

**1. Definitions**

- 1.1 "Agent" shall mean B.V Skelton Pty Ltd T/A Skelton Sherborne its successors and assigns or any person acting on behalf of and with the authority of B.V Skelton Pty Ltd T/A Skelton Sherborne.
- 1.2 "Client" shall mean the Client or any person acting on behalf of and with the authority of the Client.
- 1.3 "Guarantor" means that person (or persons), or entity, who agrees to be liable for the debts of the Client on a principal debtor basis.
- 1.4 "Sub-Contractor" shall mean and include:
- (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 firm with whom the Agent 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 clause 1.4(a) and 1.4(b).
- 1.5 "Goods" shall mean cargo together with any packaging to be moved from one place to another by way of the Agent's Services.
- 1.6 "Services" shall mean all Services supplied by the Agent to the Client (and includes any advice or recommendations) and are as described on any quotation, invoice, consignment note, manifests, or any other form as provided by the Agent to the Client.
- 1.7 "Price" shall mean the price payable for the Services as agreed between the Agent and the Client in accordance with clause 10 of this contract.

**2. Acceptance**

- 2.1 Any instructions received by the Agent from the Client for the supply of Services and/or the Client's acceptance of Services supplied by the Agent shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 2.3 Upon acceptance of these terms and conditions by the Client the terms and conditions are binding and can only be amended with the written consent of the Agent.
- 2.4 The Client shall give the Agent not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by the Agent as a result of the Client's failure to comply with this clause.
- 2.5 Services are supplied by the Agent only on the terms and conditions of trade herein to the exclusion of anything to the contrary in the terms of the Client's order notwithstanding that any such order is placed on terms that purport to override these terms and conditions of trade.

**3. The Commonwealth Trade Practices Act 1974 ("TPA") and Fair Trading Acts ("FTA")**

- 3.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the TPA or the FTA in each of the States and Territories of Australia, except to the extent permitted by those Acts where applicable.

**4. Agent Not A Common Carrier**

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

**5. Client's Responsibility**

- 5.1 The Client expressly warrants to the Agent that 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 contract for the for all persons on whose behalf the Client is acting.
- 5.2 The Client warrants it shall:
- (a) fully and accurately disclosed the exact nature, weight and measurement of the Goods; and
  - (b) comply with all applicable laws and regulations in respect of (without limitation) the notification, classification, description, labelling, documentation, handling, transport, storage, and packaging of the Goods; and
  - (c) provide all necessary documentation relating to the Goods (including, without limitation, data sheets, technical information, handling instructions, and labelling) in addition to any documentation requested by the Agent. The Client warrants that this information shall be true and correct, and shall comply with all regulatory requirements.
- 5.3 The Client shall be liable for and hereby indemnifies the Agent against all loss or damage whatsoever caused by the Client failing to comply with any part of clause 5.

**6. Freight Forwarding**

- 6.1 Except to the extent that any of the Services shall be actually performed by the Agent, the Agent shall act as a forwarding agent only. The Agent 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 Goods by any person at any place and for any length of time, and for such other matters as in the opinion of the Agent may be necessary or desirable to the performance of the Services. The Client hereby appoints the Agent the agent of the Client for the purpose of entering into any contract, upon such terms and conditions, as the Agent 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 the Agent may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Client, the Agent or any other person.

- 6.2 The Client shall be severally liable for any duty, tax, impost, excise, levy, penalty, deposit, or outlay of whatsoever nature levied by any government, or the authorities at any port or place in connection with the Goods, and for any payments, fines, expenses, loss or damage incurred or sustained by the Agent in connection therewith and shall indemnify the Agent, its servants and agents from all claims by third parties howsoever arising in connection with the Goods.
  - 6.3 When the Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from any consignee or any other person the Client shall remain responsible for those charges and expenses if they are not paid by the consignee or other person.
  - 6.4 The Agent's Price (including all charges) shall be deemed fully earned on delivery of the Goods and shall be paid in any event including, but not limited to, cargo lost, or a voyage or flights broken up or abandoned. If there is a forced interruption or abandonment of a voyage or flight at the port or airport of shipment or elsewhere, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Client.
- 7. Nomination of Sub-Contractor**
- 7.1 The Agent may license or sub-contract all or any part of its rights and obligations without the Client's consent. The Sub-Contractor shall be entitled to the full benefit of these terms and conditions to the same extent as the Agent. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled the Agent shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 8. Servants or agents of the Agent**
- 8.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of the Agent 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 the Agent and any such servant or agent against all consequences thereof.
- 9. Prohibited And Dangerous Goods**
- 9.1 The Agent or its authorised agent may (at the Agent's sole discretion and only upon providing written approval to the Client) transport or store dangerous Goods. If the Agent has agreed in writing to transport or store any dangerous Goods, the Client shall disclose to the Agent the exact nature and composition of the dangerous Goods, and provide the Agent with all necessary information and documentation relating to the dangerous Goods (including, but not limited to full Material Safety Data Sheets) in addition to any documentation requested by the Agent. The Client warrants that this information shall be true and correct, and shall comply with all regulatory requirements. The Client also warrants that any dangerous Goods have been packaged by the Client in accordance with any regulatory requirements for the transport or storage of dangerous Goods.
  - 9.2 The Agent or its authorised agent will not transport or store any:
    - (a) bullion, cash, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants; or
    - (b) any materials that are prohibited under any Australian State or Federal Law
  - 9.3 The Client warrants that the Goods are not prohibited under any Australian State or Federal Law.
  - 9.4 If the Agent has agreed in writing to transport dangerous Goods (or if the Agent was not notified by the Client that the Goods are dangerous), the Client acknowledges that:
    - (a) the Client, and any person delivering the dangerous Goods to the Agent, or causing the Agent to handle or deal with the dangerous Goods, shall be liable for any loss or damage caused by the dangerous Goods or by their nature, and shall indemnify and keep indemnified the Agent against all loss, damages, claims and costs incurred by the Agent in connection therewith; and
    - (b) the dangerous Goods may be destroyed or otherwise dealt with as determined by the Agent in its absolute discretion at the expense of the Client or by any other person in whose custody they may be at the relevant time also at the expense of the Client, and neither the Agent nor any such other person shall incur any liability whatsoever to the Client in relation to any action taken by them concerning the dangerous Goods.
  - 9.5 The Client shall be solely liable for, and hereby indemnifies the Agent against, all loss or damage that is incurred due to the Client not complying with any part of this clause 9 (including, without limitation, failure by the Client to disclose the exact nature of the dangerous Goods, not providing the correct documentation, or the Goods being prohibited under any Australian State or Federal Law). The Agent's limitation of liability shall include all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Agent or incurred or become payable by the Agent.
  - 9.6 For the purposes of this clause 9 the expression "dangerous Goods" includes Goods that are noxious, hazardous, inflammable, explosive, likely to harbour or encourage vermin or other pests, or which fall within the definitions of

“hazardous” or “dangerous” materials in any legislation governing carriage by rail, road, sea or air in the States and Territories of Australia.

**10. Price And Payment**

- 10.1 At the Agent’s sole discretion the Price shall be either:
- (a) as indicated on invoices provided by the Agent to the Client in respect of Services supplied; or
  - (b) the Agent’s current price as at the date of the delivery of the Services according to the Agent’s current Price list; or
  - (c) the Agent’s quoted Price (subject to clause 10.2 and 10.3) which shall be binding upon the Agent provided that the Client shall accept the Agent’s quotation in writing within thirty (30) days.
- 10.2 The Agent reserves the right to change the Price in the event of a variation to the Agent’s quotation.
- 10.3 The Agent may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to the Agent beyond the reasonable control of the Agent (including, without limitation, foreign exchange fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 10.4 The Agent 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.
- 10.5 At the Agent’s sole discretion a deposit may be required.
- 10.6 Time for payment for the Services shall be of the essence and will be stated on the invoice or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 10.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (plus a surcharge of up to two and one half percent (2.5%) of the Price), or by direct credit, or by any other method as agreed to between the Client and the Agent.
- 10.8 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

**11. Transportation and Storage of Goods**

- 11.1 If the Client instructs the Agent to use a particular method of carriage whether by road, rail, sea or air the Agent will give priority to the method designated but if that method cannot conveniently be adopted by the Agent the Client shall be deemed to authorise the Agent to carry or have the Goods carried by another method or methods.
- 11.2 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 the Agent be deemed reasonable or necessary in the circumstances.
- 11.3 The Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Agent.
- 11.4 At the Agent’s sole discretion delivery of the Goods shall take place when:
- (a) the Client takes possession of the Goods at the Agent’s address; or
  - (b) the Goods are delivered to the Client’s nominated address (as supplied to the Agent by the Client for that purpose) and it is expressly agreed that the Agent shall be taken to have delivered the Goods in accordance with this contract if at that address the Agent obtains from any person a receipt or a signed delivery docket or consignment note for the Goods.
- 11.5 The Client shall make all arrangements necessary to take delivery of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then the Agent shall be entitled to charge a reasonable fee for redelivery.
- 11.6 The Client will be and shall remain responsible to the Agent for all its proper charges incurred for any reason. A charge may be made by the Agent in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of the Agent. Such permissible delay period shall commence upon the Agent reporting for loading or unloading.
- 11.7 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery to the Client for the purposes of this agreement.
- 11.8 The failure of the Agent to deliver shall not entitle either party to treat this contract as repudiated.

**12. Insurance**

- 12.1 The Client acknowledges that:
- (a) the Agent 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
  - (b) under no circumstances will the Agent be under any liability with respect to the arranging of any such insurance and no claim will be made against the Agent for failure to arrange or ensure that the Goods are insured adequately or at all.

**13. Australian Quarantine And Inspection Service (AQIS)**

- 13.1 The Client acknowledges that unless otherwise expressly agreed in writing by the Agent, the Services shall not include ensuring that the Goods comply with AQIS regulations, and the Client is wholly responsible for ensuring that the Goods comply with AQIS regulations.

**14. Limitation of Liability**

- 14.1 Subject to any statutory provisions imposing liability, the Client acknowledges that the Goods are transported and/or stored at the Client's own risk. The Agent shall not be under any liability for any loss or damage to the Goods whatsoever or howsoever arising (unless such loss or damage is due to the wilful neglect of the Agent), nor for any instructions, advice, information or Service given or provided to the Client or any person whether in respect of the Goods or any other thing or matter. The Agent's limitation of liability shall include all actions, proceedings, claims, demands, liabilities, either express or implied, and all costs, losses, losses of profit, damages and expenses whatsoever which may be taken against the Agent or incurred or become payable by the Agent.
- 14.2 The Agent shall not be liable for any consequential or indirect loss, or loss of market, or consequences of delay whatsoever, due to the failure by the Agent to deliver the Goods promptly or at all, where due to circumstances beyond the control of the Agent.
- 14.3 Liability of the Agent arising out of any one incident for breach of these terms and conditions, howsoever arising, is limited to any of the following as determined by the Agent:
- (a) the supplying of the Services again; or
  - (b) the payment of the cost of having the Services supplied again.

**15. Default & Consequences of Default**

- 15.1 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 the Agent's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 15.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Agent.
- 15.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Agent from and against all costs and disbursements incurred by the Agent in pursuing the debt including legal costs on a solicitor and own client basis and the Agent's collection agency costs.
- 15.4 Without prejudice to any other remedies the Agent may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Agent may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Agent will not be liable to the Client for any loss or damage the Client suffers because the Agent has exercised its rights under this clause.
- 15.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 15.6 Without prejudice to the Agent's other remedies at law the Agent shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Agent shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Agent becomes overdue, or in the Agent's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**16. Security And Charge**

- 16.1 Despite anything to the contrary contained herein or any other rights which the Agent may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to the Agent or the Agent's nominee to secure all amounts and other monetary obligations payable under these terms and conditions. The Client and/or the Guarantor acknowledge and agree that the Agent (or the Agent's nominee) shall be entitled to lodge where appropriate a caveat, which caveat shall be withdrawn once all payments and other monetary obligations payable hereunder have been met.
  - (b) should the Agent elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify the Agent from and against all the Agent's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint the Agent or the Agent's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause

**17. Cancellation**

- 17.1 The Agent may cancel any contract to which these terms and conditions apply or cancel delivery of Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice the Agent shall

- repay to the Client any sums paid in respect of the Price. The Agent shall not be liable for any loss or damage whatever arising from such cancellation.
- 17.2 In the event that the Client cancels delivery of Services the Client shall be liable for any loss incurred by the Agent (including, but not limited to, any loss of profits) up to the time of cancellation.
- 18. Privacy Act 1988**
- 18.1 The Client and/or the Guarantor/s agree for the Agent to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Agent.
- 18.2 The Client and/or the Guarantor/s agree that the Agent may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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 credit worthiness of Client and/or Guarantor/s.
- 18.3 The Client consents to the Agent being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 18.4 The Client agrees that personal credit information provided may be used and retained by the Agent for the following purposes and for other purposes as shall be agreed between the Client and Agent or required by law from time to time:
- (a) provision of Services; and/or
  - (b) marketing of Services by the Agent, its agents or distributors in relation to the Services; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 18.5 The Agent may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 19. Unpaid Agent's Right to Dispose of Goods**
- 19.1 The Agent shall have a lien on any Goods (and any documents relating to those Goods) in the possession or control of the Agent for all sums payable by the Client to the Agent, and the Agent shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. The Agent 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.
- 20. General**
- 20.1 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.
- 20.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Queensland and are subject to the jurisdiction of the courts of Queensland.
- 20.3 The Agent shall be under no liability whatever to the Client for any indirect loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by the Agent of these terms and conditions.
- 20.4 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 the Agent.
- 20.5 The Agent reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which the Agent notifies the Client of such change.
- 20.6 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 20.7 The failure by the Agent to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the Agent's right to subsequently enforce that provision.
- 21. Default & Consequences of Default**
- 21.1 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 the Company's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by the Company.

- 21.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify the Company from and against all costs and disbursements incurred by the Company in pursuing the debt including legal costs on a solicitor and own client basis and the Company's collection agency costs.
- 21.4 Without prejudice to any other remedies the Company may have, if at any time the Client is in breach of any obligation (including those relating to payment), the Company may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. The Company will not be liable to the Client for any loss or damage the Client suffers because the Company has exercised its rights under this clause.
- 21.5 If any account remains overdue after thirty (30) days then an amount of the greater of twenty dollars (\$20.00) or ten percent (10.00%) of the amount overdue (up to a maximum of two hundred dollars (\$200.00)) shall be levied for administration fees which sum shall become immediately due and payable.
- 21.6 Without prejudice to the Company's other remedies at law the Company shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to the Company shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to the Company becomes overdue, or in the Company's opinion the Client will be unable to meet its payments as they fall due; or
  - (b) 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
  - (c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.
- 22. Privacy Act 1988**
- 22.1 The Client and/or the Guarantor/s agree for the Company to obtain from a credit reporting agency a credit report containing personal credit information about the Client and Guarantor/s in relation to credit provided by the Company.
- 22.2 The Client and/or the Guarantor/s agree that the Company may exchange information about the Client and the Guarantor/s with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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 credit worthiness of Client and/or Guarantor/s.
- 22.3 The Client consents to the Company being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 22.4 The Client agrees that personal credit information provided may be used and retained by the Company for the following purposes and for other purposes as shall be agreed between the Client and Company or required by law from time to time:
- (a) provision of Services; and/or
  - (b) marketing of Services by the Company, its agents or distributors in relation to the Services; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 22.5 The Company may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client; and/or
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.