

# TERMS AND CONDITIONS

## Definitions

1. In these terms and conditions:  
**'Agreement'** means this document and includes any Schedule attached hereto.  
**'Customer'** means the person, firm, organisation, partnership, corporation, trust or other entity (including its successors and permitted assigns) to whom goods and/or services are provided by Hi-Quality Group.  
**'Hi-Quality Group'** means, jointly and severally, Hi-Quality Sales Victoria Pty Ltd ACN 100 174 712, Hi-Quality Waste Management Pty Ltd ACN 003 105 379, Hi-Quality Quarry (NSW) Pty Ltd ACN 104 362 110, Hi-Quality Building & Landscape Supplies ACN 145 898 095, Hi-Quality Heavy Haulage Pty Ltd ACN 635 475 624, Hi-Quality Environmental Services Pty Ltd ACN 097 554 580, Hi-Quality Recycling Services Pty Ltd ACN 101 044 688, Hi-Quality Civil & Environmental Services Pty Ltd ACN 133 722 915, Hi-Quality ACT Pty Ltd ACN 625 378 038, Hi-Quality Waste Treatment Services Pty Ltd ACN 631 222 234 and their related bodies corporate (as that term is defined in the *Corporations Act 2001*).  
**'Schedule'** means any schedule, annexure or attachment attached hereto.

## Interpretation

2. Unless the contrary intention appears, an expression which denotes:
  - (a) the singular includes the plural and vice versa; and
  - (b) a person includes the person's successors, executors, administrators, substitutes and assigns.
3. The Customer acknowledges and understands that:
  - (a) these terms and conditions apply to all contracts for the supply of goods and/or services entered into between the Customer and Hi-Quality Group; and
  - (b) additional terms and conditions may apply to contracts for the supply of goods and/or services entered into between Customer and certain entities within the Hi-Quality Group, in which case such additional terms and conditions shall be set out in the applicable Schedule and the Customer agrees to be bound by such terms and conditions.
4. In the event of any inconsistency or conflict between these terms and conditions and the terms and conditions contained in any applicable Schedule, the terms and conditions contained in the applicable Schedule shall prevail to the extent of any inconsistency or conflict.

## Payment terms

5. Subject to clause 6, the terms of payment are strictly thirty (30) days from the end of the calendar month in which the goods and/or services are invoiced (or such other period as nominated by Hi-Quality Group herein).
6. Where the Customer does not have an approved commercial credit account with Hi-Quality Group, payment shall be, at Hi-Quality Group's discretion, due and payable:
  - (a) on or prior to delivery of the goods; or
  - (b) by the date nominated by Hi-Quality Group's invoice.
7. The Customer must check all invoices and advise Hi-Quality Group of any errors or omissions within seven (7) days of receipt. Failing advice from the Customer that the invoice contains any errors or omissions, the invoice may be deemed accepted by Hi-Quality Group.
8. Should the Customer not pay for the goods or services supplied by Hi-Quality Group in accordance with the credit terms as provided herein, or as agreed in writing by Hi-Quality Group and the Customer from time to time, after issuing a written demand to the Customer demanding payment within fourteen (14) days, Hi-Quality Group will be entitled to charge an administration fee of ten (10) percent of the amount of the invoice payable.
9. The Customer acknowledges that Hi-Quality Group shall be at liberty to charge a surcharge for credit card transactions equal to the merchant fees incurred by Hi-Quality Group.

## Purpose of credit

10. The Customer acknowledges and agrees that any credit to be provided to the Customer by Hi-Quality Group is to be applied wholly or predominantly for commercial purposes.

## Formation of contract

11. Quotations shall remain valid for a period of thirty (30) days from the date of quotation, unless otherwise specified in writing. Hi-Quality Group, in its sole discretion, reserves the right to withdraw, vary or extend any quotation at any time prior to the formation of a contract in accordance with clause 12.
12. Quotations made by Hi-Quality Group will not be construed as an offer or obligation to supply in accordance with the quotation. Hi-Quality Group reserves the right to accept or reject, at its discretion, any offer to purchase received by it upon provision of written reasons to the Customer. Only written acceptance by Hi-Quality Group of the Customer's offer will complete a contract.
13. Placement of an order, either verbally or in writing, will imply acceptance of Hi-Quality Group's offer and these terms and conditions (as well as the terms and conditions set out in any applicable Schedule hereto).
14. At Hi-Quality Group's sole discretion, a deposit may be required. The deposit amount or percentage of the price due will be stipulated at the time of the order of the goods and/or services and shall immediately become due and payable upon the formation of a contract in accordance with clause 12.

## Variations

15. Where the Customer requests or directs that any goods and/or services be supplied that are not strictly in accordance with the quotation or purchase order, then such additional goods and/or services shall constitute a variation, unless otherwise agreed between the parties.
16. The Customer understands and agrees that:
  - (a) all variations must be agreed between the parties in writing prior to the goods and/or services being supplied;
  - (b) all variations shall be, at Hi-Quality Group's discretion, invoiced at the rate(s) specified in the quotation, as specifically quoted, or in accordance with Hi-Quality Group's current prevailing rates (as amended from time to time).
17. Notwithstanding clauses 15 and 16, and subject to any rights the Customer might have under any relevant legislation, Hi-Quality Group reserves the right to vary the quoted price if:
  - (a) there is any movement in the cost of supplying the goods and/or services specified in the Customer's order;
  - (b) the goods and/or services specified in the Customer's order are varied from the goods and/or services specified in Hi-Quality Group's quotation; or
  - (c) otherwise provided for in these terms and conditions.

## Cancellation of orders

18. Unless otherwise agreed in writing between the parties, the Customer may not cancel an order (or any part of an order) unless the Customer pays to Hi-Quality Group (in Hi-Quality Group's sole discretion) any and all costs incurred by Hi-Quality Group in relation to the cancelled order (or cancelled part of an order) up until and including the date of cancellation.
19. Notwithstanding any other rights Hi-Quality Group may have under this Agreement, Hi-Quality Group may cancel any order or delivery of any order, by providing written notice to the Customer if the Customer:
  - (a) defaults in payment of any invoice by the due date;
  - (b) enters into liquidation or, in the case the Customer is an individual, becomes bankrupt; or
  - (c) breaches an essential term of this Agreement.
20. To the fullest extent permitted by law, Hi-Quality Group accepts no liability for any loss whatsoever incurred by the Customer or any third party as a result of Hi-Quality Group exercising its rights under clause 19.

## Delivery

21. The mode of transport which is used to deliver the goods to the Customer will be at the Hi-Quality Group's option unless the Customer requests a particular method of transport.
22. Hi-Quality Group may:
  - (a) make the goods ordered by the Customer available for collection at Hi-Quality Group's premises;
  - (b) deliver the goods ordered by the Customer to the Customer's premises or a site nominated by the Customer; or
  - (c) arrange for a cartage contractor to deliver the goods ordered by the Customer to the Customer's premises or to a site nominated by the Customer.
23. The Customer shall be liable for all costs associated with delivery, including freight, insurance, handling and other charges, unless otherwise agreed in writing.
24. The Customer acknowledges and accepts that any estimated delivery or supply of goods provided by Hi-Quality Group is an estimate only and Hi-Quality Group will not be liable for any loss suffered by the Customer as a result of any delay in the delivery of goods or non-delivery of the goods.
25. Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed to in writing).
26. Delivery is deemed to occur at the earlier of:
  - (a) the collection of goods from Hi-Quality Group by the Customer or any third party on behalf of the Customer;
  - (b) the time of loading of goods at Hi-Quality Group's premises for the purpose of delivery to the Customer.
27. Hi-Quality Group is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer does not, or is unable to, accept delivery of the goods.
28. The Customer accepts that Hi-Quality Group may deliver goods by instalments and require payment for each separate instalment in accordance with these terms and conditions.
29. The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions by reason of any delay in delivery.

## Returns

30. The Customer must inspect the goods immediately upon delivery and must within seven (7) days after the date of inspection give written notice to Hi-Quality Group with, of any claim that the goods are not in accordance with this Agreement. Further, the Customer must, upon request from Hi-Quality Group, allow Hi-Quality Group to enter upon any premises occupied by the Customer to inspect the goods that are subject of the claim. If the Customer fails to give notice or refuses to allow Hi-Quality Group to inspect the goods, then to the extent permitted by law, the goods must be treated as having been accepted by the Customer and the Customer must pay for the goods in accordance with these terms and conditions.
31. The Customer cannot return goods to Hi-Quality Group without the written agreement of Hi-Quality Group.
32. The Customer acknowledges and agrees that any return, other than a return due to a default by Hi-Quality Group under this Agreement or as otherwise permitted by law, will incur a handling and administration charge of ten (10) percent of the purchase price of the returned goods.
33. Unless otherwise agreed in writing between the parties, the Customer must pay all costs associated with the return of any goods (either to Hi-Quality Group or from Hi-Quality Group to the Customer or any third party) including freight, insurance, handling and other charges. Goods to be returned to Hi-Quality Group must be packed and wrapped appropriately and must include all original packaging and documentation. Hi-Quality Group accepts no liability for any damage that occurs to any goods in return transit.

## Risk

34. Risk of damage to or loss of the goods passes to the Customer on delivery and the Customer must insure the goods on or before delivery.
35. If any of the goods are damaged or destroyed following delivery but prior to ownership passing to the Customer, Hi-Quality Group is entitled to receive all insurance proceeds payable for the goods to the extent of the indebtedness of the Customer to Hi-Quality Group. The production of these terms and conditions by Hi-Quality Group is sufficient evidence of Hi-Quality Group's rights to receive the insurance proceeds without the need for any person dealing with Hi-Quality Group to make further enquiries.
36. If the Customer requests that goods are delivered either to an unattended location, left outside, or are left outside Hi-Quality Group's premises for collection, the Customer acknowledges that Hi-Quality Group will deliver the goods as requested at the Customer's risk.

## Retention of title

37. Until such time as the Customer has made payment in full for the goods and until such time as the Customer has made payment in full of all other money owing by the Customer to Hi-Quality Group (whether in respect of money payable under a specific contract or on any other account whatsoever):
  - (a) title in the goods does not pass to the Customer;
  - (b) the Customer agrees that property and title in the goods will not pass to the Customer and Hi-Quality Group retains the legal and equitable title in those goods supplied and not yet sold;
  - (c) the Customer will hold the goods in a fiduciary capacity for Hi-Quality Group and agrees to store the goods in such a manner that they can be identified as the property of Hi-Quality Group, and will not mix the goods with other similar goods; and
  - (d) the Customer will be entitled to sell the goods in the ordinary course of its business but will sell as agent and bailee for Hi-Quality Group and the proceeds of sale of the goods will be held by the Customer on trust for Hi-Quality Group absolutely.
38. The Customer's indebtedness to Hi-Quality Group, whether in full or in part, will not be discharged by the operation of clause 37(d) hereof unless and until the funds held on trust are remitted to Hi-Quality Group.
39. The Customer agrees that whilst property and title in the goods remains with Hi-Quality Group, Hi-Quality Group has the right, with prior notice to the Customer, to enter upon any premises occupied by the Customer (or any receiver, receiver and manager, administrator, liquidator or trustee in bankruptcy of the Customer) to inspect the goods of Hi-Quality Group and to repossess the goods which may be in the Customer's possession, custody or control when payment is overdue.
40. The Customer will be responsible for Hi-Quality Group's reasonable costs and expenses in exercising its rights under clause 39 where the Customer is otherwise in default of the terms of this Agreement. Where Hi-Quality Group exercises any power to enter the premises, that entry will not give rise to any action of trespass or similar action on the part of the Customer against Hi-Quality Group, its employees, servants or agents.
41. The Customer agrees that where the goods have been retaken into the possession of Hi-Quality Group, Hi-Quality Group has the absolute right to sell or deal with the goods, and if necessary, sell the goods with the trademark or name of the Customer on those goods, and the Customer hereby grants an irrevocable licence to Hi-Quality Group to do all things necessary to sell the goods bearing the name or trademark of the Customer.
42. For the avoidance of doubt, Hi-Quality Group's interest constitutes a 'purchase money security interest' pursuant to the PPSA.

## Cancellation of terms of credit

43. Hi-Quality Group reserves the right to withdraw credit at any time upon provision of 48 hours' written notice.
44. Notwithstanding clause 43, if the Customer defaults in the payment of any amount due to Hi-Quality Group pursuant to this Agreement and does not cure such default within seven (7) days after being given notice of such default, Hi-Quality Group may terminate this Agreement (to be effective immediately) upon notice to the Customer.

45. Upon the withdrawal of credit in accordance with clause 43, or upon termination of this Agreement in accordance with clause 44, all liabilities incurred by the Customer become immediately due and payable to Hi-Quality Group.
46. For the avoidance of doubt, termination of this Agreement will not affect:
- the right of any party to whom money is owed hereunder at the time of termination to receive that money according to the provisions hereof; and
  - the rights and/or obligations pursuant to this Agreement which by their nature are intended to survive termination of this Agreement.
- Indemnity**
47. The Customer agrees to indemnify Hi-Quality Group and keep Hi-Quality Group indemnified against any claim that arises out of the goods and services supplied under this Agreement to the extent that such a claim is a consequence of a default by the Customer under the terms of this Agreement. This indemnity includes any legal fees and expenses Hi-Quality Group incurs in order to enforce its rights, on an indemnity basis.
- Provision of further information**
48. The Customer undertakes to comply with any reasonable written requests by Hi-Quality Group to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
49. If the Customer is a corporation (with the exception of a public listed company), it must advise Hi-Quality Group of any alteration to its corporate structure (for example, by changing directors, shareholders, or its constitution). In the case of a change of directors or shareholders Hi-Quality Group may ask for its directors to sign a guarantee and indemnity.
- Corporations**
50. If the Customer is a corporation, the Customer warrants that all of its directors have signed this Agreement and acknowledges that all of its directors may be required to enter into a guarantee and indemnity with Hi-Quality Group in relation to the Customer's obligations to Hi-Quality Group.
- Trustee capacity**
51. If the Customer is the trustee of a trust (whether disclosed to Hi-Quality Group or not), the Customer warrants to Hi-Quality Group that:
- the Customer enters into this Agreement in both its capacity as trustee and in its personal capacity;
  - the Customer has the right to be reasonably indemnified out of trust assets;
  - the Customer has the power under the trust deed to sign this Agreement; and
  - the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising Hi-Quality Group and having the new or additional trustee sign an agreement on substantially the same terms as this Agreement.
52. The Customer must give Hi-Quality Group a copy of the trust deed upon request.
- Partnership**
53. If the Customer enters into this Agreement in its capacity as a partnership, the Customer warrants that all of the partners have signed this Agreement and that all of the partners may be required to enter into a guarantee and indemnity with Hi-Quality Group in relation to the Customer's obligations to Hi-Quality Group.
54. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without advising Hi-Quality Group. In the case of a change of partners, Hi-Quality Group may ask for new guarantors to sign a guarantee and indemnity.
- Insolvency**
55. If the Customer becomes insolvent, to the extent permitted by law, the Customer remains liable under this Agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this Agreement even if Hi-Quality Group receives a dividend or payment as a result of the Customer being insolvent.
- Waiver**
56. A waiver of any provision or breach of this Agreement by Hi-Quality Group must be made by an authorised officer of Hi-Quality Group in writing. A waiver of any provision or breach of this Agreement by the Customer must be made by the Customer's authorised officer in writing.
57. Until ownership of the goods passes, the Customer waives its rights it would otherwise have under the PPSA (unless otherwise agreed to in writing by Hi-Quality Group and the Customer):
- under section 95 to receive notice of intention to remove an accession;
  - under section 118 to receive notice that Hi-Quality Group intends to enforce its security interest in accordance with land law;
  - under section 121(4) to receive a notice of enforcement action against liquid assets;
  - under section 129 to receive a notice of disposal of goods by Hi-Quality Group purchasing the goods;
  - under section 130 to receive a notice to dispose of goods;
  - under section 132(1) to receive a statement of account following disposal of goods;
  - under section 132(4) to receive a statement of account if no disposal of goods for each six (6) month period;
  - under section 135 to receive notice of any proposal of Hi-Quality Group to retain goods;
  - under section 137(2) to object to any proposal of Hi-Quality Group to retain or dispose of goods;
  - under section 142 to redeem the goods;
  - under section 143 to reinstate the security agreement; and
  - under section 157(1) and 157(3) to receive a notice of any verification statement.
- Security/charges**
58. The Customer charges in favour of Hi-Quality Group all of its estate and interest in any real property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
59. The Customer charges in favour of Hi-Quality Group all of its estate and interest in any personal property, whether held in its own right or as capacity as trustee, the Customer owns at present and in the future with the amount of its indebtedness hereunder until discharged.
60. As security for the payment of the amount of its indebtedness to Hi-Quality Group from time to time, the Customer irrevocably appoints as its duly constituted attorney Hi-Quality Group's company secretary from time to time to execute in the Customer's name and as the Customer's act and deed any real property mortgage, bill of sale or consent to any caveat Hi-Quality Group may choose to lodge against real property that the Customer may own in any Land Titles Office in any state or territory of Australia, even though the Customer may not have defaulted in carrying out its obligations hereunder upon written notice and demand to the Customer (in the event that there is no default by the Customer in carrying out its obligations hereunder).
61. Where the Customer has previously entered into an agreement with Hi-Quality Group by which the Customer has granted a charge, mortgage or other security interest (including a security interest as defined in the *Personal Property Securities Act 2009 (PPSA)*) over or in respect of real or personal property, those charges, mortgages or other security interests and the terms which directly or indirectly create rights, powers or obligations in respect thereto will continue and co-exist with the obligations and security interests created in this Agreement and will secure all indebtedness and obligations of the Customer under this Agreement. Hi-Quality Group may, at its election and upon the provision of written notice, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
- Costs**
62. The Customer must pay for its own legal, accounting and business costs and all costs incurred by Hi-Quality Group relating to any default by the Customer under this Agreement. The Customer must also pay for all stamp duty and other taxes payable on this Agreement (if any).
63. The Customer will pay Hi-Quality Group's costs and disbursements incurred in pursuing any recovery action, or any other claim or remedy, against the Customer, including collection costs, debt recovery fees and legal costs on an indemnity basis.
64. Subject to clauses 65 and 66, payments by, or on behalf of, the Customer will be applied by Hi-Quality Group as follows:
- Firstly, in payment of any and all collection costs and legal costs in accordance with clauses 40 and 63.
  - Secondly, in payment of any interest incurred in accordance with clause 69.
  - Thirdly, in payment of the outstanding invoice(s), or part thereof in an order determined by Hi-Quality Group in its absolute discretion.
65. To the extent that payments have been allocated to invoices by Hi-Quality Group in its business records, Hi-Quality Group may, at its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at Hi-Quality Group's absolute discretion, including in a manner inconsistent with clause 64 herein.
66. Payments allocated (and/or reallocated) under clause 64 and/or 65 will be treated as though they were allocated (and/or reallocated) in the manner determined by Hi-Quality Group on the date of receipt of payment.
- Taxes and duty**
67. The Customer must pay GST on any taxable supply made by Hi-Quality Group to the Customer under this Agreement. The payment of GST is in addition to any other consideration payable by the Customer for a taxable supply.
68. If as a result of:
- any legislation becoming applicable to the subject matter of this Agreement; or
  - any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration;
- Hi-Quality Group becomes liable to pay any tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay Hi-Quality Group these additional amounts on 48 hours' written demand.
- Interest rates**
69. The interest rate on any outstanding debts is a fixed rate of eighteen (18) percent per annum.
- Set-off**
70. All payments required to be made by the Customer under this Agreement will be made free of any set-off, or counterclaim and without deduction or withholding, unless agreed to otherwise by Hi-Quality Group and the Customer in writing or as required by law.
71. Any amount due to Hi-Quality Group from time to time may be deducted from any monies which may be or may become payable to the Customer by Hi-Quality Group.
- Limitation of liability**
72. In relation to the supply of goods, to the extent permitted by law, Hi-Quality Group's liability is limited to:
- replacing the goods or supplying similar goods;
  - repairing the goods;
  - providing the cost for replacing the goods or for acquiring equivalent goods; and
  - providing the cost for having the goods repaired.
73. In relation to the supply of services, to the extent permitted by law, Hi-Quality Group's liability is limited to:
- supplying the service again; or
  - providing for the cost of having the services supplied again.
74. Hi-Quality Group is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the goods and/or services supplied under this Agreement.
- Subcontracting and assignment**
75. The Customer acknowledges that Hi-Quality Group reserves the right to subcontract:
- the manufacturing and/or supply of any part of the goods quoted or any of the goods to be supplied; and
  - the services to be supplied (or any part of those services).
76. Any rights, obligations or benefits created or conferred by this agreement are not unilaterally assignable by one party and will not be assigned without the prior written consent or approval of the other party.
77. The Customer agrees that it will not unreasonably withhold its consent should Hi-Quality Group request to assign rights, obligations or benefits in accordance with clause 76.
- Miscellaneous**
78. Hi-Quality Group is not liable for any loss caused to the Customer by reason of strikes, lockouts, fires, floods, tempest, riots, war, embargoes, civil commotions, supplier shortages, material shortages, plant or mechanical breakdown, acts of God or any other activity beyond Hi-Quality Group's control.
79. The Customer will, at the request of Hi-Quality Group, execute documents and do such further acts as may be required for Hi-Quality Group to register pursuant to the PPSA the security interest granted by the Customer under the PPSA.
80. The Customer agrees to accept service of any document required to be served, including any notice under this Agreement or the PPSA or any originating process, by prepaid post at any address nominated in this application or any other address later notified to Hi-Quality Group by the Customer or the Customer's authorised representative.
81. The Customer further agrees that where Hi-Quality Group has rights in addition to those under part 4 of the PPSA, those rights will continue to apply.
82. The Customer irrevocably grants to Hi-Quality Group the right to enter upon the Customer's property or premises, with notice, and without being in any way liable to the Customer or to any third party, if Hi-Quality Group has cause to exercise any of its rights under sections 123 and/or 128 of the PPSA, and the Customer shall reasonably indemnify Hi-Quality Group from any claims made by any third party as a result of such exercise.
83. Nothing in this Agreement shall be read or applied so as to purport to exclude, restrict or modify or have the effect of excluding, restricting or modifying the application in relation to the supply of any goods and/or services pursuant to this Agreement of all or any of the provisions the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.
- Severance**
84. If any provision of this Agreement is not enforceable in accordance with its terms, other provisions which are self-sustaining are, and continue to be, enforceable in accordance with their terms.
85. If any part of this Agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.
- Variation of agreement**
86. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of Hi-Quality Group at any time by written notice to the Customer. Subject to clause 87, after fourteen (14) days of receipt of the written notice of the variation(s), the variation(s) will be deemed agreed by the Customer.
87. If the Customer does not agree with the variation(s) proposed by Hi-Quality Group, it must notify Hi-Quality Group in writing within fourteen (14) days from receipt of the written notice that the variation(s) is/are not agreed to. Hi-Quality Group and/or the Customer will then be at liberty to suspend/withdraw credit facilities until such time as agreement can be reached between the parties regarding the proposed variation(s). Clerical errors (such as spelling mistakes or grammatical errors) may be subject to correction by Hi-Quality Group without notification.
88. Any proposed variation to these terms and conditions by the Customer must be requested in writing. Hi-Quality Group may refuse any such request without providing reasons either orally or in writing.
89. Variations requested by the Customer will only be binding upon Hi-Quality Group if they are in writing signed by an authorised officer of Hi-Quality Group.

#### Consent to register

- The Customer hereby consents to Hi-Quality Group recording the details of this Agreement on the Personal Property Securities Register and agrees to do all things necessary and reasonably required by Hi-Quality Group to effect such registration.
- The Customer waives any right or entitlement to receive notice of the registration of any security interest(s) created by this instrument on the Personal Property Securities Register.

#### Legal advice

- The Customer acknowledges that it has obtained independent legal advice (or has had the opportunity to obtain independent legal advice) with respect to entering into this Agreement, and the Customer, by entering into this Agreement, is doing so in full knowledge of the contents hereof, of its own free will and with full capacity and authority to do so.

#### Jurisdiction

- The Customer acknowledges and agrees that this Agreement will be governed by the laws of New South Wales, and the laws of the Commonwealth of Australia which are in force in New South Wales.
- The Customer acknowledges and agrees that any contract for the supply of goods or services between Hi-Quality Group and the Customer is formed at the address of Hi-Quality Group.
- The parties to this Agreement submit to the non-exclusive jurisdiction of the courts of New South Wales and the relevant federal courts and courts competent to hear appeals from those courts.

#### Entire agreement

- This Agreement constitutes the entire agreement between the parties relating in any way to its subject matter, unless agreed to otherwise by Hi-Quality Group and the Customer in writing. All previous negotiations, understandings, representations, warranties, memoranda or commitments about the subject matter of this Agreement are merged in this Agreement and are of no further effect. No oral explanation or information provided by a party to another affects the meaning or interpretation of this Agreement or constitutes any collateral agreement, warranty or understanding.
- Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written credit agreement (**Original Agreement**) between the Customer and Hi-Quality Group, these terms and this Agreement will constitute a variation of the Original Agreement whereby the terms of the Original Agreement are deleted and replaced with the terms herein, unless the terms of the Original Agreement are otherwise expressly or implicitly preserved by the terms herein in which case they will co-exist with the terms herein, and, to the extent of any inconsistency, these terms will prevail.
- For the avoidance of doubt, the Customer understands and agrees that these terms will prevail over, and Hi-Quality Group will not be bound by, any conditions (express or implied) added or provided by the Customer, whether in an order or otherwise, unless otherwise agreed in writing by Hi-Quality Group.

#### Privacy Act

- The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* contained in this document.

## PRIVACY STATEMENT

- This privacy statement encompasses consents, notifications and disclosures under or in relation to the *Privacy Act 1988* (Act).
- The terms of this statement operate concurrently with any pre-existing privacy statement, authorisation or notification, whether contained in our credit application, terms and conditions of trade or otherwise, save to the extent of any inconsistency in which case the terms of this privacy statement shall prevail.
- For the purpose of this statement, the terms "personal information", "sensitive information", "credit eligibility information", "credit information", "commercial credit purpose", "credit guarantee purpose", "consumer credit purpose", "credit reporting body", "credit provider", "credit reporting information", "credit reporting code" carry the same meaning as under the Act and the term "Information" means personal information, sensitive information, credit eligibility information, credit reporting information and credit information, both severally and collectively.
- Hi-Quality Group may collect personal information about the Customer and/or Guarantor(s) for Hi-Quality Group's primary purposes which include the assessment of a credit application, reviewing existing credit terms, assessing credit worthiness, collecting overdue payments, assessing credit guarantees (current and prospective), internal management purposes, marketing, sales and business development purposes and direct marketing.
- The Customer and/or Guarantor(s) consent to Hi-Quality Group collecting, using and disclosing personal information (including sensitive information) for both their primary purposes specified herein and purposes other than the primary purposes, including the purpose of direct marketing.
- Hi-Quality Group may collect, and may already have collected, Information from the Customer and/or Guarantor(s), other credit providers, credit reporting bodies and other third parties for the purposes of its functions and activities including, but not limited to, credit, sales, marketing and administration. If the Information was not collected by Hi-Quality Group it may restrict or impede upon Hi-Quality Group trading with, extending credit to, continuing to extend credit to or extending further credit to the Customer and/or Guarantor(s) or their related bodies corporate.
- The Customer and/or Guarantor(s) consent to Hi-Quality Group obtaining and making disclosure of Information about the Customer and/or Guarantor(s) from and to a credit reporting body and/or another credit provider for a commercial credit related purpose and/or a credit guarantee purpose and/or a consumer credit purpose and/or another related purpose. Hi-Quality Group notifies the Customer and/or Guarantor(s) that it may use and/or disclose credit eligibility information under section 21G of the Act.
- Hi-Quality Group may provide personal information about the Customer and/or Guarantor(s) to any or all of the credit reporting bodies nominated below. Hi-Quality Group intends to disclose default information to any or all of the credit reporting bodies listed below. The Customer and/or Guarantor(s) consent to such disclosure. Hi-Quality

Group's credit reporting policy contains a statement of notifiable matters in accordance with s21C of the Act and items 4.1 and 4.2 of the Credit Reporting Code in respect of disclosure to credit reporting bodies including what the information may be used for, what Hi-Quality Group may disclose and the Customer's and/or Guarantor(s)' right to request limitations to the use of their information.

Equifax Australia Level 15, 100 Arthur Street NORTH SYDNEY NSW 2060 Tel: 1300 921 621	Creditor Watch Level 13, 109 Pitt Street SYDNEY NSW 2000 Tel: 1300 501 312	NCI Level 2, 165 Grenfell St ADELAIDE SA 5000 Tel: 1800 882 820
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Illion Level 2, 143 Coronation Drive MILTON QLD 4064 Tel: 07 3360 0600	Experian Level 6, 549 St Kilda Road MELBOURNE VIC 3004 Tel: 03 9699 0100
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- Hi-Quality Group may disclose Information to, and about them and the Customer and/or Guarantor(s) hereby acknowledge that they consent to the disclosure of such information to Hi-Quality Group's employees, subsidiaries, employees, agents and related bodies corporate, past, present or prospective credit providers of the Customer and/or Guarantor(s) or their related bodies corporate, including for the purpose of that person considering whether to offer to act as guarantor or offer security for that credit.
- By reason of the Customer's and/or Guarantor(s)' consent to the disclosure to overseas recipients hereunder, APP 8.1 will not apply to Hi-Quality Group's dealing with the Customer's and/or Guarantor(s)' Information.
- A full copy of Hi-Quality Group's privacy policy and credit reporting policy can be obtained from Hi-Quality Group's website (details above) or by making a request in writing directed to Hi-Quality Group's privacy officer. Hi-Quality Group's privacy policy and credit reporting policy contain information about how to access and seek correction of Information, or how to complain about a breach of the Act, APP, code(s) and how Hi-Quality Group will deal with any such complaint.
- The Customer and/or Guarantor(s) will be deemed to have acknowledged and accepted the terms of this privacy statement by either signing and returning this statement, failing to provide written notification to Hi-Quality Group within fourteen (14) days of receipt of this statement that its terms are not accepted, continuing to trade with Hi-Quality Group after receipt of this Statement or, if the Customer and/or Guarantor(s) are directors or guarantors of a customer, by not taking steps to prevent the customer from continuing to trade with Hi-Quality Group after receipt of this statement.

## Schedule A – Terms and Conditions Relating to Recycling and Landfill Sites

#### Definitions

- In these terms and conditions:

**'ADG Code'** means The Australian Code for the Transport of Dangerous Goods by Road & Rail (or its successor).

**'Authorised Waste'** means strictly any waste material listed on Hi-Quality Group's license. It does not include any green waste, asbestos, free-flowing liquid, viscous materials, contaminated waste, putrescible waste, chemicals, wet paint, oil, gas bottles, tyres, car bodies, hazardous or restricted waste, medical waste or any 'Dangerous Goods' as defined by ADG Code, unless specified otherwise by Hi-Quality Group.

**'Customer'** means the person, firm, organisation, partnership, corporation, trust or other entity (including its successors and permitted assigns) requesting the Services or to whom the Services are provided.

**'Dangerous Goods'** means goods classified as 'Dangerous Goods' by the ADG Code and also includes, without limitation, goods that are (or may become) dangerous, noxious, flammable, explosive, or radioactive that may cause damage to property and/or injury or death to any person or, in the opinion of Hi-Quality Group, are likely to cause damage to property and/or injury or death to any person.

**'Designated Area'** means the area designated by Hi-Quality Group or its representatives as the area on which the Customer is permitted to store or dispose of Authorised Waste.

**'Facilities'** means the waste management and disposal facilities owned and operated by Hi-Quality Group and includes the land on which the Designated Area is situated.

**'Hi-Quality Group'** means, jointly and severally, Hi-Quality Sales Victoria Pty Ltd ACN 100 174 712, Hi-Quality Waste Management Pty Ltd ACN 003 105 379, Hi-Quality Quarry (NSW) Pty Ltd ACN 104 362 110, Hi-Quality Building & Landscape Supplies ACN 145 898 095, Hi-Quality Heavy Haulage Pty Ltd ACN 635 475 624, Hi-Quality Environmental Services Pty Ltd ACN 097 554 580, Hi-Quality Recycling Services Pty Ltd ACN 101 044 688, Hi-Quality Civil & Environmental Services Pty Ltd ACN 133 722 915, Hi-Quality ACT Pty Ltd ACN 625 378 038, Hi-Quality Waste Treatment Services Pty Ltd ACN 631 222 234 and their related bodies corporate (as that term is defined in the *Corporations Act 2001*).

**'Services'** means any and all waste management, disposal and associated services (as the context requires).

**'Sub-Contractor'** means any person, firm, organisation, corporation, trust or other entity Hi-Quality Group arranges to supply Services (including their servants, agents, employees or sub-contractors).

**'Unauthorised Waste'** means any waste material that is not Authorised Waste.

#### Operation

- These terms and conditions apply to all contracts for the provisions of Services between the Customer and Hi-Quality Group.

#### The supply of Services

- From time to time, Hi-Quality Group may, in its sole discretion, provide Services to the Customer at the Customer's request on the terms and conditions contained herein.
- The Customer may have access to Hi-Quality Group's Facilities, and Services will be performed, on the days and during the hours of operation published by Hi-Quality Group at Hi-Quality Group's Facilities or on Hi-Quality Group's website (as updated from time to time) (**Normal Business Hours**).

#### Customer's warranties

- The Customer warrants that:
  - all waste material delivered to the Designated Area is Authorised Waste;
  - all representations made by or on behalf of the Customer concerning waste material, or its source, are true and correct in every respect and are made on an on-going basis and applies to all disposals of waste material;
  - it will not store or dispose of any waste material at Hi-Quality Group's Facilities, except for Authorised Waste, and only in the Designated Area;
  - to the extent permitted by law, no waste material delivered to Hi-Quality Group's Facilities by the Customer, or transported by Hi-Quality Group, will give rise to any liability on the part of Hi-Quality Group's;
  - the Customer, having made its own enquires, is satisfied that the transport, storage or disposal of waste material on or near Hi-Quality Group's Facilities will not contravene any law;
  - it will ensure that its servants, agents, contractors and employees will comply with all directions and instructions from Hi-Quality Group's, its servants, agents, and employees; and
  - if documents, shipping papers, permits, test certificates or manifests (**Required Documents**) are required by Hi-Quality Group and/or law or regulation to accompany the waste material to Hi-Quality Group's Facilities, the Customer will have prepared copies of all Required Documents in the form and number required and will present such Required Documents to Hi-Quality Group upon request.

#### Formation of contract

6. A binding contract will only come into existence if:
- Hi-Quality Group confirms its written acceptance of the Customer's order; or
  - Hi-Quality Group accepts the Customer's waste material for storage or disposal at its Facilities (whether by single or multiple deliveries); or
  - the Customer uses Hi-Quality Group's Facilities to store or dispose of waste material (or attempts to store or dispose of waste material).

**Orders based on weight**

7. Where the amount payable to Hi-Quality Group by the Customer for Services is based on weight or quantity of the waste material to be stored or disposed of by Hi-Quality Group, the records of the weight of the waste material generated by Hi-Quality Group's weighbridge shall be conclusive evidence of the weight or quantity of the waste material.

**Collection/Delivery**

8. Where the Customer has retained Hi-Quality Group to collect and deliver waste material to Hi-Quality Group's Facilities (or to any other location), the Customer shall be liable for all costs associated with the collection and delivery of the waste material to Hi-Quality Group's Facilities (or to any other location), including freight, insurance, handling and other charges, unless otherwise agreed in writing.
9. The Customer acknowledges and accepts that any estimated collection or delivery times provided by Hi-Quality Group are estimates only and Hi-Quality Group will not be liable for any loss suffered by the Customer as a result of any delay in the collection and/or delivery of waste material to Hi-Quality Group's Facilities (or to any other location).
10. The collection and delivery of waste material to Hi-Quality Group's Facilities (or to any other location) will be made within Normal Business Hours (unless otherwise agreed to in writing).
11. In the case of collection and/or delivery of waste material to Hi-Quality Group's Facilities (or to any other location), delivery is deemed to occur:
- where Hi-Quality Group has been retained to collect and store or dispose of waste material, upon collection of the waste material from the Customer; and
  - where the Customer delivers waste material to Hi-Quality Group's Facilities, upon delivery of the waste material to the Designated Area.
12. Hi-Quality Group is entitled to charge a reasonable fee for storage and/or redelivery charges in the event the Customer is not ready for Hi-Quality Group to collect the waste material at the time and place agreed between the parties.
13. The Customer accepts that Hi-Quality Group may collect the Customer's waste material in instalments and require payment for each separate instalment in accordance with these terms and conditions.
14. The Customer shall be responsible for ensuring safe and adequate access to the site for collection and all other aspects of site safety.
15. The Customer shall notify Hi-Quality Group prior to collection of any obstacles or peculiarities in relation to the site, including, but not limited to, whether the site or its approach has a gradient of greater than eight (8) percent.

**Retention of title in relation to waste material**

16. Until such time as the Customer has made payment in full for the Services rendered by Hi-Quality Group, and until such time as the Customer has made payment in full of all other money owing by the Customer to Hi-Quality Group (whether in respect of money payable under a specific contract or on any other account whatsoever):
- title in the Authorised Waste (or Unauthorised Waste, as the case may be) shall remain with the Customer and shall not pass to Hi-Quality Group; and
  - Hi-Quality Group shall have the right to dispose of the Authorised Waste (or Unauthorised Waste, as the case may be) in the ordinary course of business.

**Risk in waste material**

17. Subject to clause 18, upon delivery of the waste material in accordance with clause 11, all risk shall remain with the Customer.
18. Risk in the waste material shall only pass to Hi-Quality Group upon the issuance of:
- a material assessment docket confirming the waste material is Authorised Waste;
  - a signed weighbridge docket; and
  - a cash receipt for payment made or upon receipt of payment in full in cleared funds in respect of all monies owing under the corresponding account invoice.

**Unauthorised Waste**

19. Hi-Quality Group reserves the right to inspect any of the Customer's waste material that is subject to the provision of Services by Hi-Quality Group. The Customer must provide Hi-Quality Group with access to such waste material upon request and agrees to cooperate with Hi-Quality Group's reasonable directions during such inspection.
20. Upon inspection, if Hi-Quality Group determines that a load contains waste material which are, or include, Unauthorised Waste or are contrary to Hi-Quality Group's policies (as amended from time to time), Hi-Quality Group may, at its sole discretion:
- refuse to provide Services to the Customer in relation to such waste material; or
  - send the Unauthorised Waste to a licensed facility that is capable of dealing with the Unauthorised Waste.
21. A load containing Unauthorised Waste may be rejected in entirety as a contaminated load.
22. The Customer acknowledges that:
- notwithstanding any representations made by the Customer in relation to the waste material; and
  - notwithstanding any test certificates or other documents provided to Hi-Quality Group by the Customer, Hi-Quality Group's classification of the waste materials provided by the Customer shall be conclusive evidence of the materials to be stored or disposed of.
23. The Customer agrees to accept the return of any Unauthorised Waste rejected by Hi-Quality Group. If any Unauthorised Waste is handled, tested, treated, transported, stored or disposed of by Hi-Quality Group, it shall be so handled, tested, treated, transported, stored or disposed of in Hi-Quality Group's capacity as agent for the Customer at the Customer's expense.
24. For the avoidance of any doubt, the Customer agrees to indemnify Hi-Quality Group against all loss or damage resulting from Hi-Quality Group dealing with Unauthorised Waste.
25. Where a contaminated load is identified as trackable under Schedule 1 of the *Protection of the Environment Operations (Waste) Regulation 2014* (NSW) (or corresponding legislation in another state or territory), the Customer holds responsibility for the provision of a NSW EPA Consignment Authorisation and Transport Certificate (or other corresponding documentation required by any other state or territory authority).

**Site Access**

26. The Customer will provide "all weather", unobstructed and structurally appropriate truck access for Hi-Quality Group's vehicles. The Customer is liable for all expenses incurred in retrieving Hi-Quality Group's vehicles from the site in the event that access and egress to the site is hindered by circumstances beyond the control of Hi-Quality Group.

**Insurance**

27. The Customer is responsible for ensuring that it obtains its own insurance in respect of its staff and equipment and in relation to all business activities carried out by the Customer including when in attendance at Hi-Quality Group's Facilities. Further, the Customer will ensure that all of its subcontractors obtain their own insurance in respect of all works and activities carried out, including at Hi-Quality Group's Facilities.

**Indemnity**

28. The Customer agrees to indemnify Hi-Quality Group and keep Hi-Quality Group indemnified against any claim that arises out of:
- the Services supplied pursuant to these terms and conditions to the extent that such a claim is a consequence of a default by the Customer under these terms and conditions;
  - violation of any law or regulation committed, caused, or contributed by the Customer;
  - injury or to death to persons, loss or damage to property, contamination of the environment and/or Hi-Quality Group's Facilities caused by, or in connection with, delivery or unloading the waste material at Hi-Quality Group's Facilities by the Customer or its servants, agents, contractors or employees; and
  - negligent or wilful acts or omissions of the Customer or its servants, agents, contractors or employees.
29. The Customer acknowledges that the indemnity contemplated by clause 28 survives termination of any contract and includes any legal fees and expenses Hi-Quality Group incurs in order to enforce its rights, on an indemnity basis.

**Limitation of liability**

30. To the extent permitted by law, every exemption, exclusion or limitation of liability, and condition contained in these terms and conditions applicable to Hi-Quality Group shall also be available to, and shall extend to protect, Hi-Quality Group's Sub-Contractors.
31. In relation to the supply of Services, to the extent permitted by law, Hi-Quality Group's liability is limited to:
- supplying the Services again; or
  - providing for the cost of having the Services supplied again.
32. Hi-Quality Group is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Services supplied pursuant to these terms and conditions, and whether caused by the negligence, recklessness, or wilful negligence or misconduct of Hi-Quality Group's servants, agents, employees, Sub-Contractors or otherwise.
33. It is expressly agreed that all rights, immunities, and exclusions or limitations of liability conferred on Hi-Quality Group whether expressly or impliedly in these terms and conditions shall continue to be in full force and effect in all circumstances and notwithstanding any breach of contract or any condition hereby by Hi-Quality Group.

**Subcontracting and assignment**

34. The Customer acknowledges that Hi-Quality Group reserves the right to subcontract the Services to be supplied (or any part of those Services).
35. Any rights, obligations or benefits created or conferred by these terms and conditions are not unilaterally assignable by one party and will not be assigned without the prior written consent or approval of the other party.
36. The Customer agrees that it will not unreasonably withhold its consent should Hi-Quality Group request to assign rights, obligations or benefits in accordance with clause 34.

## Schedule B – Terms and Conditions of Carriage

### Definitions

- In these terms and conditions of carriage:
  - 'ADG Code'** means The Australian Code for the Transport of Dangerous Goods by Road & Rail (or its successor).
  - 'Carrier'** means, jointly and severally, Hi-Quality Heavy Haulage Pty Ltd ACN 635 475 624 and Hi-Quality Waste Management Pty Ltd ACN 003 105 379 and their related bodies corporate (as that term is defined in the *Corporations Act 2001*).
  - 'Customer'** means the person, firm, organisation, corporation, trust or other entity (including its successors and permitted assigns) requesting the Carrier to provide the Services.
  - 'Dangerous Goods'** means goods classified as 'Dangerous Goods' by the ADG Code and also includes, without limitation, goods that are (or may become) dangerous, noxious, flammable, explosive, or radioactive that may cause damage to property and/or injury or death to any person or, in the opinion of the Carrier, are likely to cause damage to property and/or injury or death to any person.
  - 'Goods'** means any and all plant, machinery, equipment, goods, articles, items, and/or cargo (together with any packaging, containers, and/or pallets) accepted by the Carrier for transportation from one location to another location by way of the Carrier's Services.
  - 'Recipient'** means the person to whom the Goods are delivered.
  - 'Services'** means any and all services supplied by the Carrier to the Customer, including, without limitation, packing, unpacking, loading or unloading the Goods from any vehicle or vessel, rail, sea or air carriage, stowing, storage, freight forwarding, customs clearance, and de-consolidation of any Goods on behalf of the Customer, and any other carriage and transport services provided by the Carrier to the Customer from time to time.
  - 'Sub-Contractor'** means any person, firm, organisation, corporation, trust or other entity the Carrier arranges to supply Services in relation to the Goods (including their servants, agents, employees or sub-contractors).

### Operation

- These terms and conditions of carriage apply to all contracts for the provisions of Services between the Customer and the Carrier.

### No liability as common carrier

- The Carrier is not a common carrier and hereby gives notice that it accepts Goods for carriage only upon the conditions set out herein and shall not be bound by any agreement to vary these conditions unless such agreement is in writing and signed by an authorised officer of the Carrier.

- The Carrier, in its sole discretion, reserves the right to refuse the transport of any Goods (or any class of Goods) without assigning any reason for such refusal.

### Pricing and charges

- The Customer shall be liable for all costs associated with the Services, including freight, insurance, handling and other charges, unless otherwise agreed in writing.
- Every special instruction to the effect that charges will be paid by the Customer shall be deemed to include a stipulation that if the Customer does not pay the said charges within seven (7) days of delivery or attempted delivery of the goods, then the Customer shall pay the said charges including any additional charge for each call made in an attempt to effect delivery.
- The Carrier may charge freight by weight, measurement or value and may at any time reweigh, revalue or remeasure or require the Goods to be reweighed, revalued or remeasured and in the event of any increases being disclosed in the weight, value or measurement of any of the said Goods the Carrier may make additional charges proportional to such increase so disclosed.
- All uncrated plant, machinery, and/or equipment shall be deemed to have a height of 2.6 metres and shall be measured and charged accordingly.
- Where freight is charged by weight there shall be a minimum weight for each shipment of Goods, unless otherwise stated in writing, and shall be calculated as follows:
  - With respect to Goods shipped by pallet, the minimum weight for each pallet of Goods shall be calculated at the rate of one-thousand (1000) kilograms per two (2) cubic metres (or any part thereof).
  - With respect to Goods shipped other than by pallet, the minimum weight of Goods shipped other than by pallet shall be calculated at the rate of three-hundred and thirty-three (333) kilograms per cubic metre (or part thereof).
  - The minimum weight shall be used for the calculation of the charge unless the actual weight of the shipment exceeds the minimum weight, in which case the charge shall be based upon the actual weight of the shipment.
- The Customer authorises the Carrier to store or to arrange for the storage of the Goods at any place and at any time as the Carrier considers appropriate and at the sole risk of the Customer and the Customer undertakes to pay any charges in respect thereof upon demand.
- If any Goods offered for transport are subject to any law or regulation relating to customs or excise, then the Customer warrants and represents that any customs and/or excise duty and any costs and other charges in relation to the Goods have been paid. If, for whatever reason, the Carrier becomes liable to pay any monies in respect thereof in performance of the Services, then such monies shall be repaid by the Customer to the Carrier on demand.

### Customer's warranties and obligations

- The Customer warrants and represents that:
  - it has complied with all laws and regulations in relation to the nature, conditioning, packaging, and carriage of the Goods, including, without limitation, the ADG Code;
  - the Goods are accurately described in writing, whether on a consignment note or otherwise, and accurately detail the nature and value of the Goods, as well as the requirements of any relevant authority and any other relevant information required by the Carrier (including, without limitation, the weight and measurements of the Goods);
  - subject to clauses 13 and 14, the Goods are not Dangerous Goods;
  - the Customer is the owner of the Goods, or is the duly authorised agent of the person who owns, or has an interest in, the Goods and is authorised to provide the Goods to the Carrier; and
  - the Customer has in place, and will maintain, an insurance policy to cover any and all loss of, or damage, to the Goods (however so caused) while the Goods are at the Customer's risk.

### Dangerous Goods

- The Customer acknowledges that it shall not tender for transport any Dangerous Goods, unless otherwise agreed in writing by the Carrier.
- If, in its sole discretion, the Carrier agrees to accept for transport any Dangerous Goods:
  - such Dangerous Goods must be accompanied by an accurate, written declaration that details the nature and value of the Dangerous Goods (as well as the requirements of any relevant authority and any other relevant information required by the Carrier); and
  - the Customer warrants that it has complied with all laws and regulations in relation to the nature, conditioning, packaging, and carriage of the Dangerous Goods, including, without limitation, the ADG Code.
- If, in the opinion of the Carrier, the Dangerous Goods accepted for transport are liable to become dangerous, inflammable, explosive, volatile, offensive or damaging in nature (whether to persons or property), the Carrier may, at any time and at the Customer's cost, destroy, dispose of, abandon or render harmless the Dangerous Goods, without any liability to the Customer or Recipient whatsoever.

### Route and deviation

- In provision of the Services, the Customer acknowledges that the Carrier reserves the right to use, or may use, any method or methods of carriage at its absolute discretion, and the Customer is deemed to have authorised such method or methods, unless it is expressly agreed that the Carrier is to use a particular method or handling, transporting or storing the Goods.
- The Customer authorises any deviation from the usual route of carriage that may, in the sole discretion of the Carrier, be considered preferable or necessary.

### Delivery

- Delivery will be made within normal business hours between Monday to Friday, 8.00am to 5.00pm only (unless otherwise agreed).
- The Carrier shall deliver the Goods to the Customer's nominated address and it is expressly agreed that the Carrier reserves the right to arrange transport of the Goods by any means in its sole discretion.
- Subject to clause 21, delivery is deemed to occur if at the Customer's nominated address, the Carrier obtains from the Recipient (or any person on behalf of the Recipient) an acknowledgement of delivery.
- If the Customer's nominated address for delivery is unattended or the Recipient fails to take delivery of the Goods (for whatever reason), the Carrier, in its sole discretion, may:
  - deposit the Goods at the Recipient's address;
  - store the Goods; or
  - return the Goods to the Customer;and it is expressly agreed that the Carrier's actions under subclauses 21(a) to 21(c) will constitute delivery.
- The Carrier is entitled to charge:
  - a reasonable fee for storage and/or redelivery charges in the event the Recipient does not, or is unable to, accept delivery of the Goods; and
  - the Customer for any costs which the Carrier incurs as a result of any delay in the delivery of the Goods caused by the Customer, its agents, or employees or the Recipient.
- Goods may be forwarded by any means at the discretion of the Carrier.
- The Carrier does not undertake to collect and/or despatch the Goods at any particular time, unless otherwise specified in writing. The Customer acknowledges and accepts that any estimated delivery time provided by the Carrier is an estimate only and the Carrier, will not be liable for any loss suffered by the Customer as a result of any incorrect delivery, delay in delivery, or non-delivery of the Goods.
- The Carrier may at its discretion detain and/or stop the carriage of any Goods in transit and may require the Customer retake possession of the Goods at any time.
- The Customer accepts that the Carrier may deliver the Goods by instalments and require payment for each separate instalment in accordance with these terms and conditions of carriage.
- The Customer acknowledges and accepts that it is not relieved from any obligation arising under these terms and conditions of carriage by reason of any incorrect delivery, delay in delivery or non-delivery of the Goods.

### Risk

- The Customer acknowledges that risk of damage, loss, and/or deterioration to the Goods shall at all times be at the risk of the Customer and that it is aware that the Carrier is not an insurer of Goods (either warehoused or in transit) and that the Carrier does not affect insurance on behalf of the Customer, unless otherwise agreed in writing.
- If the Customer requests that the Goods are delivered either to an unattended location, or to a location without the Recipient (or any person on behalf of the Recipient) being in attendance at the time of delivery, the Customer acknowledges that the Carrier will deliver the Goods as requested at the Customer's risk.

### Claims

- To the extent permitted by law, notice in writing of any claim intended to be made in relation to delivery (or non-delivery) of the Goods must be given to the Carrier within fourteen (14) days of the date of delivery, or, in the case of non-delivery within thirty (30) days from the date the Services should have been completed, or the Goods should have been delivered, and unless so given and made the claim however so made shall be extinguished and will not be enforceable against the Carrier.

### General lien

- The Carrier shall have a general lien on the Goods (and any documents in respect of the Goods) in relation to the Services rendered by the Carrier, until such time as the Customer has made payment in full for the Services and until such time as the Customer has made payment in full or all other money owing by the Customer to the Carrier (whether in respect of money payable under a specific contract or on any other account whatsoever).
- Without prejudice to any other rights or remedies the Carrier may have, whether under these terms and conditions of carriage or at law, the Carrier may:
  - store the Goods as the Carrier sees fit and at the Customer's risk and expense;
  - sell the Goods (or any part thereof) with notice to the Customer by way of public auction or private treaty and apply the proceeds to discharge the lien, together with all charges, costs and expenses in respect of the detention, storage and sale of the Goods (or any part thereof), and shall render the surplus (if any) of the proceeds of sale and Goods that remain unsold to the Carrier.

### Indemnity

- The Customer agrees to indemnify the Carrier and keep the Carrier indemnified in respect of all liability, claims, damage, loss, costs and expenses that the Carrier may suffer or incur at any time, directly or indirectly, as a result of:
  - any breach of the warranties set out in clause 12;
  - loss of, or damage to, any property and/or injury or death to any person (whether or not caused by any Dangerous Goods);
  - any claim by a third-party regarding ownership of the Goods (or any part thereof);

- (d) any other thing in relation to which the Customer has assumed the risk or liability under these terms and conditions of carriage; and
- (e) any default by the Customer in the performance or observance of the Customer's obligations under these terms and conditions of carriage.

34. The Customer acknowledges that the indemnity contemplated by clause 33 survives termination of any contract and includes any legal fees and expenses the Carrier incurs in order to enforce its rights, on an indemnity basis.

**Limitation of liability and exclusion of bailment**

35. To the extent permitted by law, the obligations of a bailor are excluded. The Carrier will not be responsible for any loss of, or damage to, or incorrect delivery of, or delay in the delivery of, any Goods. This applies when such loss, damage, incorrect delivery, delay in delivery or non-delivery may be occasioned by the negligence or wrongful act of the Carrier or its Sub-Contractors (whether intentional or not).

36. To the extent permitted by law, every exemption, exclusion or limitation of liability, and condition contained in these terms and conditions of carriage applicable to the Carrier shall also be available to, and shall extend to protect, the Carrier's Sub-Contractors.

37. In relation to the supply of Services, to the extent permitted by law, the Carrier's liability is limited to:

- (a) supplying the Services again; or
- (b) providing for the cost of having the Services supplied again.

38. The Carrier is not liable for loss of profit, economic or financial loss, damages, consequential loss, loss of opportunity or benefit, loss of a right or any other indirect loss suffered by the Customer as a result of the Services supplied pursuant to these terms and conditions, and whether caused by the negligence, recklessness, or wilful negligence or misconduct of the Carrier's servants, agents, employees, Sub-Contractors or otherwise.

39. It is expressly agreed that all rights, immunities, and exclusions or limitations of liability conferred on the Carrier whether expressly or impliedly in these terms and conditions of carriage shall continue to be in full force and effect in all circumstances and notwithstanding any breach of contract or any condition hereby by the Carrier.

**Subcontracting and assignment**

40. The Customer acknowledges that the Carrier reserves the right to subcontract the Services to be supplied (or any part of those Services).

41. Any rights, obligations or benefits created or conferred by these terms and conditions of carriage are not unilaterally assignable by one party and will not be assigned without the prior written consent or approval of the other party.

42. The Customer agrees that it will not unreasonably withhold its consent should the Carrier request to assign rights, obligations or benefits in accordance with clause 41.