

**Clique Logistics Pty Ltd ACN 165 258 435**

**58B Greenhill Road, Wayville, SA 5034 Telephone: (08) 8443 8213**



## **Terms and Conditions**

## CLIQUE LOGISTICS TERMS AND CONDITIONS OF TRADE

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

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

**Subcontracting** – We may subcontract the performance of the services and our subcontractors will have the benefit of these terms and conditions. When subcontracting we will select the liability level that produces the lowest rates.

**Liability Exclusions - Carriage of Goods** – In respect of international carriage of goods, under clause 10 liability is limited to the maximum extent permitted under international conventions. It is likely that if goods are damaged, the liability limits will not fully cover the loss. It is strongly recommended that you obtain insurance to cover loss or damage to the goods.

**Liability Exclusions – General** – Clause 11 contains a number of clauses that limit our liability more generally in respect of the services.

**Time limit for claims** – Clauses 11.11 – 11.12 set out strict time limits on making claims against us. You should notify us immediately if you wish to make a claim against us.

**Indemnities** – Clause 12 sets out a number of instances where you are required to pay us for loss or damage that we incur in providing the services. Sometimes these costs will not be your fault, such as if a Government inspection delays the release of the goods and storage charges are incurred.

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

**Security Interest** – Under clause 14 you grant us a registerable security interest in the goods for payment of all amounts you owe us under this contract.

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

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

### 1. Definitions

**Administration Costs** means Clique Logistics' invoice management costs of AUD100 per notice for invoices unpaid after fourteen (14) days.

**Agreement** means these Terms and Conditions, together with the Freight Safe Terms and Conditions, any Service Level Agreement, Authority, quotation and Customer credit application.

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

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

**Carrier** means any party involved in the Carriage of Goods whether by airfreight, sea freight or land transport

**Clique Logistics** means Clique Logistics Pty Ltd ACN 165 258 435 and its nominees, agents and employees.

**Convention** means any applicable international convention, including the national implementation of that convention, that applies to the international transport of goods including without limitation the provisions of the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25th August, 1924 (and includes the amendments by the Protocols signed at Brussels in 1968 and 1979, but only if the amendments are compulsorily applicable to this agreement and nothing in this agreement shall be construed as contractually applying those

amendment), the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on 28 May 1999 and the Convention for the Unification of Certain Rules Relating to International Carriage by Air, signed at Warsaw, 12 October 1929; that Convention as amended at The Hague on 28 September 1955; that Convention as amended at The Hague 1955 and by Montreal Protocol No. 1, 2, or 4 (1975) as the case may be.

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

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

**Container** means any container, flexitank, trailer, transportable tank, flat, pallet or any equipment used to carry or consolidate goods and any equipment of or connected thereto.

**CoR Laws** means any laws in relation to safety concerning the carriage of goods by road, including as to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness and maintenance and including the HVNL.

**Customer** means:

- (a) Where this document is signed, the customer listed in the signing section of this document;
- (b) Where this document is not signed, but there is an Authority or quotation, the customer named in the Authority or quotation.
- (c) Where this document is not signed and there is no Authority or quotation, the person instructing Clique Logistics to provide the Services.

If the Customer consists of more than one person, each person will be jointly and severally bound by these Terms and Conditions.

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

**Dispute** means any dispute or disagreement arising out of or in relation to this Agreement, including as to its formation, terms, performance, non-performance or breach, but does not include its termination or purported termination.

**Event of Default** means any of the following, or any analogous, events:

- (a) the Customer fails to pay any amount due and payable under any this Agreement when the amount is due and payable;
- (b) the Customer fails to comply with any obligations under any this Agreement;
- (c) any representation, warranty or statement by the Customer in connection with this Agreement is untrue or misleading (whether by omission or otherwise) or fraudulent; or
- (d) the Customer becomes subject to an Insolvency Event

**Fees** means Clique Logistics' fees for the Services as set out in any quotation, rates schedule, tariff or as otherwise notified to the Customer, disbursements, taxes and any other amounts payable under these Terms and Conditions.

**Freight Safe Terms and Condition** means the terms and conditions at <https://cliquelogistics.com.au/wp-content/uploads/2024/09/Clique-Logistics-FreightSafe-Warranty-Terms-Conditions-23102023.pdf> as amended from time to time by Clique Logistics.

**Freight Safe Warranty** means the warranty provided by Clique Logistics in respect of domestic freight only

and as set out in the Freight Safe Terms and Conditions.

**Force Majeure Event** means anything outside of the reasonable control of a party including, without limitation, fire, flood, drought, storm (or other adverse weather conditions), lightning, act of God, peril of sea or air, explosion, radioactive or chemical contamination, sabotage, accident, embargo or trade restriction, blockade, labour dispute, strike or shortage, civil commotion, curfew, act of war, actual or threatened act of terrorism, pressure waves caused by aircraft or other devices, meteorites, epidemic, pandemic, the act of an Authority or Law to contain a pandemic or epidemic, plague, quarantine.

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

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

**HVNL** means any Commonwealth or State law or regulation relating to chain of responsibility obligations, including laws and regulations relating to driver fatigue, fatigue management, vehicle mass and dimension, vehicle maintenance, loading requirements (including load restraint), speed management, towing and coupling requirements, vehicle permits, transport documentation for goods, container weight declarations and dangerous goods and any other laws regulating the road transport of goods by heavy vehicles including means the Heavy Vehicle National Law and Regulations and any other laws of any State/Territory which give effect to any of them, *Road Traffic (Administration) Act 2008* (WA) and *Road Traffic (Vehicles) Act 2012* (WA) and any similar laws in any State/Territory and any replacement or modification of any of the foregoing.

**Insolvency Event** means any of the following, or any analogous, events:

- (a) any step is taken to appoint an administrator, receiver, trustee, provisional liquidator or liquidator of the whole or any part of the Customer's assets, operations or business;
- (b) any person, or agent of a person, who holds any security interest (whether or not under the PPSA) takes possession of any of the Customer's property (including but not limited to seizing the Customer's property within the meaning of section 123 of the PPSA); or
- (c) a court or other Authority enforces any judgment or order against the Customer for the payment of money or the recovery of any property;

**Law** means any law, regulation, rule or Convention.

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

**Manifested** means Goods listed in a manifest by Clique Logistics or the Carrier.

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

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

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

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

**Services** means the work performed by Clique Logistics in relation to the Goods, whether as agent or principal, including facilitating the import, export, transport, or storage of the Goods; and any ancillary acts for those purposes, including preparing any documentation or providing any information to a Government Authority.

**Service Level Agreement** means any agreement entered into between the parties called a Service Level Agreement or which otherwise govern service levels in respect of the Services.

**Subcontractor** means a third party (and their employees, agents and contractors) engaged to provide all or part of the Services.

**Terms and Conditions** means these terms and conditions.

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

**Transport Activities** has the meaning given to it in the HVNL.

**Transport and Journey Documentation** means any transport Documentation or Journey Documentation as defined in the HVNL.

## **2. General**

- 2.1 The Customer acknowledges and agrees that it has had the opportunity to receive and review these Terms and Conditions.
- 2.2 Clique Logistics is not a common carrier. Clique Logistics will not be liable as a common carrier.
- 2.3 These Terms and Conditions take priority over and will prevail to the extent of any inconsistency with the Authority, any credit application made by the Customer, the Customer's terms and conditions or other document issued by the Customer. Any terms and conditions set out in any Transport Document issued by Clique Logistics (including by its agents) take priority over these Terms and Conditions.
- 2.4 The Agreement is governed by the laws of South Australia, Australia. Clique Logistics and the Customer submit to the jurisdiction of the courts of South Australia and of the Federal Court of Australia.
- 2.5 A variation of these Terms and Conditions will only be valid if in writing and signed by each party or signed by a person with the authority to bind each party.
- 2.6 Neither Party may assign its rights and obligations under the Agreement without the other Party's consent with such consent not to be unreasonably withheld.
- 2.7 Any notices under these Terms and Conditions must be in English and in writing.
- 2.8 All rights, indemnities and limitations of liability contained in these Terms and Conditions will have their full force and effect, despite any breach of term or condition of these Terms and Conditions, the Agreement, or any collateral agreement by a Party or the expiry or termination of the Authority.
- 2.9 Without limiting the effect of clause 2.8, clauses 2.6, 2.13, 4.2, 6.14, 6.16, 6.19, 7.3, 7.4 11, 12, 15, 16, 17 and 18 of these Terms and Conditions will survive termination.
- 2.10 If a condition or part of a condition of this Agreement is unenforceable, it must be severed from and does not affect the rest of the Agreement.
- 2.11 A Party is not bound by any waiver, discharge or release of a condition or any agreement which purports to change this Agreement, unless it is in writing and signed by or for that Party.
- 2.12 A reference in this Agreement to any law includes any statutory modification, substitution or re-enactment of it.
- 2.13 If the Customer is a trustee of a trust, the Customer:
  - (a) will provide Clique Logistics with a copy of the trust deed and any documents amending that trust deed;
  - (b) will notify Clique Logistics of any change in trustee of the trust;
  - (c) agrees that these Terms and Conditions apply to, and all requests for Services placed by the Customer with Clique Logistics are placed by, the Customer in its personal capacity and as trustee of the trust;

- (d) warrants it has authority to enter these Terms and Conditions and to grant security, will preserve its right of indemnity, and will not without Clique Logistics' consent resign or be replaced as sole trustee.

- 2.14 Any party that enters this Agreement as a disclosed or undisclosed agent agrees to be joint and severally liable for the debts, liabilities and obligations of the principal under this Agreement.
- 2.15 This Agreement constitutes the entire understanding and agreement between the Parties regarding the Services. Each Party agrees that it did not rely on any representation, promise, warranty or condition made by the other Party that is not expressly part of this Agreement or any associated quotation for Services.

### **3. Services**

- 3.1 Services are provided by Clique Logistics subject to these Terms and Conditions.
- 3.2 Without limitation to other methods of acceptance, by instructing Clique Logistics to provide the Services the Customer agrees to be bound by the Terms and Conditions.
- 3.3 The Goods are at the risk of the Customer at all times.
- 3.4 Clique Logistics may agree or refuse to provide Services at its reasonable discretion. Clique Logistics accepts Service requests only when confirmed in writing by an authorised representative by Clique Logistics. The cancellation of accepted orders by the Customer will incur cancellation costs.
- 3.5 Quoted times and dates for the movement of Goods are always subject to equipment and vessel/aircraft space availability. Availability may be impacted by decisions of Carriers and cannot be controlled by Clique Logistics. Delivery times are estimates only. The Customer agrees to accept delivery even if delayed.
- 3.6 Clique Logistics is authorised by the Customer to choose the method for performance of the Services at Clique Logistics' reasonable discretion. Clique Logistics may deliver in instalments. Partial delivery does not allow cancellation or non-payment.
- 3.7 The Customer authorises Clique Logistics to open any package containing Goods and do any other thing in order to inspect or weigh the Goods as part of performing the Services.
- 3.8 The Customer agrees that:
  - (a) the value of the Goods will not be declared or inserted into a Transport Document or contract for the purpose of extending a Carrier's liability unless the Customer provides express written instructions to Clique Logistics to do so, and if required, the Carrier agrees;
  - (b) where a Subcontractor's or Carrier's charges may be determined by the extent of liability assumed by the Subcontractor or Carrier, no declaration of value will be made for the purpose of extending the liability of the Subcontractor or Carrier, and the Goods will be dealt with at the Customer's risk for minimum charges, unless the Customer provides written instructions to the contrary to Clique Logistics;
  - (c) Clique Logistics reserves the right to not make any declaration or take any action in respect of the Customer's Goods unless the Customer has provided Clique Logistics with sufficient notice, written instructions and the documents necessary to take that action in relation to those Goods.
- 3.9 The Customer must notify Clique Logistics in writing if Goods are, or may be, Dangerous Goods. If Clique Logistics agrees to transport such Goods they must be classified, packed, marked, labelled and documented in accordance with all Applicable Laws and regulations (including the International Maritime Dangerous Goods Code and International Air Transport Association Dangerous Goods Regulations for international freight).
- 3.10 Clique Logistics may deem that certain Goods are Dangerous Goods provided that there are

reasonable grounds for doing so.

- 3.11 If Dangerous Goods are undeclared, or even if declared, pose a risk to people or property, Clique Logistics may in its reasonable discretion unload, store, neutralise, destroy or otherwise deal with any Goods, without notice or compensation to the Customer. Where reasonably possible Clique Logistics will contact the Customer and try to agree on the action to be taken in respect of the Dangerous Goods.
- 3.12 Clique Logistics' delivery obligations are satisfied if Clique Logistics delivers the Goods to the delivery address instructed by the Customer and a person at that address provides a receipt or signs a delivery docket, or if authorised by the Customer, the Goods are left at the delivery address without obtaining a receipt or signed delivery docket. Proof of delivery is available on request. Where applicable, Clique Logistics will provide the Customer with notice of the non-delivery.
- 3.13 If a person at the delivery address cannot or refuses to take delivery of the Goods, or the Goods cannot be delivered for any other reason, the Customer authorises Clique Logistics to deal with the Goods at Clique Logistics' reasonable discretion, including storing, disposing of, or returning the Goods. Clique Logistics will reasonably attempt to give notice to the Customer before taking any action that may adversely affect the Customer.
- 3.14 If Clique Logistics collects Goods from a third party at the Customer's request, any receipt is a record of collection only and not proof of quality or condition.
- 3.15 The Carrier is not obligated to follow instructions to collect Fees from a third party. If Fees are billed to a non-account third party, non-account rates apply. The Customer remains liable if the third party does not pay.
- 3.16 The Customer must pay demurrage fees in accordance with any quotation and for any unreasonable delay returning Clique Logistics' vehicle, trailer, container, or equipment.
- 3.17 The Goods may be stored at any place in the reasonable discretion of Clique Logistics at the Customers' expense. Where reasonably possible, Clique Logistics will provide the Customer with the expected costs of storage and the storage location.
- 3.18 If Clique Logistics stores the Goods, and no further Services are to be performed, or the Customer has breached the Agreement, Clique Logistics may require the Customer to remove the Goods from storage by giving reasonable notice delivered to an address provided by the Customer to Clique Logistics.
- 3.19 The Customer appoints Clique Logistics with the power and authority to take any reasonable action and execute any document in the name of and on behalf of the Customer as required for Clique Logistics to provide the Services.

#### **4. Customer Obligations**

- 4.1 The Customer will provide Clique Logistics with all reasonable assistance, information and documentation necessary to enable Clique Logistics to provide the Services, and punctually comply with any Law or request from a Government Authority. Without limitation, this includes verifying the weight of any packed Containers and providing the verified weight prior to any verified gross mass cut off time / date.
- 4.2 The Customer will keep confidential Clique Logistics' Fees or charges and any waiver, discount, release or indulgence provided by Clique Logistics in relation to the provision of the Services.
- 4.3 The Customer will ensure, so far as reasonably practicable, the safety of its Transport Activities, avoid conduct that risks CoR breaches, and implement policies, training and monitoring to eliminate or minimise risk.
- 4.4 The Customer must comply with Clique Logistics' CoR requirements, keep all required Transport/Journey records, promptly notify suspected or actual CoR breaches or regulator actions, and provide information requested for audits.

- 4.5 If the Customer has breached Clique Logistics' CoR Requirements, Clique Logistics may cease or suspend Services until remedied, and/or terminate by notice.

## **5. Instructions**

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

## **6. Fees**

- 6.1 In respect of the Carriage of Goods, Clique Logistics' Fees are earned on the earlier of the Goods being Manifested, the commencement of the performance of the Services (or part thereof) or when the Goods are delivered to Clique Logistics or its subcontractors. All other Fees are earned as the Service is performed.
- 6.2 Clique Logistics' Fees may include any disbursements and other amounts that Clique Logistics is required to pay third parties in connection with the Services. Clique Logistics at its reasonable discretion may vary its Fees if the amount of any such disbursements change. Where reasonably practicable, Clique Logistics will provide notice of any material change in the Fees.
- 6.3 The Customer will be liable for any additional international freight charges such as duties, taxes, clearance, quarantine, port demurrage, storage, detention re-delivery and fines unless caused by Clique Logistics' breach or gross negligence.
- 6.4 Subject to any payment terms agreed in writing:
- (a) where the invoice for customs duty, GST and other taxes (Taxes) is greater than \$1,500 Clique Logistics will invoice the Customer the amount and the Taxes will not be paid by Clique Logistics to the Government until that invoice is paid by the Customer. The Customer must pay the invoice immediately;
  - (b) where the Taxes are \$1,500 or less, Clique Logistics at its discretion will make payment to the Government and invoice the amount to Customer together with the freight invoice;
  - (c) Clique Logistics' invoices for all other services and costs must be paid within 14 days of an invoice (the Due Date).

Time is of the essence in respect of the Customer's obligations to make any payment to Clique Logistics in connection with this Agreement.

- 6.5 Clique Logistics at its discretion may determine its Fees, including by weight, measurement or value, including by volumetric conversion. On request Clique Logistics will inform the Customer of the basis upon which its Fees are determined.
- 6.6 Clique Logistics may re-weigh, re-measure or re-value the Goods at any time, and amend its Fees at its reasonable discretion if the Fees were based on incorrect information. Clique Logistics will provide notice of any change in its Fees.
- 6.7 Any information contained in a quotation provided by Clique Logistics in relation to the Fees applies to the specific item, weight and volume quoted, designated Services and standard of Services, and is only valid until the earlier of 14 days after being provided, the quote being withdrawn or the quote



expiring. Unless expressly stated otherwise, the quotation does not include disbursements and any Services for which rates have not been quoted or fixed.

- 6.8 A quotation may change based on changes to freight, insurance, warehousing, fees, and any other charges. Quotations will be confirmed by Clique Logistics if the Customer wishes to proceed with the quoted Service.
- 6.9 Fees due to Clique Logistics are payable in Australian dollars unless otherwise agreed. Clique Logistics is entitled to charge a currency conversion fee when it receives payment in a currency other than Australian dollars.
- 6.10 Unless otherwise stated, Clique Logistics' Fees are exclusive of goods and services tax.
- 6.11 The Customer agrees that Clique Logistics may receive and retain for its own account remuneration, allowances, brokerages and commissions from shipping and forwarding agents, shipping lines, insurance brokers, airlines and any other persons with whom Clique Logistics deals or that are payments of the nature commonly received by freight forwarders and that Clique Logistics is not required to disclose the receipt and retention of such amounts to the Customer, even, without limitation, if acting as agent for the Customer.
- 6.12 The Customer agrees that Clique Logistics may charge its fees and/or recover its administrative costs by way of increasing the amount charged to it by third parties, such as disbursements, when invoicing those amounts to the Customer and that there is no obligation on Clique Logistics to separately show this portion of the fee on any invoice.
- 6.13 The Customer remains responsible for the payment of Fees:
- (a) even where an arrangement is made for the Fees to be paid by another person;
  - (b) whether or not the Goods are delivered or damaged or the Services performed as instructed. However, the payment of Fees will not be taken as a waiver of any rights of the Customer.
- 6.14 If the Fees are not paid in full within 7 days of the Due Date then, without limitation to its rights, Clique Logistics may charge interest on the late payment at the Reserve Bank of Australia cash rate plus 2% per annum, calculated daily and compounded monthly. Administration Costs may also be recovered on overdue Fees.
- 6.15 The Customer may allocate monies received under this Agreement to any debts as they choose, regardless of Customer directions.
- 6.16 A Party will not defer, set-off or withhold payment of any amount payable to the other Party by reason of any claim the Party has, or claims it has, against the other Party.
- 6.17 Any credit terms provided by Clique Logistics may be terminated by Clique Logistics with immediate effect if the Customer does not pay the Fees by the Due Date or otherwise materially breaches this agreement.
- 6.18 The Customer will pay any credit card surcharge and will reimburse any dishonour fees on a full indemnity basis.
- 6.19 The Customer indemnifies Clique Logistics for any costs or expenses it reasonably incurs in recovering any unpaid Fees.

## **7. Subcontractors and agency**

- 7.1 The Customer authorises Clique Logistics to:
- (a) subcontract all or part of the Services to a Subcontractor; and / or
  - (b) as the agent of the Customer, contract with a third party service provider on behalf of the Customer on ordinary commercial terms, including terms that limit or exclude the liability of the third party service provider.

- 7.2 The Customer authorises a Subcontractor to subcontract all or part of the Services.
- 7.3 All exclusions or limitations on the liability of Clique Logistics in these Terms and Conditions extend to protect:
- (a) all Subcontractors;
  - (b) the agents, employees and servants of any Subcontractor or Clique Logistics; and
  - (c) any person engaged to provide all or part of the Services.
- 7.4 Other than a claim against Clique Logistics, no Claim shall be made by the Customer or any other person, against any Subcontractor in connection with the Services or Goods.
- 7.5 For the purpose of clauses 7.3 and 7.4 Clique Logistics acts as trustee on behalf of and for the benefit of any Subcontractor, and to this extent each Subcontractor is deemed to be a party to this Agreement.

## **8. Containers**

- 8.1 The Customer must return Containers to their owner or agent.
- 8.2 If Clique Logistics provides a Container, the Customer must inspect it before packing and return it clean and undamaged to the specified location by the specified date. Failure to do so will make the Customer responsible for any costs or expenses incurred by Clique Logistics.
- 8.3 If the Customer or its agent packs or stows Goods into a Container, Clique Logistics is not responsible for any claims, damages, or losses caused by unsafe or improper packing or stowage.

## **9. Intellectual Property**

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

## **10. Warranties**

- 10.1 The Customer (on behalf of itself and the Owner) warrants to Clique Logistics that:
- (a) it is the owner of the Goods, or is the authorised agent of the owner of the Goods and is authorised to complete and sign documentation related to the Goods and the Services;
  - (b) it enters into the Agreement on its own behalf, or in its capacity as the authorised agent of the owner of the Goods;
  - (c) it has complied with all Laws relating to the Goods, including the nature, condition, packaging, handling, storage and Carriage of the Goods;
  - (d) in engaging the Services from Clique Logistics, it will not procure Clique Logistics to perform any act in breach of any Laws including any trade sanctions;
  - (e) it will observe all Laws and requirements of Government Authorities;
  - (f) all information and documentation provided by or on behalf of the Customer to Clique Logistics is accurate and complete, and it has not omitted to provide any requested or material information;
  - (g) other than where Clique Logistics is responsible for packing the Goods, the Goods are packed to endure the ordinary risks of handling, storage and the Services, having regard to the nature of the Goods including without limitation, that in respect of temperature controlled goods, the Container has been properly pre-cooled or pre-heated and the Container's thermostatic controls have been correctly set;

- (h) the Goods are not Dangerous Goods, unless Clique Logistics has agreed in writing to provide the Services in respect of those particular Dangerous Goods, and in which case, warrants that it has made full disclosure of Dangerous Goods and such Goods are distinctly marked; and
- (i) all Goods are adequately and accurately marked, labelled or branded.

## 11. Liability

**The below clauses significantly limit the liability of Clique Logistics. The Customer is recommended to obtain insurance in respect of any loss of damage to the Goods. Please contact Clique Logistics if you need assistance arranging insurance.**

- 11.1 The below terms do not limit Clique Logistics' liability under Clique Logistics' Freight Safe Warranty (if applicable). Please contact Clique Logistics for more details about the Freight Safe Warranty.
- 11.2 Despite any other clause in these Terms and Conditions, where the Services involve the international Carriage of Goods, Clique Logistics limits its liability in respect of loss or damage to Goods, or delay in the delivery of the Goods, to the maximum extent permitted under any Convention (or national enabling legislation) applying to relevant Carriage of the Goods.
- 11.3 Clique Logistics will exercise due care and skill in the selection of third party Carriers and service providers. However, Clique Logistics excludes all liability for loss, damage or delay to the Goods that occurs while the Goods are in the physical custody of a third party, including a Subcontractor, unless such loss or damage was caused by Clique Logistics or could have been prevented by the exercise of due care and skill by Clique Logistics.
- 11.4 Subject to the application of any mandatory legislation, Clique Logistics will not be liable in any circumstances (whether in tort, contract, bailment or otherwise) for loss, damage or mis-delivery of the Goods unless it is demonstrated that such loss, damage or mis-delivery was due to the negligence, breach or wilful default of Clique Logistics.
- 11.5 Neither party is liable for Consequential Loss suffered by the other Party unless the Party had actual knowledge that such Consequential Loss would be incurred.
- 11.6 Clique Logistics is not liable for any Loss or delay caused by a Force Majeure Event, the Customer's act or omissions, inherent defects of the Goods, compliance with any Law or compliance with the orders of any Government Authority.
- 11.7 Clique Logistics excludes from this Agreement all conditions, warranties, terms and consumer guarantees implied by Laws, general law or custom except any the exclusion of which would contravene any Laws or cause this condition to be void (**Non-Excludable Condition**).
- 11.8 To the extent permitted by Law, Clique Logistics' liability for any breach of a Non-Excludable Condition is limited, at Clique Logistics' option, to supplying the particular Services again, or the cost of supplying the particular Services again.
- 11.9 Without limiting clause 11.2, where the liability of Clique Logistics is not limited or fully excluded by a Convention, the Agreement, Law or otherwise, the liability of Clique Logistics is limited to the lesser of:
  - (a) The actual loss or damage suffered by the Customer;
  - (b) Australian \$1,000,
  - (c) the value of the Goods at the time the Goods were received by Clique Logistics.
- 11.10 The liability limits in clause 11.9 do not apply to the extent that the Loss or damage results from any act or omission which constitutes fraud, wilful misconduct or gross negligence.
- 11.11 Where a Convention or Law imposes a timeframe on the making of claims against Clique Logistics, Clique Logistics relies on and does not extend that timeframe.

- 11.12 Without limitation to any other clause of the Agreement, a Party will be discharged from all liability in connection with:
- (a) damage to or non-delivery or late delivery of the Goods unless:
    - (1) notice of any claim is received by the other Party within 7 days of the earlier of the delivery of Goods or the date the Goods should have been delivered; and
    - (2) suit is brought and written notice is received by the other Party within 9 months of the earlier of the delivery of the Goods or the date the Goods should have been delivered.
  - (b) claims unrelated to damage to, non-delivery of or late delivery of the Goods unless suit is brought and written notice is received by the other Party within 3 years of the event giving rise to the claim:
- 11.13 Clause 10.12 does not apply where the making of a claim or commencement of a proceeding outside of the stated timeframes, does not prejudice Clique Logistics in any claim it may have against a third party in respect of, or in determining the cause of, the loss or damage to the Goods or delay in delivering the Goods.
- 11.14 A Party will not be liable to the other Party for any delay or failure to perform an obligation under the Agreement or Loss suffered by the other Party to the extent caused by a Force Majeure Event.
- 11.15 If a Force Majeure Event prevents or causes a delay in the performance of a Party's obligation exceeding 28 days, either Party may terminate the provision of the Services by notice to the Other Party.
- 11.16 Without limitation to any other clause in this Agreement, for Carriage by air, if the Carriage involves an ultimate destination stop in a county other than the country of departure, the Warsaw Convention or the Montreal Convention may be applicable and the relevant convention governs, and in most cases, limits the liability of air Carriers in respect of loss or damage to cargo.

## **12. Customer Indemnities**

- 12.1 The indemnities in this clause do not apply to the extent that the Loss was caused by a breach of contract or a negligent, unlawful, reckless or wilful act or omission by Clique Logistics or its employees, agents and contractors unless Clique Logistics was following a specific direction provided by the Customer.
- 12.2 When seeking to rely on an indemnity, Clique Logistics is under an obligation to act reasonably to minimise the Loss incurred.
- 12.3 The Customer indemnifies Clique Logistics from and against (and must pay on demand for) all Loss arising directly or indirectly from or in connection with the Goods or the performance of the Services (including Consequential Loss) caused by an act or omission of the Customer or which was beyond the reasonable control of Clique Logistics.
- 12.4 Without limitation to clause 12.3 the Customer indemnifies Clique Logistics from and against (and must pay on demand for) any Loss arising from:
- (a) the Customer's or Owner's failure to return, return by the due date, return within the "free" period and/or return empty, clean, or undamaged any Container or transport equipment involved in the performance of the Services;
  - (b) any claim against Clique Logistics by a person who claims to have an interest in the Goods (other than the Customer);
  - (c) breach of this Agreement, including any warranty provided by the Customer;
  - (d) any Loss, cost or liability incurred or suffered by Clique Logistics as a result of releasing or delivering the Goods to the Customer or at the direction of the Customer;

- (e) any claim for general average and will provide any security requested by Clique Logistics for the release of any Goods that are the subject of a claim for general average;
- (f) any inspection of, or treatment of, the Goods by, or directed by, a Government Authority;
- (g) all duty, GST, and any other fees and taxes incurred in connection with the Goods payable to a Government Authority;
- (h) any costs or charges incurred as a result of any delay in loading or unloading, or collecting or delivering, the Goods;
- (i) carriage, storage, handling or delivery, including issues from the Goods' nature, condition or packing;
- (j) any fees, losses or damages arising from the cancellation of the Services by the Customer after the time the Goods having been Manifested;
- (k) all costs payable to third parties in relation to the Carriage, storage, treatment or entry of the Goods.

12.5 The indemnities in this clause 12 continue whether or not the Goods are pillaged, stolen, lost or destroyed. However, the payment of any amount by the Customer will not constitute a waiver of any rights held by the Customer.

### **13. Termination**

- 13.1 If an Event of Default occurs, Clique Logistics may immediately terminate this Agreement by giving written notice to the Customer. Without limitation to any other rights under this Agreement, Clique Logistics may also demand immediate payment of any money owed by the Customer and cease the supply of Services to the Customer.
- 13.2 Without limitation to any other termination right, Clique Logistics may terminate this Agreement including a Service Level Agreement upon thirty (30) days' written notice to the Customer.
- 13.3 The Customer may only terminate a Service Level Agreement as outlined in paragraph 2 of the Service Level Agreement.
- 13.4 Either party may terminate a Trading Account without cause on one (1) month's written notice.
- 13.5 The Carrier may immediately terminate the Trading Account and/or a Service Level Agreement by written notice if:
  - (a) the Customer breaches any provision of these Terms and Conditions, or any provision of any other agreement with Clique Logistics;
  - (b) the Customer experiences an Insolvency Event; or
  - (c) Clique Logistics terminates any other agreement with the Customer for any reason.

### **14. Insurance**

- 14.1 Clique Logistics will not arrange insurance in respect of the Goods. The Customer is responsible for arranging insurance in respect of the Goods. If Clique Logistics refers the Customer to an insurance company or broker, Clique Logistics makes no warranty or representation in respect of the insurer or broker or the insurance offered.

### **15. Lien**

- 15.1 Clique Logistics has:
  - (a) a particular and general lien on all Goods and documents relating to the Goods; and
  - (b) a right to sell those Goods and documents by public auction or private sale (at Clique

Logistics' discretion) and apply the proceeds of sale;

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

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

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

15.3 The lien will also cover Clique Logistics' costs and expenses relating to the exercise of its lien and right of sale, including Clique Logistics' reasonable legal fees.

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

## **16. PPSA**

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

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

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

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

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

## **17. Uncollected goods**

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

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

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

17.3 Where Clique Logistics sells Goods under clauses 15 or 17;

- (a) it does so as principal, not as agent, and is not the trustee of the power of sale;
- (b) the Customer must pay all reasonable costs, charges and expenses incurred by Clique Logistics in connection with the storage, sale or return of the Goods, which may be deducted from the proceeds of the sale of the Goods;
- (c) Clique Logistics is entitled to recover any deficit from the Customer where the proceeds of sale of the Goods do not satisfy the amounts payable to Clique Logistics;

- (d) any surplus proceeds will be paid to the Customer (provided that the Customer can be identified).

**18. Dispute Resolution**

- 18.1 If a Dispute arises under this Agreement either party may give the other a notice of dispute providing particulars of the Dispute.
- 18.2 Within seven (7) days of receiving a notice of dispute, the parties must meet in good faith to try to resolve the Dispute. Each party must be represented by someone with authority to settle the Dispute.
- 18.3 If the Dispute remains unresolved after fourteen (14) days, or longer period agreed between the parties, either party may, by written notice to the other, refer the Dispute to mediation. The mediation must be conducted in accordance with the Mediation Rules of the Resolution Institute and by a mediator appointed by the Resolution Institute or otherwise agreed between the parties. The mediation will be held in Adelaide unless otherwise agreed. Costs of the mediation including the mediator's fee, will be shared equally between the parties unless agreed otherwise.
- 18.4 A Party may not commence legal proceedings in respect of a Dispute unless there has been compliance with this clause, unless that non-compliance is caused by the other Party.
- 18.5 Nothing in this clause prevents either party from seeking injunctive or declaratory relief from a court of competent jurisdiction regarding any Dispute or any matter under this Agreement.