Optimum Corporate Services Pty Ltd Trading as Cargo Traders International - TERMS AND CONDITIONS

1. DEFINITIONS

1.1. **"Agreement"** means the agreement and these terms and conditions. It includes these terms, any covering letter, quotation, estimate and any other document that refers to these terms.

1.2. **"Appointment Term"** means the period of time from the date of the Agreement up to and including the date the Agreement is terminated.

1.3. **"Authorised Officer"** means a person who is the Owner, Director, Secretary or Manager.

1.4. **"Claim"** means any actual, contingent, present or future claim, demand, action, suit or proceeding for any Liability, restitution, equitable compensation, account, injunctive relief, specific performance or any other remedy of whatever nature and however arising, whether direct or indirect, and whether in contract, tort (inducing but not limited to negligence) or otherwise.

1.5. **"Customer"** means the customer set out in any quotation, fee estimate, offer or other document provided by Optimum Corporate Services Pty Ltd trading as Cargo Traders International refered to as CTI from hereon (or, in the absence of such information, the customer who placed the order).

1.6. **"Credit"** means CTI providing, or proposing to provide, in the course of business, credit to the
Customer in relation to the acquisition of goods or services under the Agreement.

1.7. **"Dangerous Goods"** means any good which is noxious, dangerous, hazardous, flammable, explosive or likely to cause damage to the property of CTI, its staff, agents, employees or sub-contractors.

1.8. **"Disbursements"** means any charge incurred during the provision of the services which is not directly payable to CTI.

1.9. **"Goods"** means any goods associated with the provision of services.

1.10. **"Invoice"** means a tax invoice pursuant to GST laws.

1.11. **"Labour"** means the physical work undertaken by CTI and its employees in the course of providing the services.

1.12. **"Liability"** means any loss, liability, cost, payment, damages, debt or expense (including but not limited to reasonable legal fees).

1.13. **"Outstanding Debts"** means all amounts unpaid by the Customer to CTI as payable under the Agreement and in accordance with the relevant terms herein.

1.14. **"Perishable Goods"** means any good which is subject to certain use by dates, temperatures or any other specific condition.

1.15. **"PPSA"** means the Personal Property Securities Act 2009.

1.16. **"Privacy Act"** means Privacy Act 1988 (as amended by the Privacy Amended (Enhancing Privacy Protection) Act 2012).

1.17. **"Price"** means the price of the goods and services including but not limited to any other charges CTI is entitled to under the Agreement.

1.18. **"Professional Fees"** means fees directly payable to CTI for providing the Services and/or supplying the Goods.

1.19. **"Security interest"** means a security interest within the meaning of the *Personal Property Securities Act 2009*.

1.20. **"Services"** means the services in the Agreement and any associated services which may be required by the Customer.

1.21. **"Supply"** means the same as in GST laws.

1.22 **"Third Party"** means any 3rd party engaged to provide services outside the scope of CTI work. This may include but is not limited to; sub-contractors, agents, customs authorities, additional transport operators, etc.

1.23. **"Valuables"** means a Good which is reasonably considered to be; bullion, precious stones, jewellery, antique, painting or other art.

1.24. **"CTI"** means Cargo Traders International ABN 24 622 948 695 trading as Cargo Traders International and any of their staff, agents or employees.

2. CORPORATIONS

2.1. If the Customer is a corporation, the Customer warrants that its director(s) and/or company secretary will sign this Agreement pursuant to the requirements in section 1.5.7 of the *Corporations Act 2001* (Cth) for signing documents on behalf of the Customer.

2.2. The Customer warrants that all of its directors will provide personal guarantees and indemnities to CTI in relation to the Customer's obligations under the Agreement. Should a director fail to sign the guarantee, CTI reserves its right to cease providing services until the guarantee is executed.

3. TRUSTEE CAPACITY

3.1. If the Customer is the trustee of a trust (whether disclosed to CTI or not), the Customer warrants to CTI that:

3.1.1. the Customer enters into this Agreement in both its capacity as trustee and personal capacity;

3.1.2. the Customer has the right to be indemnified out of trust assets;

3.1.3. the Customer has the power under the trust Agreement to sign this Agreement; and

3.1.4. the Customer will not retire as trustee of the trust or appoint any new or additional trustee without advising CTI.

3.2. The Customer must give CTI a copy of the trust Agreement upon CTI's request.

4. PARTNERSHIP

4.1. If the Customer is a partnership, the Customer warrants that all of its partners agree to and have signed this Agreement and that all of its partners will provide personal guarantees and indemnities to CTI in relation to the Customer's obligations under the Agreement.

4.2. If the Customer is a partnership, it must not alter its partnership (for example, adding or removing partners or altering its partnership agreement) without first advising CTI. In the case of a change of partners, CTI may require new partners to sign a personal guarantee and indemnity.

5. ACCEPTANCE

5.1. The Customer is taken to have accepted, and is immediately bound, jointly and severally, by the Agreement if the Customer (or its agent or employee);

5.1.1. orders the Services; or

5.1.2. accepts provision of the Services.

5.2. These terms and conditions may only be amended with CTI's written consent and shall prevail to the extent of any inconsistency with any other document or agreement.

6. FORMATION OF CONTRACT

6.1. Fee estimates made by CTI will not be construed as an offer or obligation to supply in accordance with the fee estimate. CTI reserves the right to accept or reject, at its discretion, any offer to purchase received by it.

6.2. A fee estimate is not a guarantee that the work will be completed for the price listed in the estimate. Unforeseen events may occur that mean the estimate will increase.

6.3. Placement of an order for Services, either verbally or in writing, will imply acceptance of CTI's offer and of these terms and conditions.

7. NOT A COMMON CARRIER

7.1. CTI is not a common carrier and accepts no liability as such.

8. PRICE

8.1. At CTI's sole discretion the Price shall be:

8.1.1. as indicated on estimates/quotes provided by CTI to the Customer in respect of the Services.

8.1.2. Subject to clause 8.1.1, quotations in respect of Services are subject to the right of withdrawal before acceptance by the Customer.

8.2. CTI reserve the right to change the Price:

8.2.1. if a variation to the Services which are to be provided is requested;

8.2.2. if a variation to the Services originally ordered is requested;

8.2.3. in the event that the Customer has misrepresented the nature of the Services required to complete the job; or

8.2.4. in the event of increases to CTI's cost of labour or other charges which are beyond CTI's control.

9. PAYMENT TERMS

9.1. Professional Fees incurred for work completed by CTI will be invoiced to the Customer and payable strictly within fourteen (14) days of the date of the invoice unless they are the subject of the credit application.

9.2. Disbursement Fees incurred during the provision of the Services are payable immediately as they are invoiced or, where CTI has notified the Customer that a Disbursement Fee will be incurred shall be paid when requested.

9.3. CTI is entitled to retain and be paid for all brokerages, commissions, allowances and other remunerations customarily retained by or pay to shipping and forwarding agents and insurance brokers whether declared or otherwise.

9.4. Should the Customer not pay for the Services and/or Goods as and when they fall due, or as agreed in writing by CTI from time to time, CTI will be entitled to charge an administration fee of $100 (fixed).

9.5. Should the Customer wish to pay an invoice by way of Credit Card, a merchant fee will be charged for the use of Mastercard or Visa.

9.6. CTI's charges to the Customer including professional fees shall be deemed fully earned on receipt of the Goods by CTI and shall be paid and non-refundable in any event, (except for negligence or wilful misconduct by CTI) and whether the Goods are lost or not lost, whether a voyage or flight is delayed or not delayed. If there shall be a forced interruption or abandonment of a flight or voyage anywhere, any forwarding of the Goods shall be at the risk and expense of the Customer.

10. SECURITY/CHARGE

10.1. The Customer charges in favour of CTI all of its estate and interest in any real property that the Customer owns at present and in the future with the amount of its indebtedness until discharged.
10.2 The Customer charges in favour of CTI all of its estate and interest in any personal property that the Customer owns at present and in the future with the amount of its indebtedness until discharged.
10.3. The Customer appoints, as its duly constituted attorney, CTI's company secretary from time to time to execute, in the Customer's name, any real property mortgage, bill of sale or consent to any caveat which CTI may choose to lodge, against any 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.
10.4. Where the Customer has entered into a previous Agreement with CTI in which the Customer has granted a charge, mortgage or other security interest (inducing a security interest defined in 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. CTI may, at its election, vary the terms of such previous charges, mortgages or other securities to reflect the terms herein.
10.5. CTI shall have a special and general lien on the goods and a right to sell the goods whether by public or private sale or auction without notice, for freight demurrage, detention charges, duty, fines, penalties, salvage or any other charge, whatsoever for any debt which is due and owing by the Customer. The lien shall extend to cover the costs and expenses of exercising the lien and such a sale including reasonable legal fees.
10.6. The lien referred to in clause 10.5 shall survive the delivery of the goods and CTI shall be entitled to retain the proceeds of sale of the goods in respect of any outstanding amounts previously referred to.
10.7. The Customer agrees and acknowledges CTI is entitled in its absolute discretion to register its specific and general lien as a security interest on the register established under the PPSA and CTI has provided consideration for that security interest, by delivery of its promises under this Agreement.

11. COSTS

11.1. The Customer must pay for its own legal, accounting and business costs and all costs incurred by CTI relating to any default by the Customer. The Customer must also pay for all stamp duty and other taxes (if any) payable on this Agreement.
11.2. The Customer will pay CTI's costs and disbursements incurred in pursuing any recovery action/or any other claim or remedy, against the Customer, including but not limited to; collection costs, debt recovery fees, commission and legal costs on an indemnity basis. Such costs, disbursements and commission will be due and payable by the Customer to CTI irrespective of whether the recovery action, claim or remedy is successful.
11.3. Subject to clause 11.2, payments by, or on behalf of, the Customer will be applied by CTI as follows:

11.3.1. firstly, in payment of any and all collection costs, debt recovery fees and commission and legal costs in accordance with clauses 11.1 and 11.2;
11.3.2. secondly, in payment of any interest incurred in accordance with clause 15; and
11.3.3. thirdly, in payment of the outstanding debt(s).

11.4. CTI may apply and allocate payments received by, or on behalf of, the Customer in a manner in CTI's absolute and unfettered discretion, inducing so as to attribute the payments to satisfy obligations which are or are not secured by a purchase money security interest or otherwise.
11.5. To the extent that payments have been allocated to invoices by CTI in its business records, CTI may, in its sole and unfettered discretion, allocate and/or retrospectively reallocate payments in any manner whatsoever at any time whatsoever.
11.6. Payments allocated (and/or reallocated) under clause 11.5 will be treated as though they were allocated or reallocated, respectively, in the manner determined by CTI on the date of receipt of payment.

12. INSURANCE

12.1. As CTI have limited their liability pursuant to clause 17, the Customer should seek to arrange its our insurance in the event that loss or damage were to occur during the provision of the Services.
12.2. Alternatively, the Customer may request in writing that CTI arrange insurance for the Customer as the Customers agent. CTI is under no obligation to advise the Customer or choose the terms of the cover and accepts no liability for doing so. Should the insurer dispute liability for any reason, the Customer shall have no recourse against CTI for acting as its agent.

13. TYPES OF GOODS

13.1. Unless otherwise agreed in writing, CTI will not accept; valuables, Dangerous Goods, Perishable Goods, Livestock, Plants or any other good that may be in breach of any law or customs regulation of the Origin and Destination.
13.2. Should the Customer breach clause 13.1, it will be liable to CTI for any and all loss, damage and expense CTI incurs in rectifying the breach.

14. TAXES AND DUTY

14.1. The Customer must pay GST on any taxable supply made by CTI 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.
14.2. If as a result of:

14.2.1. any legislation becoming applicable to the subject matter of this Agreement; or
14.2.2. any changes in legislation or its interpretation by a court of competent jurisdiction or by any authority charged with its administration, CTI becomes liable to pay tax, duty, excise or levy in respect of the amounts received from the Customer, then the Customer must pay CTI these additional amounts on demand.

15. DEFAULT

15.1. Each of the following is an event of default, namely:

15.1.1. The Customer allowing any sum of money payable to CTI pursuant to this Agreement to remain unpaid one (1) clear day following the day upon which the amount became due and payable;
15.1.2. The Customer failing to punctually perform or observe any of the conditions or obligations imposed upon it by this Agreement and such failure remaining unresolved for a period of seven (7) clear days after the notice in writing is served upon the Customer by CTI specifying the default;
15.1.3. If CTI ascertains that the Customer has made any false, inaccurate or misleading statement having a material effect in relation to the making of the Agreement or any related or collateral document;
15.1.4. If the Customer is a company, upon the passing of a resolution for its winding up or the making of any order by any court for its winding up, the appointment of a controller, provisional liquidator, receiver; or receiver and manager, or voluntary administrator in respect of it or in respect of the whole or any part of its assets;
15.1.5. The levying of execution by any court against the Customer and such execution not being satisfied within fourteen (14) days;
15.1.6. If the Customer; or if the Customer is a company, any director of the Customer, being convicted upon indictment of a criminal offence or being sentenced to a term of imprisonment; or
15.1.7. If the Customer breaches any one or more of the terms or conditions of this Agreement

15.2. A statement rendered by CTI to the Customer will be proof of the amount due.

16. INTEREST RATES

16.1. Any amount not paid in accordance with the terms and conditions of this Agreement, will be subject to penalty interest pursuant to the provisions of the *Penalty interest Rates Act 1983* and *Supreme Court Act 1986* or any act which supersedes either of those Acts until the total amount is paid in full.

17. SET-OFF

17.1. 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.
17.2. Any amount due to CTI from time to time may be deducted from any monies which may be or may become payable to the Customer by CTI.

18. LIABILITY AND INDEMNITY

18.1. The Customer agrees to indemnity CTI for any and all costs and disbursements incurred in pursuing any recovery action or any other claim or remedy, against the Customer, inducing collection costs, debt recovery fees, commission and legal costs on an indemnity basis.
18.2. The Customer agrees to indemnify CTI against all and any losses sustained by CTI as a result of any claims, actions, loss, damage, liability, fine or penalty brought against CTI, whether those claim(s) or action(s) are by the Customer or by a third party, pursuant to any event arising from or as a result of the Agreement unless caused by the negligence, wilful act or omission by CTI.
18.3. CTI shall not be liable for,

18.3.1. any loss caused to the Customer by reason of strikes, lockouts, fires, riots, war, embargoes, civil commotion, acts of God or any other activity beyond CTI's control.
18.3.2. completing work or not completing work subject to the instructions provided by the Customer.
18.3.3. any loss suffered by the Customer due to the Customer's failure to abide by the terms contained herein.
18.3.4. any delay in delivery, forwarding or transit or failure to deliver Goods, any deterioration, contamination, evaporation or any consequential loss or loss of market value howsoever it occurs.

18.4. In relation to the supply of services, CTI's liability is limited to:

18.4.1. supplying the service again; or
18.4.2. providing for the cost of having the services supplied again at the amount of which is equal to o reasonably equivalent to the cost CTI would have incurred if supplying the services again.

18.5. CTI is not liable, whether claims are made or not, 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 unless the loss or damage occurs is due to the fault, negligence or wilful act or omission of CTI, its employees, servants, agents and sub-contractors.
18.6. Should it be applicable, General Average shall be adjusted, stated and settled according to the York-Antwerp Rules 2016 in Australia unless another place is agreed in writing. The Customer shall pay any contribution to the General Average to the carrier even when such average is due to the actions of the master, pilot or crew.

19. SERVICE

19.1. The Customer agrees to accept service of any document required to be served, including any notice under the Agreement, the PPSA or court process, by prepaid post at any address nominated in this Agreement or any other address later notified to CTI by the Customer or its authorised representative.

20. PROVISION OF FURTHER INFORMATION

20.1. The Customer undertakes to comply with any request by CTI to provide further information for the purpose of assessing the Customer's creditworthiness, including an updated credit application.
202. If the Customer is a corporation (with the exception of a publicly listed company), it must advise CTI of any alteration to its corporate structure or governance (for example a change in directors, shareholders, or constitution). In the case of a change of directors or shareholders CTI may require the new directors or shareholders to sign a guarantee and indemnity.

21. THIRD PARTIES

21.1. CTI shall, where reasonable, liaise with Third Parties, but shall not be responsible for their employment and payment.

21.1.1. CTI will not be held liable by the Customer for any work provided by a 3rd party.
21.1.2. The Customer shall be responsible for organising the transportation of the Goods between the Customer's facility and the nominated facility of CTI.
21.1.3. Should there be a delay in the Services provided by a third party, the Customer agrees that additional charges may be incurred, including but not limited to; warehousing charges, additional transport charges, demurrage charges, wharf charges and detention charges.

22. CTI WARRANTIES TO THE CUSTOMER

22.1. CTI will ensure that all work is decent, lawful and does not infringe the rights of any third party or any legislation;
22.2. CTI will notify the Customer as soon as practical of any anticipated delay or failure howsoever they arise.

23. OBLIGATIONS OF THE CUSTOMER

23.1. The Customer warrants that:

23.1.1. It is the owner of the Goods, or if it is not the owner, is the verified agent acting on behalf of the owner and has the necessary authority to enter this Agreement;
23.1.2. It will appoint CTI as its agent for the purposes of carrying out any/all requirements associated with the provision of the Services.
23.1.3. It will provide any and all intonation that CTI requires to provide the Services, this includes but is not limited to; accurate descriptions of the goods, weights, values and any other information that is required by customs;
23.1.4. CTI is entitled to make decisions about the proposed route and any associated procedures with the provision of the Services;
23.1.5. The Goods are sufficiently packed; prepared or stored unless the Customer has specifically engaged CTI in writing to ensure same.
23.1.6. It authorises CTI to make payments on its behalf and it will pay any and all disbursements, professional fees, duties, taxes, imposts, charges or any other outlay howsoever they may arise due to the provision of the Services.
23.1.7. Where necessary, suitable facilities and equipment for the transport and storage of the Goods will be provided.
23.1.8. CTI is able to assign the Agreement should it be deemed necessary.
23.1.9. It shall be responsible for the timely return of any container used in respects of the Goods and Services which are the subject of this agreement. The customer will return the container in a clean and undamaged condition and indemnify CTI against any claim, liability or expense, including detention or demurrage charges which may arise as a result of a failure by the Customer to return the container, delay in returning the container or damage to the container.
23.1.10. unless a notice of loss is served on CTI within three (3) business days after the delivery of the Goods, the Customer accepts that the Goods have been delivered in a satisfactory condition.

24. WAIVER

24.1. A waiver of any provision or breach of this Agreement by CTI must be made by an authorised officer of CTI 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.

25. CANCELLATION/TERMINATION OF AGREEMENT

25.1. Upon cancellation of the Agreement, with or without notice, all liabilities and fees incurred by the Customer become immediately due and payable to CTI; and
25.2. The Agreement may be terminated for any reason by either party at any time by giving seven (7) days written notice.
25.3.

26. VARIATION

26.1. The Customer agrees that these terms and conditions may be varied, added to, or amended by an authorised officer of CTI at any time by written notice to the Customer.
26.2. Any proposed variation to these terms and conditions by the Customer must be requested in writing. CTI may refuse any such request without providing reasons either orally or in writing.
26.3. Variations requested by the Customer will only be binding upon CTI if they are accepted in writing.

27. SEVERANCE

27.1. 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.
27.2. If any part of this agreement is invalid or unenforceable, that part is deleted and the remainder of the Agreement remains effective.

28. INSOLVENCY

28.1. If the Customer becomes insolvent, the Customer remains liable under this Agreement for payment of all liabilities incurred hereunder. The Customer remains liable under this Agreement even if CTI receives a dividend or payment as a result of the Customer being insolvent.

29. JURISDICTION

29.1. The Customer acknowledges and agrees that this Agreement will be governed by the laws of Queensland, and the laws of the Commonwealth of Australia which are in force in Queensland.
29.2. The Customer acknowledges and agrees that any contract for the provision of services between CTI and the Customer is formed at the address of CTI.
29.3. The parties to this Agreement submit to the exclusive jurisdiction of the courts of Queensland and the relevant federal courts and courts competent to hear appeals from those courts.

30. ENTIRE AGREEMENT

30.1. This Agreement constitutes the entire Agreement between the parties relating in any way to its subject matter. 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 effects the meaning or interpretation of this Agreement or constitutes any collateral Agreement, warranty or understanding.
30.2. Notwithstanding the preceding paragraph, in circumstances where there is a pre-existing written agreement (Original agreement) between the Customer and CTI, 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.
30.3. 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 Agreement in relation to the provision of services pursuant to this Agreement of all or any of the provisions of the *Competition and Consumer Act 2010* or any relevant State or Federal Legislation which by law cannot be excluded, restricted or modified.

31. PRIVACY ACT

31.1. The Customer agrees to the terms of the Privacy Statement pursuant to the *Privacy Act 1988* as amended by the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* contained in this document.