Rex J Andrews Pty Ltd – Terms & Conditions of Cartage

1. Definitions

1.1 "Contract" means the terms and conditions contained herein, together with any Quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.

1.2 "RJA" means Rex J Andrews Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Rex J Andrews Pty Ltd.

1.3 "Sub-Contractor" means and includes:

(a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or

(b) any other person or entity with whom RJA may arrange for the carriage or storage of any Goods the subject of the Contract; or

(c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).

1.4 "Client" means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting RJA to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:

(a) if there is more than one Client, is a reference to each Client jointly and severally; and

(b) if the Client is a partnership, it shall bind each partner jointly and severally; and

(c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and

(d) includes the Client's executors, administrators, successors and permitted assigns.

1.5 "Consignee" means the person to whom the Goods are to be delivered by way of the Services.

1.6 "Goods" means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services, or to be stored by RJA.

1.7 "Services" means all services provided by RJA to the Client to facilitate the movement of Goods from one place to another by RJA as may be requested by the Client from time to time (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transhipping, or otherwise handling the Goods, or anything else done in relation thereto, including the offering of any advice or recommendations).

1.8 "Confidential Information" means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party's intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, "Personal Information" such as: name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.

1.9 "Price" means the Price payable for the Services (plus any GST where applicable) as agreed between RJA and the Client in accordance with clause 7 below.

1.10 "GST" means Goods and Services Tax as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. The Commonwealth Competition and Consumer Act 2010 (CCA) and Fair Trading Acts

2.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

2.3 Liability of RJA arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by RJA:

(a) rectifying the Services; or

(b) providing the Services again; or

(c) paying for the Services to be provided again.

2.4 If RJA is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.3 or the CCA, but is unable to do so, then RJA may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

3. Acceptance

3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts, Services provided by RJA.

3.2 In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.

3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.

3.4 These terms and conditions are to be read in conjunction with RJA's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by RJA to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

4. Electronic Transactions Act

4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (NSW & SA), the Electronic Transactions Act 2001 (ACT), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions (Northern Territory) Act 2000, section 10 of the Electronic Transactions Act 2011 (WA), section 14 of the Electronic Transactions (Queensland) Act 2001, section 7 of the Electronic Transactions Act 2000 (TAS), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

5. Errors and Omissions

5.1 The Client acknowledges and accepts that RJA shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):

(a) resulting from an inadvertent mistake made by RJA in the formation and/or administration of this Contract; and/or

(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by RJA in respect of the Services.

5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of RJA; the Client shall not be entitled to treat this Contract as repudiated nor render it invalid.

6. Change in Control

6.1 The Client shall give RJA not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, or business practice). The Client shall be liable for any loss incurred by RJA as a result of the Client's failure to comply with this clause.

7. Price and Payment

7.1 At RJA's sole discretion the Price shall be either;

(a) as indicated on invoices provided by RJA to the Client in respect of Services provided; or

(b) RJA's quoted Price (subject to clauses 7.2 and 7.3) which shall be binding upon RJA provided that the Client shall accept in writing RJA's quotation within seven (7) days.

7.2 RJA may, by giving notice to the Client, increase the Price of the Services to reflect any increase in the cost to RJA beyond the reasonable control of RJA (including, without limitation, foreign exchange fluctuations, or increases in taxes, fuel prices, customs duties, insurance premiums, or warehousing costs).

7.3 RJA may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.

7.4 At RJA's sole discretion, a deposit may be required.

7.5 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by RJA, which may be:

(a) by way of instalments in accordance with RJA's payment schedule;

(b) the date specified on any invoice or other form as being the date for payment; or

(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by RJA.

7.6 Payment may be made by electronic/on-line banking, or by any other method as agreed to between the Client and RJA.

7.7 RJA may in its discretion allocate any payment received from the Client towards any invoice that RJA determines and may do so at the time of receipt or at any time afterwards. On any default by the Client RJA may re-allocate any payments previously received and allocated. In the absence of any payment allocation by RJA, payment will be deemed to be allocated in such manner as preserves the maximum value of RJA's Purchase Money Security Interest (as defined in the PPSA) in the Goods.

7.8 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by RJA nor to withhold payment of any invoice because part of that invoice is in dispute.

7.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to RJA an amount equal to any GST RJA must pay for any provision of Services by RJA under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. Freight Forwarding

8.1 Except to the extent that any of the Services shall be actually performed by RJA, RJA shall act as a forwarding agent only. RJA shall be entitled, to enter into Contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of the Goods by any person at any place and for any length of time, and for such other matters as in the opinion of RJA may be necessary or desirable to the performance of the Services. The Client hereby appoints RJA the agent of the Client for the purpose of entering into any Contract, upon such terms and conditions, as RJA may in its absolute discretion think fit. The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which RJA may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, RJA, or any other person.

9. RJA is not a Common Carrier

9.1 RJA is not a Common Carrier and will accept no liability as such. All Goods are carried or transported, and all storage and other services are performed, by RJA subject only to these terms and conditions and RJA reserves the right to refuse the carriage or transport of Goods for any person, corporation or body, and the carriage or transport of any class of Goods, at its discretion.

10. Client-Packed Containers

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

(a) the manner in which the container has been stowed; or

(b) the unsuitability of the Goods for carriage or storage in containers; or

(c) the unsuitability or defective condition of the container.

11. Nomination of Sub-Contractor

11.1 The Client hereby authorises RJA (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as RJA. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled RJA shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

12. RJA's Servants or Agents

12.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of RJA which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify RJA and any such servant or agent against all consequences thereof.

13. Method of Transport and Route Deviation

13.1 If the Client instructs RJA to use a particular method of carriage whether by road, rail, sea or air RJA will give priority to the method designated but if that method cannot conveniently be adopted by RJA the Client shall be deemed to authorise RJA to carry or have the Goods carried by another method or methods.

13.2 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of RJA be deemed reasonable or necessary in the circumstances.

14. Charges Earned and Demurrage

14.1 RJA's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

14.2 The Client will be and shall remain responsible to RJA for all its proper charges incurred for any reason. A charge may be made by RJA in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of RJA. Such permissible delay period shall commence upon RJA reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

15. Dangerous Goods

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

16. Client's Responsibility and Consignment Note

16.1 The Client expressly warrants, represents, confirms and acknowledges that:

(a) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Client accepts these conditions of the Contract for the Consignee as well as for all other persons on whose behalf the Client is acting;

(b) the Goods are fit for carriage, comply with any applicable legal requirements relating to the nature, condition and/or packaging of the Goods (and that the expenses of complying with such requirements or any other lawful requirements of any authority, other body or the company shall be at the Client's cost);

(c) unless specified otherwise in writing, RJA has relied upon the Client's skill in properly and safely packing, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those relating to the packing, carriage, storage, customs clearance, delivery of other services in respect of the Goods, etc.) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations;

(d) the person delivering any Goods to RJA for carriage or forwarding is authorised to sign the consignment note for the Client;

(e) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

17. Delivery

17.1 RJA is authorised to deliver the Goods at the address given to RJA by the Client for that purpose and it is expressly agreed that RJA shall be taken to have delivered the Goods in accordance with this Contract if at that address RJA obtains from any person a receipt or a signed delivery docket for the Goods.

17.2 RJA 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 Contract.

17.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.

17.4 The failure of RJA to deliver shall not entitle either party to treat this Contract as repudiated.

17.5 Any time specified by RJA for the delivery of Goods is an estimate only and RJA will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that RJA is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then RJA shall be entitled to charge the Client any additional costs incurred by RJA as a direct consequence of any resultant delay or rescheduling of the delivery.

18. Loss or Damage

18.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

(a) RJA shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of RJA or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and

(b) the Client will indemnify RJA against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by RJA in connection with the Goods.

19. Insurance

19.1 The Client acknowledges that:

(a) the Goods are carried and stored at the Client's sole risk and not at the risk of RJA; and

(b) RJA is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and

(c) under no circumstances will RJA be under any liability with respect to the arranging of any such insurance and no claim will be made against RJA for failure to arrange or ensure that the Goods are insured adequately or at all.

20. Conditions of Storage

20.1 RJA will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from RJA, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case RJA will be entitled to make a reasonable additional charge.

20.2 RJA is authorised to remove the goods from one warehouse to another without cost to the Client. RJA will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).

20.3 The Client is entitled upon giving RJA reasonable notice to inspect the Goods in store but a reasonable charge may be made by RJA for this service.

20.4 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving RJA not less than five (5) working days' notice. If the Client gives RJA less than the required notice RJA will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.

21. Claims

21.1 Notwithstanding clauses 18 and 19 in the event that the Client believes that they have any claim against RJA then they must lodge any notice of claim for consideration and determination by RJA within seven (7) days of the date of delivery, or for non delivery within seven (7) days of the anticipated date of delivery or the removal or destruction of the Goods.

21.2 The failure to notify a claim within the time limits under clause 21.1 is evidence of satisfactory performance by RJA of its obligations.

22. Default and Consequences of Default

22.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at RJA's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

22.2 If the Client owes RJA any money the Client shall indemnify RJA from and against all costs and disbursements incurred by RJA in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, RJA's contract default fees, and bank dishonour fees).

22.3 Further to any other rights or remedies RJA may have under this Contract, if the Client has made payment to RJA, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by RJA under this clause 22 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.

22.4 Without prejudice to RJA's other remedies at law RJA shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to RJA shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to RJA becomes overdue, or in RJA's opinion the Client will be unable to meet its payments as they fall due; or

(b) the Client has exceeded any applicable credit limit provided by RJA;

(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or

(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

23. Carrier's Lien

23.1 RJA shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of RJA (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to RJA (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and RJA shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. RJA shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.

23.2 Notwithstanding clause 23.1 nothing shall prejudice RJA's rights to use any of RJA's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 23.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

24. Personal Property Securities Act 2009 ("PPSA")

24.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

24.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:

(a) all Goods being transported, carried or handled by RJA, over which RJA invokes a lien; and

(b) all Services that will be supplied in the future by RJA to the Client; and

(c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to RJA for Services – that have previously been provided and that will be provided in the future by RJA to the Client.

24.3 The Client undertakes to:

(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which RJA may reasonably require to:

(i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;

(ii) register any other document required to be registered by the PPSA; or

(iii) correct a defect in a statement referred to in clause 24.3(a)(i) or 24.3(a)(ii);

(b) indemnify, and upon demand reimburse, RJA for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;

(c) not register a financing change statement in respect of a security interest without the prior written consent of RJA;

(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of RJA.

24.4 RJA and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

24.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

24.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

24.7 Unless otherwise agreed to in writing by RJA, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.

24.8 The Client shall unconditionally ratify any actions taken by RJA under clauses 24.3 to 24.5.

24.9 Subject to any express provisions to the contrary (including those contained in this clause 24), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

25. Security and Charge

25.1 In consideration of RJA agreeing to supply Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

25.2 The Client indemnifies RJA from and against all RJA's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising RJA's rights under this clause.

25.3 The Client irrevocably appoints RJA and each director of RJA as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 25 including, but not limited to, signing any document on the Client's behalf.

26. Confidentiality

26.1 Both parties shall not use, divulge or communicate to any person any Confidential Information, and shall exercise good and proper judgement and discretion to limit disclosure of any Confidential Information (or any part of it) to its contractors, employees, agents and customers, concerning this Contract between the Client and RJA, unless such use or disclosure is necessary for performance of their obligations under this Contract.

27. Privacy Policy

27.1 All emails, documents, images or other recorded information held or used by RJA is Personal Information, as defined and referred to in clause 27.3, and therefore considered Confidential Information. RJA acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). RJA acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Clients Personal Information, held by RJA that may result in serious harm to the Client, RJA will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.

27.2 Notwithstanding clause 27.1, privacy limitations will extend to RJA in respect of Cookies where transactions for purchases/orders transpire directly from RJA's website. RJA agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:

(a) IP address, browser, email client type and other similar details;

(b) tracking website usage and traffic; and

(c) reports are available to RJA when RJA sends an email to the Client, so RJA may collect and review that information ("collectively Personal Information")

In order to enable / disable the collection of Personal Information by way of Cookies, the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable, provided on the website prior to proceeding with a purchase/order via RJA's website.

27.3 The Client agrees for RJA to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by RJA.

27.4 The Client agrees that RJA may exchange information about the Client with those credit providers and with related body corporates for the following purposes:

(a) to assess an application by the Client; and/or

(b) to notify other credit providers of a default by the Client; and/or

(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or

(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.

27.5 The Client consents to RJA being given a consumer credit report to collect overdue payment on commercial credit.

27.6 The Client agrees that personal credit information provided may be used and retained by RJA for the following purposes (and for other agreed purposes or required by):

(a) the provision of Goods; and/or

(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or

(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or

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

27.7 RJA may give information about the Client to a CRB for the following purposes:

(a) to obtain a consumer credit report;

(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

27.8 The information given to the CRB may include:

(a) Personal Information as outlined in 27.3 above;

(b) name of the credit provider and that RJA is a current credit provider to the Client;

(c) whether the credit provider is a licensee;

(d) type of consumer credit;

(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);

(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and RJA has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);

(g) information that, in the opinion of RJA, the Client has committed a serious credit infringement;

(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

27.9 The Client shall have the right to request (by e-mail) from RJA:

(a) a copy of the Personal Information about the Client retained by RJA and the right to request that RJA correct any incorrect Personal Information; and

(b) that RJA does not disclose any Personal Information about the Client for the purpose of direct marketing.

27.10 RJA will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.

27.11 The Client can make a privacy complaint by contacting RJA via e-mail. RJA will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

28. Other Applicable Legislation

28.1 At RJA's sole discretion, if there are any disputes or claims for unpaid Goods and/or Services then the provisions of the Building and Construction Industry Security of Payment Act 2002 (Victoria), Building and Construction Industry Security of Payments Act 1999 (New South Wales), Construction Contracts Act 2004 (Western Australia), Building Industry Fairness (Security of Payment) Act 2017 (Queensland), Construction Contracts (Security of Payments) Act (Northern Territory of Australia), Building and Construction Industry Security of Payments Act 2009 (Tasmania), Building and Construction Industry Security of Payments Act 2009 (South Australia) and Building and Construction Industry (Security of Payment) Act 2009 (Australian Capital Territory) may apply.

28.2 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the any of the Acts listed in clause 28.1 (each as applicable), except to the extent permitted by the Act where applicable.

29. Cancellation

29.1 Without prejudice to any other remedies RJA may have, if at any time the Client is in breach of any obligation (including those relating to payment) RJA may suspend or terminate the provision of Services to the Client and any of its other obligations under the terms and conditions. RJA will not be liable to the Client for any loss or damage the Client suffers because RJA exercised its rights under this clause.

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

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

30. Trusts

30.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust ("Trust") then whether or not RJA may have notice of the Trust, the Client covenants with RJA as follows:

(a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;

(b) the Client has full and complete power and authority under the Trust to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client 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) the Client will not without consent in writing of RJA (RJA will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:

(i) the removal, replacement or retirement of the Client 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.

31. General

31.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

31.2 These terms and conditions and any contract to which they apply shall be governed by the laws of the state and/or territory in which the Services were provided by RJA to the Client however, in the event of a dispute that deems necessary for the matter to be referred to a Magistrates or higher Court then jurisdiction will be subject to the Sydney Courts of New South Wales in which RJA has its principal place of business.

31.3 Subject to clause 2, RJA shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by RJA of these terms and conditions (alternatively RJA's liability shall be limited to damages which under no circumstances shall exceed the Price).

31.4 RJA may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent.

31.5 The Client cannot licence or assign without the written approval of RJA.

31.6 RJA may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of RJA's Sub-Contractors without the authority of RJA.

31.7 The Client agrees that RJA may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for RJA to provide Goods to the Client.

31.8 Where RJA is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of RJA, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this Contract and RJA gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of RJA.

31.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.

Please note that a larger print version of these terms and conditions is available from RJA on request.

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