide, wash-out, explosion, radioactive contamination or natural disaster;
- (b) epidemic, pandemic, or other public health and safety emergency declared by any Governmental Authority;
- (c) terrorism, insurrection, revolution or civil disorder, act of public enemies, malicious damage, sabotage, vandalism, war or military operation, blockade or riot;
- (d) any failure, delay or suspension by any third-party supplier of the supply in whole or in part of fuel, electricity, equipment, machinery or materials to the affected party provided that the affected party has acted in a timely manner in endeavouring to secure the same (which does not require the affected party, to secure the same if the alternative supply is only available to the affected party at a materially increased or additional cost to it);
- (e) the lack of availability of time slots at any Australian port, any road closure or congestion of roads, any quarantine or customs restriction, collision or breakdown of a vehicle, crane, machinery or equipment;
- (f) cyber warfare, cyberattacks, ransomware attacks, cyber sabotage;

- (g) adverse application of any Law or enforcement actions of any court or Governmental Authority;
- (h) industrial dispute of any kind, strike, lock-out, ban, limitation or other industrial disturbances; or
- (i) any production shutdown or interruption which is validly directed by any Governmental Authority.

“GHS Code” means a code for the Globally Harmonized System of Classification and Labelling of Chemicals.

“Goods” means the Customer's goods which are the subject of the Services provided by CTI, including containers and packaging.

“Governmental Authority” means any federal, state, territory or local government, or any ministry, department, court, commission, statutory body, board, agency, instrumentality, political subdivision or similar entity.

“GST” means goods and services tax levied under the GST Law.

“GST Law” has the meaning given to that term in the *A New Tax System (Goods and Services) Tax Act 1999 (Cth)*.

“Heavy Vehicle National Law” means the *Heavy Vehicle National Law Act 2012 (Qld)*, all Law made under that statute and the Law of each State and Territory adopting that statute.

“Interest Rate” is the rate per annum of the Reserve Bank of Australia's cash rate plus 3%.

“Insolvency Event”, in relation to a person (**Relevant Person**), means any of the following events occurring:

- (a) a receiver, receiver and manager, controller (as that term is defined in the Corporations Act), administrator, trustee in bankruptcy, liquidator, provisional liquidator, or similar officer is appointed to the Relevant Person's or any of the Relevant Person's assets, or an application to court for such appointment is made and not permanently stayed, withdrawn or dismissed within 30 days;
- (b) the Relevant Person enters into, or resolves to enter into, a deed of company arrangement, scheme of arrangement, compromise or composition with any class of creditors, other than for a solvent corporate restructure;
- (c) a resolution is passed or an application to a court is taken or an order is made for the winding up, dissolution, official management or administration of the Relevant Person;
- (d) the Relevant Person ceases to (or is unable to) pay its creditors (or any class of them) in the ordinary course of business, or announces its intention not to pay its creditors;
- (e) the Relevant Person is (or states that it is) insolvent (or is deemed to be insolvent), commits an act of bankruptcy or is declared bankrupt under applicable bankruptcy or insolvency Law; or
- (f) anything having a substantially similar effect to any of the events specified in this definition above happens under the Law of any applicable jurisdiction.

“Law” means common law, principles of equity, civil law, and statutory law (including regulations, by-laws, ordinances, codes and any other instruments under them).

“Liability” means a liability, loss, damage (of any nature, including aggravated and punitive damage), compensation, cost (including all legal costs on a full indemnity basis), charge or expense, whether present or future, actual, contingent or prospective and whether known or unknown, howsoever arising.

“Loss or Damage” means the loss of or physical damage to Goods rendering the Goods lost or unfit for use or their intended purpose, including loss due to theft, misappropriation or mixing with other goods which are not the Goods.

“Modern Slavery” has the meaning given to that term in section 4 of the Modern Slavery Act.

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“Modern Slavery Act” means the *Modern Slavery Act 2018* (Cth).

“Non-Defaulting Party” means the Party with respect to which a Default has not occurred.

“Party” means a party to the Agreement, being CTI or the Customer, as the context requires.

“Personnel”, in relation to a party, means any of that party’s employees, officers, directors, contractors, agents and its representatives involved directly or indirectly in the matters related to the Agreement or in the supply or manufacture of the Goods.

“PPS Act” is the *Personal Property Securities Act 2009* (Cth).

“Privacy Policy” means CTI’s policy in relation to the collection, use, storage, security, destruction, de-identification and/or disclosure of personal information (as that term is defined in the *Privacy Act 1988* (Cth)) from time to time.

“Rates” means the rates of CTI from time to time for the charging of Fees for the provision of Services as provided by CTI to the Customer.

“Related Entity” means as defined under the Corporations Act.

“Security Interest” means:

- (a) a security interest within the meaning given to that term under the PPS Act; or
- (b) any other security for payment of money, performance of an obligation or protection against default (including a bill of sale, mortgage, charge, lien, pledge, trust, power, title retention arrangement, right of set-off, assignment of income, garnishee order, monetary claim or flawed deposit arrangement).

“Service Information” means all information concerning the Goods specified in a Services Document, supplied by Customer to CTI or requested by CTI.

“Services” means Transportation Services and/or Warehousing Services as specified in these General Terms or a Services Document and any Additional Services provided in accordance with the Customer’s Instructions.

“Services Document” means any Variation Agreement, standard operating procedure, quotation, proposal, scope of works, credit application, rates card, instruction, electronic message or other document issued by CTI or accepted by CTI from the Customer for the Services.

“Special Condition” means a term or condition of the Agreement stated in a Services Document.

“Small Business Contract” means a legally binding agreement for the supply of goods or services where at least one of the parties is a small business. A small business is defined as a company that employs fewer than 100 people or has an annual turnover of less than \$10 million.

“Storage Facility” is where Goods are stored.

“Subcontractor” means any servant, agent or subcontractor of CTI or the servant, agent or subcontractor of such initial party as appointed by CTI or any other party which is appointed to be in possession or control of the Goods under the Agreement, including any operator of any aircraft, train, railway, tramway, vessel or vehicle.

“Term” means the term of the Agreement commencing from the Commencement Date until terminated in accordance with the Agreement.

“Transportation Services” means the carriage of Goods from one place to another on the instructions of the Customer, the loading and unloading of the Goods, the dispatch of transportation vehicles and the processing of a Customer order as it relates to Delivery. “Transportation Services” does not include Warehousing Services.

“Variation Agreement” means a document signed by the parties specified to be a Variation to this Agreement.

“Warehouseman’s Lien Law” means the *Warehouseman’s Liens Act 1952* (WA) and any other analogous or applicable Law in any State or Territory of Australia where Services are performed or applicable to the Goods for provision of a lien.

“Warehousing Services” means the storage and handling of the Goods in a secure Storage Facility, including the receipt, unloading, container de-stuffing, unpacking, palletising and put-away of inwards Goods, and the picking and preparation of outwards Goods for dispatch. “Warehousing Services” does not include Transport Services.

“WHS Laws” means the *Work Health & Safety Act 2020* (WA), the *Work Health & Safety Regulations 2007* (WA) and any other analogous or applicable Law in any State or Territory of Australia where Services are performed or applicable to the Goods.

26. INTERPRETATION

- 26.1 This clause 26 applies to the interpretation of the Agreement.
- 26.2 If a word or phrase is defined, then its other grammatical forms have a corresponding meaning.
- 26.3 The singular includes the plural and vice versa.
- 26.4 A reference to:
 - (a) a gender includes any gender;
 - (b) a living thing includes a reference to an inanimate thing and vice versa;
 - (c) a clause, schedule or annexure is a reference to a clause, schedule or annexure to the Agreement;
 - (d) a document includes a variation or replacement of that document;
 - (e) a statute includes its subordinate legislation and a modification, replacement or re-enactment of either;
 - (f) the Agreement includes a schedule or annexure to the Agreement;
 - (g) person includes a reference to:
 - (i) an individual, a body corporate, a trust, a partnership, a joint venture, an unincorporated body or other entity, whether or not it is a separate legal entity; and
 - (ii) the person’s personal representatives, successors and assigns;
 - (h) a thing, including a right, is a reference to either the whole thing or a part of the thing;
 - (i) Australia is to the Commonwealth of Australia, including any State or Territory of the same;
 - (j) currency is to Australian currency unless specified otherwise;
 - (k) time is to Australian Western Standard Time (time in Perth, Western Australia) unless specified otherwise;
 - (l) a day is a reference to the period which starts at midnight and ends 24 hours later;
 - (m) a right includes a benefit, remedy, discretion or power, and vice versa; and
 - (n) an obligation includes a duty, and vice versa.
- 26.5 The words “include”, “includes”, “including” and similar words are not words of limitation and do not restrict the interpretation of a word or phrase in the Agreement.
- 26.6 Part performance is not performance of an obligation.
- 26.7 A term, condition or warranty in the Agreement in favour of, or on the part of, two or more people benefits or binds them jointly and severally.
- 26.8 If the date on which a thing must be done is not a Business Day, then that thing must be done on the next Business Day.
- 26.9 A clause is not to be construed against a party on the grounds that the party is responsible for the preparation of the Agreement or that clause.
- 26.10 To the extent of any inconsistency between the documents, the following order of precedence applies; Variation Agreement, General Terms, and any Services Document.
- 26.11 A Special Condition prevails to the extent of any conflict or inconsistency with another provision of the Agreement.

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CTI means CTI Logistics Limited (ABN 69 008 778 925) and all its related entities including all subsidiary companies (Affiliates) listed below and any company which is not now, however is in the future, a related entity of CTI Logistics Limited (ABN 69 008 778 925). The registered address for CTI and subsidiary companies is 1 Drummond Place, West Perth, Western Australia 6005.

Registered name	ABN	Trading name(s)	Services
CTI Freight Systems Pty Ltd	66 009 472 628	CTI Warehousing & Distribution CTI Minerals & Energy Logistics	Warehousing, Distribution Supply base logistics, Quarantine services
CTI Transport Services Pty Ltd	44 009 238 439	CTI Warehousing & Distribution (SA)	Warehousing, Distribution
CTI Logistics (NSW) Pty Ltd	82 153 063 382	CTI Warehousing & Distribution (NSW)	Warehousing, Distribution
CTI Logistics (VIC) Pty Ltd	26 063 795 568	CTI Warehousing & Distribution (VIC)	Warehousing, Distribution
CTI Transport Systems Pty Ltd	76 009 139 315	CTI Taxi Trucks	Taxi Trucks, Fleet Management
CTI Freightlines Pty Ltd	22 009 291 310	CTI Freightlines Broome Freightlines	Freight, Linehaul
CTI Nationwide Logistics Pty Ltd	86 009 265 347	CTI Interstate	Interstate Freight, Linehaul
CTI Xpress Systems Pty Ltd	45 067 742 714	CTI Xpress Systems	Freight, Parcels, Taxi Trucks, Warehousing
Foxline Logistics Pty Ltd	96 086 449 952	Foxline Express Parcels Foxline Taxi Trucks	Freight, Parcels, Taxi Trucks
CTI Freight Management Pty Ltd	34 009 391 431	CTI Regional Freight, Stirling Freight Express, Bunbury Freight Services	Freight, Parcels, Taxi Trucks, Linehaul
CTI Couriers Pty Ltd	17 051 430 338	CTI Couriers	Couriers, Taxi Trucks
Action Logistics (WA) Pty Ltd	74 009 151 008	Action Couriers	Couriers, Taxi Trucks
CTI Security Systems Pty Ltd	72 009 302 032	Securus	Security Services (install, maintain)
CTI Security Services Pty Ltd	83 009 236 104	ARM Security	Security Monitoring
CTI Records Management Pty Ltd	71 083 767 999	CTI Records Management	Records Management (document storage)
G.M. Kane & Sons Pty Ltd	17 000 408 800	GMK Logistics	National Flooring Logistics

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CUSTOMER SIGNING PAGE

The Customer acknowledges having had the opportunity prior to the execution of this document to obtain independent legal advice as to its meaning and the implications of executing this document.

EXECUTED BY THE CUSTOMER named below by a representative who has authority to bind the Customer in accordance with its constitutional documents and the laws applying in the place of its incorporation:

Registered COMPANY NAME (APPLICANT)

COMPANY ABN / ACN

Authorised representative SIGNATURE

Authorised representative FULL NAME

Authorised representative TITLE

Signing DATE

IMPORTANT

PLEASE RETURN ENTIRE DOCUMENT TO ACTION COURIERS

CTI to complete:

Copy entered into CTI systems

Confirmed

Payment Guarantee signed

Yes No

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