

Terms & Conditions

The Customer's attention is drawn to these Conditions, which exclude or limit Fremantle Freight and Storage Pty Ltd's ("FFS") liability and may require the Customer to indemnify FFS in certain circumstances.

These Conditions, together with any applicable Quotation, Rate Card, credit application (as applicable) and any annexes, form the contractual structure for the provision of Services by FFS to the Customer.

PART I: GENERAL CONDITIONS

1. Application

- (a) Subject to Clauses 1(b) and 1(c), all Services of FFS whether gratuitous or not are undertaken subject to these Conditions and:
 - (i) the provisions of Part I shall apply to all Services;
 - (ii) the provisions of Part II shall only apply to the extent that the Services are provided by FFS as agents; and
 - (iii) the provisions of Part III shall only apply to the extent that Services are provided by FFS as principals.
- (b) To the extent that there is any inconsistency between these Conditions and any applicable Quotation or Rate Card, the terms in these Conditions are to prevail to the extent of the inconsistency, unless the contrary intention is otherwise expressly stated in the relevant Quotation or Rate Card.
- (c) Where a document is issued by or on behalf of FFS and bears the title of, or includes the words, "bill of lading" (whether or not negotiable), or sea or air "waybill" and provides that FFS contracts as carrier, the provisions set out in that document, if inconsistent with these Conditions, shall be paramount and prevail over these Conditions to the extent that such provisions are inconsistent but no further.
- (d) Any variation, cancellation or waiver of these Conditions (or any of them) must be in writing signed by both parties. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these Conditions.
- (e) Any Instructions received by FFS from the Customer for the supply of Services shall constitute acknowledgement by the Customer that it: has received, understands and agrees to be bound by these Conditions and will be bound by these Conditions.
- (f) Such Instructions received by FFS from the Customer or their authorised agent for the supply of Services shall also constitute:
 - (i) authorisation for FFS to act on behalf of the Customer in accordance with these Conditions; and
 - (ii) acceptance of the Fees and scope of work set out in the relevant Quotation and/or the Rate Card.
- (g) To the extent that the parties agree to use the Customer's own forms, the terms in these Conditions are to prevail, to the extent of any inconsistency.

2. Provision of Services

- (a) FFS shall have the right to decline to perform any Services requested by the Customer by giving reasonable notice in writing to the Customer. FFS requires this right because, for instance, there may be operational constraints affecting performance, or because FFS faces increased credit risk in connection with the Customer or the Owner.
- (b) Services are provided by FFS as agents only, except in the following circumstances where FFS acts as principal:
 - (i) where FFS performs any carriage, handling or storage of Goods, but only to the extent that the carriage is performed by FFS itself or its servants and the Goods are in the actual custody and control of FFS;
 - (ii) where, prior to the commencement of the carriage of Goods, the Customer in writing demands from FFS particulars of the identity, services or charges of persons instructed by FFS to perform part or all of the carriage, and FFS fails to give the particulars demanded within 28 days. However, for the purposes of this sub-clause, FFS shall only be deemed to be

- contracting as a principal in respect of that part of the carriage which FFS fails to give the particulars demanded;
- (iii) to the extent that FFS expressly agrees in writing to act as a principal;
 - (iv) to the extent that FFS is held by a court of law to have acted as a principal; or
 - (v) for the purposes of engaging with third parties and incurring Disbursements if the Customer is a Non-Resident, but solely for the purposes of the GST treatment of those disbursements and without affecting FFS's status as agent for all other purposes of these Conditions.
- (c) The charging by FFS of a fixed price for any Services whatsoever shall not in itself determine or be evidence that FFS is acting as an agent or a principal in respect of those Services.
 - (d) The supplying by FFS of its own or leased equipment shall not in itself determine or be evidence that FFS is acting as agent or a principal in respect of any carriage, handling or storage of Goods.
 - (e) FFS acts as an agent where FFS procures a bill of lading, sea or air waybill or other document evidencing a contract of carriage between a person, other than FFS, and the Customer or Owner.
 - (f) FFS acts as an agent and never as a principal when providing Services as a customs broker in respect of or relating to customs requirements, taxes, licenses, consular documents, certificates of origin, inspection, certificates and other similar services or when providing any other services whatsoever for or on behalf of the Customer.
 - (g) FFS is not a common carrier and will accept no liability as such and it reserves the right to accept or refuse the carriage of any Goods or any other Service at its discretion. All Services are performed subject only to these Conditions (and when applicable but subject to clause 28(f), the conditions on any bill of lading or sea waybill or air waybill issued by FFS as principal).

3. Definitions

Unless the context otherwise requires:

ACL means the *Australian Consumer law*, being Schedule 2 of the Competition and Consumer Act 2010 (Cth);

Agreement means any agreement between the Customer and FFS for the supply of Services, incorporating these Conditions and any Quotation, Rate Card and, if applicable, the Customer's credit application to FFS;

Authority means a duly constituted legal or administrative person, acting within its legal powers and exercising jurisdiction within any nation, state, municipality, port or airport;

Australian Resident means a resident of Australia for the purposes of the *Income Tax Assessment Act 1936* (Cth);

Collateral has the meaning given under the PPSA;

Conditions means these Service Terms & Conditions;

Container includes any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate goods and any equipment of or connected thereto;

Compliance Laws means laws, regulations and rules relating to ethical business conduct, including those relating to anti-bribery and corruption, anti-trust, sanctions, trade controls, export controls, anti-money laundering and modern slavery;

Consumer has the meaning applied to that term in the ACL;

Customer means the Owner and/or any person at whose request or on whose behalf FFS provides Services;

Consequential Loss means any loss or damage that does not arise directly or naturally (that is, in the usual course of things) from the breach or other acts or omission, including loss of opportunity, loss of reputation or goodwill, loss of contract, loss of revenue, profit, sales or anticipated savings and losses in connection with agreements or arrangements that the Customer has with third parties;

CoR means chain of responsibility as it is used in the Heavy Vehicle National law;

Dangerous Goods means any cargo or substance which is, or has the potential to be, a risk to health, safety, property or the environment, and includes goods which are or may become of a dangerous, inflammable, radio-active or damaging nature and goods likely to harbour or encourage vermin or other pests, any substance or article prescribed as such under a Dangerous Goods Code;

Dangerous Goods Code includes any of the following codes, as updated or replaced from time to time:

- (a) the Australian Code for the Transport of Dangerous Goods by Road and Rail (Edition 7.8);
- (b) the Australian Code for the Transport of Explosives by Road and Rail (3rd Edition); or the Code of Practice for the Safe Transport of Radioactive Material (2008 Edition); and
- (c) any other state, territory, Commonwealth or International law, regulation or code that relates to the

transport or carriage of Dangerous Goods.

Disbursements means any charges, rates, fees or levies (including fuel surcharges) incurred by FFS in the performance of the Services including but not limited to any new or existing charges, fees, levies, duties or other imposts levied by any customs or port authority (or similar authority) or government agency in respect of the Goods or Services;

FFS means Fremantle Freight and Storage Pty Ltd (ABN: 19 135 036 565);

Fees means the fees and charges levied by FFS in respect of the provision of the Services, as set out in the Quotation or the Rate Card, as the case may be, or as otherwise agreed in writing by the parties from time to time;

Force Majeure Event means any cause or causes beyond the control of the party whose performance is directly affected by it, including but not limited to war (declared or undeclared), rebellion, revolution, tumults, political disturbance, accident to wharf, accidents at works or wharf, at receivers' works or wharf, breakdown or stoppage of slurry pipeline, transfer vessels, motor vehicles or any part of the works from which the Goods are supplied or to which the Goods are destined, including loading and/or discharging facilities, installations and/or equipment at or en route, partial or total stoppage of roads, rivers or channels, riot, insurrection, civil commotion, epidemics, pandemics, quarantine, strike, lockout, blockade, industrial disturbance, labour/industrial disputes or stoppages of miners, workmen, lightermen, tugboatmen or other hands essential to the working, carriage, delivery, shipment or discharge of the said Goods whether partial or general, interference of trade unions, act of God, fire, floods, storm, tempest, volcanic eruption, earthquake, landslips, frost or snow, bad weather, intervention of sanitary, customs, and/or other constituted authorities, act of government (whether de-facto or de-jure) and supervening illegality, or any other cause beyond the control of FFS. Act of government shall include, but is not limited to, the refusal to grant any necessary import or export licence;

General Average means a loss, damage, cost or expenditure intentionally and reasonably incurred for the common safety of a vessel, cargo and other property involved in a maritime adventure, for the purpose of preserving the property from peril. General Average shall be adjusted and settled in accordance with the York-Antwerp Rules (as amended from time to time), or any other internationally accepted rules agreed between the parties, and all parties to the maritime adventure shall contribute rateably to such General Average.

Goods includes the cargo and any Container in respect of which FFS provides the Services;

Goods Requiring Special Handling means Dangerous Goods, High Value Goods and Goods which require temperature control;

GST has the meaning prescribed to it in the GST Act;

GST Act means the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (as amended from time to time);

Hague-Visby-Rules means the provisions of the International Convention for the Unification of certain rules Relating to Bills of Lading signed at Brussels on 25th August 1924 as amended by the Visby Protocol of 23rd February 1968 and the SDR Protocol of 21st December 1979;

Heavy Vehicle National law means the Heavy Vehicle National law and Regulations and any other similar laws or regulations in any State or Territory (or any replacement or modification thereof) that are applicable, including any laws in relation to safety concerning the carriage of goods by road, and in relation to mass, dimension, load restraint, speed, fatigue and vehicle standards, roadworthiness, and maintenance;

High Value Goods means any bullion, coin, precious stone, jewellery, antiques, works of art or other goods or items which value exceeds AUD\$500,000 in a single consignment;

Incidental Matters means anything done or to be done in relation to the Goods or the provision of any services ancillary to the Goods including but not limited to moving, storing or leaving the Goods at any warehouse, terminal, yard, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods or fumigating, transhipping, inspecting or otherwise handling the Goods or anything done in relation thereto;

Insolvency Event means if any (or more than one) of the following occur with respect to a Customer:

- (a) the Customer becomes insolvent or is otherwise unable to pay its debts as and when they fall due;
- (b) the Customer (or any third party) institutes any insolvency, receivership or bankruptcy proceedings with respect to the Customer, for the settlement of the Customer's debts;
- (c) the Customer makes a general assignment for the benefit of creditors; or
- (d) the Customer ceases to conduct business.

Instructions means a statement of specific requirements, received in writing from the Customer or Owner;

Montreal Convention means the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed in Montreal in 1999 (Montreal Convention) as applied respectively by the legislation of the Commonwealth of Australia;

Non-Resident means an entity that is not an Australian Resident;

Owner includes the owner, shipper and consignee of the Goods and any other person who is or may become interested in the Goods and anyone acting on their behalf;

Person includes individuals, partnerships, firms trusts, associates or any body or bodies corporate;

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

Quotation means any written quotation or proposal issued by FFS to the Customer, which contains information relevant to the Services requested by the Customer, and which may include but is not limited to the Fees payable for the Services, the volumes of such Services, and any additional terms to those specified in these Conditions;

Rate Card means a formal document issued by FFS to the Customer, setting out the applicable Fees for the requested Services;

Security Interest has the meaning given under the PPSA and includes but is not limited to any security interest arising from or associated with the provision of the Services;

Services means any and all services provided by FFS to the Customer (unless FFS and the Customer are parties to a separate, signed, agreement for the provision of specified services, in which case those specified services will not be Services for the purposes of these Conditions), and all matters necessarily related or ancillary to the provision of such services;

State or Territory means any state or territory of Australia;

Tax Invoice means a document that contains all the information required under section 29-70 of the GST Act; and

Transport Documentation means any house or main air waybill, bill of lading, sea waybill, warehouse receipt, consignment note, contract of carriage, ships delivery order or other document issued by FFS or a third party providing Services in respect of the Goods.

4. Obligations of Customer

- (a) The Customer shall give sufficient and executable Instructions in respect of the Goods and Services.
- (b) The Customer warrants that:
 - (i) it is either the Owner or the authorised agent of the Owner of the Goods and that it is authorised to accept and accepts these Conditions, not only for itself, but also as agent for and on behalf of the Owner;
 - (ii) it has reasonable knowledge of matters affecting the conduct of its business, including, but not limited to, the terms of sale and purchase of the Goods and all other matters relating thereto;
 - (iii) the description and particulars of the Goods are complete and correct;
 - (iv) the Goods are properly packed and labelled, except where FFS has accepted Instructions in respect of packaging and/or labelling;
 - (v) it will comply with all applicable laws pertaining to the transportation of the Goods, including but not limited to CoR; and
 - (vi) it shall, at its own cost undertake to do the following:
 - (A) provide to FFS all required information relating to each consignment;
 - (B) forward the consignments to the locations as agreed between the parties pursuant to these Conditions; and
 - (C) complete all required Transport Documentation.

5. Special Instructions, Goods and Services

- (a) Unless agreed in writing by FFS prior to receipt, the Customer shall not deliver to FFS, or cause FFS to deal with or handle, Dangerous Goods.
- (b) If the Customer is in breach of Clause 5(a):
 - (i) the Customer shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising, provided the loss or damage is not attributable to an act or omission of FFS;
 - (ii) the Customer shall defend, indemnify and hold harmless FFS against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith, provided they are

- not attributable to an act or omission of FFS; and
- (iii) FFS (or any other person in whose custody the Goods may be in at the relevant time) may, acting reasonably, refuse to supply Services in relation to those Goods, at the risk and cost of the Customer and take whatever measures reasonably necessary in the circumstances to render the Goods suitable to be handled or dealt with, or if required by law or a lawful authority, or to protect the health and safety of any person, property or the environment, at the cost of the Customer, destroy, dispose of or render harmless the Goods. FFS will endeavour to give reasonable notice if it elects to do anything under this sub-clause 5(b)(iii), but states and the Customer accepts that there may be situations where it is not possible to give notice prior to measures being taken (such as in an emergency, or where adjusting or improving packaging of Goods during transport), in which case FFS will notify the Customer of the measure taken under this sub-clause 5(b)(iii) as soon as practicable.
 - (c) If FFS agrees to accept Dangerous Goods and then it (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, it may take any of the action set out in clause 5(b), subject to the notice requirements set out in that clause.
 - (d) The Customer undertakes not to tender for transportation any Goods which require temperature control without previously giving written notice of their nature and the particular temperature range to be maintained and, in the case of a temperature controlled Container packed or stuffed by or on behalf of the Customer, the Customer further undertakes that:
 - (i) the Container has been properly pre-cooled or pre-heated as appropriate;
 - (ii) the Goods have been properly packed or stuffed in the Container; and
 - (iii) the Container's thermostatic controls have been properly set by the Customer.
 - (e) If the requirements of Clause 5(d) are not complied with FFS shall not be liable for any loss of or damage to the Goods caused by such non-compliance, provided the loss or damage is not attributable to an act or omission of FFS.
 - (f) Unless agreed in writing prior to receipt, FFS will not accept or deal with High Value Goods. Should any Customer nevertheless deliver any such High Value Goods to FFS or cause FFS to handle or deal with any such High Value Goods other than in accordance with prior written agreement, FFS shall be under no liability whatsoever for or in connection with such Goods howsoever arising.
 - (g) For the avoidance of doubt, FFS may, in its absolute discretion and on the provision of notice in writing to the Customer or Owner:
 - (i) accept or reject;
 - (ii) propose amended Fees and/or impose a special handling charge for; and/or
 - (iii) impose additional conditions or requirements in respect of, any Goods Requiring Special Handling. On receipt of that notice, the Customer or Owner may elect not to proceed with the provision of Services in respect of such Goods Requiring Special Handling, without penalty.
 - (h) Unless agreed in writing or otherwise provided for under the provisions of a document signed by FFS:
 - (i) FFS shall not be obliged to make any declaration for the purposes of any statute, convention or contract as to the nature or value of any Goods or as to any special interest in delivery or to make any declaration as to specific stowage requirements of any Goods;
 - (ii) Instructions relating to the delivery or release of Goods against payment or against surrender of a particular document shall be in writing and FFS's liability shall not exceed that provided for in respect of misdelivery of Goods; and
 - (iii) FFS gives no warranty and makes no representation that the Goods shall depart by or arrive by a particular date and shall not accept any responsibility for departure or arrival dates of Goods.

6. Insurance

- (a) The Customer agrees to obtain and maintain at the Customer's sole cost, appropriate and adequate insurance coverage against any and all claims, losses, damages or expenses resulting from the Services, including but not limited to any loss of or damage to the Goods on an all risk basis. In the event of loss of or damage to Goods, the Customer should as first resource pursue any available insurance cover it maintains in respect of the Goods.
- (b) In the event that FFS or its insurer pays or agrees to pay any amount in settlement of a claim for loss of or damage to the Goods, the Customer agrees that all rights of salvage in respect of the

Goods shall automatically pass to FFS or its insurer to the extent of such payment and as permitted by law. The Customer irrevocably authorises FFS and its insurer to take possession of, realise, sell or otherwise dispose of the Goods and shall provide all reasonable cooperation required to give effect to those rights.

- (c) For the avoidance of doubt, FFS does not issue insurance, and will not effect insurance in relation to the Customer's Goods.

7. General Indemnities and Liabilities of the Customer and Owner

- (a) Except to the extent reasonably attributable to a negligent act or negligent omission of FFS, its agents, servants or subcontractors, the Customer and Owner shall be liable for and shall defend, indemnify and hold harmless FFS:
 - (i) against all liability, loss, damage, costs and expenses howsoever arising:
 - (A) from the nature, manufacturing and defects of the Goods, or any insufficiency of the packing or labelling of the Goods by the Customer or the Owner or any person acting on their behalf;
 - (B) out of FFS acting in accordance with the Instructions;
 - (C) from the handling, loading, stowage or unloading of the Goods by the Customer or Owner or any person acting on their behalf; or
 - (D) from a breach of warranty or obligation by the Customer or arising from the negligence of the Customer or Owner; and
 - (ii) in respect of all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by FFS in connection therewith.
- (b) Advice and information, in whatever form it may be given, is provided by FFS for the Customer only and the Customer shall defend, indemnify and hold harmless FFS for all liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.
- (c) The Customer shall be liable for:
 - (i) the loss, damage, contamination, soiling, delay detention or demurrage whether arising before, during or after the carriage of property of FFS (including, but not limited to, Containers) or any vessel;
 - (ii) personal injury to or death of FFS's servants, sub-contractors or agents, independent contractors engaged by FFS for performance of part or all of the Services, caused by the Customer or Owner or any person acting on behalf of either of them or for which the Customer is otherwise responsible, and will defend, indemnify and hold harmless FFS in respect of same.
- (d) Instructions to collect payment on delivery in cash or otherwise are accepted by FFS at its sole and absolute discretion, and on the condition that FFS in the matter of such collection will be liable for the exercise of reasonable diligence and care only. Unless express written Instructions are received that the Goods are not to be delivered without payment, FFS accepts no liability if, upon delivery of the Goods, payment is not made.

8. Sub-contractors

- (a) The Customer undertakes that no claim will be made against any servant, sub-contractor or agent of FFS, or any other persons for whom FFS is or might be vicariously liable, which imposes or attempts to impose upon any of them any liability whatsoever in connection with the Goods or Services. If any such claim should nevertheless be made, the Customer undertakes to indemnify FFS against all consequences thereof.
- (b) Without prejudice to Clause 8(a), and to the extent permitted by law, every servant, sub-contractor or agent of FFS or persons for whom FFS is or might be vicariously liable, shall have the benefit of all provisions herein, including every exemption, exclusion or limitation in these Conditions or any agreement applicable to FFS or to which FFS is entitled, as if such provisions were expressly for their benefit, and each of them shall to this extent be deemed to be parties. In entering into this contract, FFS, to the extent of those provisions, does so not only on its behalf, but as agent and trustee on behalf of and for the benefit of all such persons.
- (c) Where the Customer is in breach of the undertaking in clause 8(a), the Customer shall defend, indemnify and hold harmless FFS from and against all claims, costs and demands whatsoever and by whomsoever made or preferred, in excess of the liability of FFS under these Conditions.

- (d) In this Clause, "sub-contractors" includes direct and indirect sub-contractors and their respective employees, servants and agents.

9. Fees

- (a) In consideration of the provision of the Services, the Customer will pay FFS the Fees in accordance with this clause 9 without deduction or deferment on account of any claim, counterclaim or set-off.
- (b) The Customer acknowledges and agrees that FFS may, in the course of performing the Services, incur Disbursements, and the Customer undertakes to pay the Disbursements in accordance with this Clause 9.
- (c) FFS will issue tax invoices to the Customer at any time as determined in FFS's absolute discretion in relation to:
 - (i) the Services (the Service Invoice); and
 - (ii) the Disbursements (the Disbursements Invoice).
- (d) Unless FFS has granted the Customer alternative credit terms in writing, the Customer must pay each of:
 - (i) the Services Invoice within 14 days; and
 - (ii) the Disbursements Invoice within 7 days.
- (e) All amounts due to FFS are payable in Australian Dollars (AUD). Where an invoice is denominated in a currency other than AUD, the invoice amount will be converted into AUD at the prevailing exchange rates.
- (f) When FFS is instructed to collect freight, duties, charges or other expenses from any person other than the Customer, the Customer:
 - (i) shall remain responsible for these amounts; and
 - (ii) shall pay these amounts to FFS on demand where these amounts have become due and have not been paid by such other person.
- (g) On all accounts overdue to FFS, FFS shall be entitled to charge default interest to be calculated at the rate of the then current cash rate target published by the Reserve Bank of Australia, plus 4 percent per annum, computed from the due date until the date of payment in full (both before and after any judgment).
- (h) The Customer shall be liable for and pay to FFS any additional costs or expenses FFS may incur and for any loss or damage occasioned either directly or indirectly to FFS as a result of FFS relying upon the description and particulars provided by the Customer or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- (i) If FFS's operating or service costs increase as a result of circumstances beyond FFS's reasonable control (including any Force Majeure Event and the introduction, amendment or change in application of any law, levy or tax), and that increase affects the cost to FFS of providing the Services, FFS may adjust the Fees to reflect that increase, by giving the Customer written notice thereof, together with reasonable documentary evidence of the circumstances and the resulting cost impact.
- (j) FFS may, with at least 14 days' written notice to the Customer and acting at its reasonable discretion, amend, reduce or withdraw any credit arrangements made available to the Customer, without incurring any liability to the Customer. FFS requires this right for circumstances where there has been a material adverse change in the Customer's credit position or FFS reasonably believes that an Insolvency Event is about to occur.
- (k) Without limiting any other rights, FFS may suspend the provision of Services if the Customer fails to pay any Fees due and owing (excluding invoices validly under dispute and which are subject to the procedure set out in clause 21 of these Conditions).
- (l) Where FFS agrees to provide the Services for a period of at least 12 months, or where the Services have been ongoing for 12 months or more, FFS may revise the Fees to reflect any increase in the Consumer Price Index (CPI) every 12 months from first acceptance of these Conditions by the Customer.
- (m) FFS shall under no circumstances be precluded from raising a debit in respect of any Fee or Disbursement lawfully due to it and inadvertently not invoiced before, notwithstanding that a previous debit or debits in relation to the Services had been raised. For clarity purposes, this does not mean that FFS shall double charge Customer for Services. Where any amount charged by FFS is described as a Disbursement (or similar expression), such amount will include the forwarder's handling, processing or administration fee in respect of the same, in accordance with

FFS's disclosure set out in the Quotation or Rate Card, as the case may be, or as otherwise agreed in writing by the parties from time to time.

- (n) The Customer acknowledges that FFS may charge Fees by reference to the Customer's declaration as to the weight, measurement or value of the Goods. If FFS, acting reasonably, suspects that the Goods the subject of Services has been misdeclared by the Customer or the Owner, FFS may at any time reweigh, remeasure or revalue the Goods (or request same) and charge additional fees accordingly.
- (o) The parties agree that:
 - (i) Unless otherwise stated, all charges quoted are exclusive of GST;
 - (ii) If a party makes a taxable supply under or in connection with this Agreement, the other party must pay to the supplier at the same time, and in addition to the GST-exclusive consideration, an amount equal to the GST payable on that supply;
 - (iii) The supplier must, as a precondition to the payment of GST under clause 9(o)(ii), give the other party a tax invoice;
 - (iv) If an adjustment event arises in connection with a supply made under this Agreement, the supplier must give the other party an adjustment note in accordance with the GST Act; and
 - (v) If these Conditions require one party to pay for, reimburse or contribute to any expense, loss or outgoing suffered or incurred by the other party, the amount required to be paid, reimbursed or contributed by the first party will be reduced by the amount of input tax credits (if any) to which the other party is entitled in respect of the reimbursable expense.

10. 153-B Agreement – Resident Customers

- (a) This clause only applies if the Customer is an Australian Resident.
- (b) In accordance with Subdivision 153-B of the GST Act, the parties agree that:
 - (i) FFS will, on the Customer's behalf, make acquisitions from third parties and incur Disbursements pursuant to clause 9(b) of these Conditions;
 - (ii) for the purposes of the GST Act, FFS will be treated as having made a corresponding supply of the things acquired from the third parties to the Customer;
 - (iii) FFS will issue to the Customer, in FFS's own name, all tax invoices relating to those supplies in accordance with clause 9(o)(iii) of these Conditions;
 - (iv) the Customer will not issue to FFS any tax invoices relating to those acquisitions; and
 - (v) this arrangement will cease if either party ceases to be registered for GST.
- (c) The parties acknowledge that each is registered for GST and will notify the other if it ceases to be registered.

11. Liberties and Rights of FFS

- (a) Pending forwarding and on notification to the Customer, FFS shall be entitled to arrange for the Goods to be warehoused or stored at any place at its sole discretion and at the risk and expense of the Customer.
- (b) Unless otherwise agreed in writing, FFS shall be entitled to enter into contracts on behalf of itself or the Customer for the:
 - (i) carriage of Goods by any route, means or person;
 - (ii) carriage of Goods of any description, whether containerised or not, on or under the deck of any vessel;
 - (iii) storage, packing, transshipment, loading, unloading or handling of Goods by any person at any place whether on shore or afloat and for any length of time;
 - (iv) carriage or storage of Goods in containers or with other goods of whatever nature; or
 - (v) performance of its own obligations, and to do such acts as FFS reasonably considers may be necessary or incidental to the performance of FFS's obligations.
- (c) FFS shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Customer's Instructions in any respect if FFS considers there is good reason to do so in the Customer's interest or in an emergency situation.
- (d) FFS may at any time comply with the orders or recommendations given by any Authority. The responsibility and liability of FFS in respect of the Goods shall cease on the delivery or other disposition of the Goods in accordance with such orders or recommendations.
- (e) FFS shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and to open or remove any Containers for the purposes of complying with the orders or

- recommendations given by any Authority.
- (f) If at any time FFS reasonably considers that the carriage of the Goods should not be undertaken or continued or only continued after effecting any necessary Incidental Matters or incurring additional expense or risk, FFS shall notify the Customer and seek further instructions. If the Customer fails to provide further instructions within 3 Business Days, FFS shall be entitled to:
 - (i) abandon the carriage of such cargo or to effect such additional Incidental Matters and incur such additional expense, as may be reasonably necessary in order to enable the carriage to be effected or further effected; and
 - (ii) be reimbursed by the Customer for the cost of all such additional Incidental Matters and all such additional expense incurred.
 - (g) If FFS (or any person whose services FFS makes use of) considers:
 - (i) the performance of FFS's obligations are likely to be affected by any hindrance, risk, delay, difficulty or disadvantage whatsoever (and which has not been caused by FFS or any person whose services FFS makes use of); and
 - (ii) the hindrance, risk, delay, difficulty or disadvantage cannot be avoided by reasonable endeavours of FFS or such other person,
 FFS may (upon giving notice in writing to the Customer or Owner) treat the performance of its obligations as terminated and may, at the Customer's expense, place the Goods or any part of them at the Customer's or Owner's disposal at any place which FFS, in its reasonable opinion, deems safe and convenient.
 - (h) Notwithstanding the above, FFS may, without prior instruction from the Customer, take immediate action and/or effect any Incidental Matters where FFS reasonably considers that such action is required in order to:
 - (i) prevent or mitigate loss of or damage to property and/or the Goods;
 - (ii) comply with any applicable law, regulation, directive, port, customs or governmental requirement;
 - (iii) address any quality, health, safety, environmental, security and/or operational emergency, and where it is not possible to provide written notice, or where seeking the Customer's Instructions would result in unreasonable delay, disruption, additional cost, or risk.
 - (i) FFS shall notify the Customer as soon as reasonably practicable after taking such action pursuant to Clause 11(h).
 - (j) Where FFS exercises its rights and obligations under Clause 11(g), responsibility and liability of FFS in respect of the Goods shall thereupon cease absolutely.
 - (k) Where FFS (or any person whose services FFS makes use of) is entitled to call upon the Customer or Owner to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Customer or Owner at the designated time and place FFS (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Customer.
 - (l) Notwithstanding Clauses 11(g) to 11(k), FFS shall be entitled (but under no obligation), acting reasonably, to sell or dispose of:
 - (i) all Goods which FFS considers cannot be delivered as instructed, but only upon giving 21 days notice in writing to the Customer, and
 - (ii) without notice, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.
 - (m) Where FFS sells or disposes of Goods pursuant to Clause 11(l), the Customer shall be responsible for any costs and expenses of the sale or disposal and FFS will not compensate or be liable to the Customer, other than accounting to the Customer for any balance proceeds after recovering any money owed to FFS (including recovery costs and the costs of the sale).
 - (n) FFS shall have the right to enforce against the Owner and the Customer jointly and severally any liability of the Customer under these Conditions or to recover from them any sums to be paid by the Customer which upon demand have not been paid.

12. Security Interest

- (a) **Special and General Lien:** From the time FFS, or its servants or agents, receive the Goods into its custody, FFS, its servants or agents shall have a special and general lien on the Transport

Documentation and/or the Goods and, acting reasonably, a right to sell the Goods whether by public or private sale or auction on the provision of 21 days' notice, for any unpaid amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the lien shall cover all costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs. The lien and rights granted by this Clause 12(a) shall survive delivery of the Goods and FFS shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts whatsoever referred to in this clause, but will account to the Customer for any balance proceeds after any money owed to FFS (including recovery costs and the costs of the sale). The Customer accepts that any sums due and owing by the Customer are secured debts and that any payment made to FFS in discharge of FFS's lien does not amount to a preference, priority or advantage in any manner or turn. FFS sells or otherwise disposes of such Goods pursuant to this Clause 12(a) as principal and not as agent and is not the trustee of the power of sale.

- (b) **Continuing Security Interest:** From the time FFS, or its servants or agents, receive the Goods into its custody, the Goods, and all of the Customer's present and future rights in relation to the Goods, are subject to a continuing security interest in favour of FFS for the payment of all amounts for freight, demurrage, container detention charges, duty, fines, penalties, salvage, average of any kind whatsoever and without limitation and for any and all debts, charges, expenses or any other sums due and owing by the Customer or the Customer's principals, servants or agents. In addition, the continuing security interest shall cover all the costs and expenses of exercising the lien, including the costs of a public or private sale or auction, including legal costs and administration costs.
- (c) **Custody and Possession:** For the purposes of this Clause 12, and in particular Clauses 12(a) and 12(d), FFS shall be deemed to have custody and possession of the Goods whether the Goods are in the actual physical custody and possession of FFS or of any subcontractors, servants or agents, and whether or not FFS is in possession of any documents of title relating to the Goods. The Customer and FFS agree that FFS has possession of the Goods within the meaning of section 24 of the PPSA, even if the Goods are in the possession of FFS's subcontractors, servants or agents.
- (d) **PPSA:** The Customer acknowledges and agrees that:
 - (i) these Conditions constitute a Security Agreement for the purposes of the PPSA;
 - (ii) value has been given for the Security Interest pursuant to section 19 of the PPSA;
 - (iii) FFS may register its Security Interest in the Goods, any proceeds of the sale of those Goods being the Collateral and all of the Customer's present and future rights in relation to the Collateral, on the Personal Property Securities Register established under PPSA; and
 - (iv) any Security Interest of FFS will be a continuing and subsisting interest in the Collateral with priority to the fullest extent permitted by law over all registered or unregistered Security Interests.
- (e) **Provide Information:** The Customer will immediately inform FFS if an Insolvency Event occurs with respect to the Customer. The Customer shall not change its name or other details without first notifying FFS in writing at least 14 days before such change takes effect.
- (f) **Contracting Out and Waiver:**
 - (i) FFS need not give any notice to the Customer or any other person (including a notice of verification statement) unless the notice is required to be given by the PPSA and cannot be excluded.
 - (ii) The Customer and FFS agree pursuant to section 115 of the PPSA that Sections 125, 142 and 143 of the PPSA do not apply to this Agreement.
 - (iii) The Customer, pursuant to section 115 of the PPSA, waives its right to receive any notice, details or other document from FFS under Sections 95, 121(4), 130, 135, 132(3)(d) and 132(4) of the PPSA.
- (g) **Customer's Obligations: The Customer will not:**
 - (i) permit to subsist any other security interest in relation to the Goods which would rank ahead of FFS's interest; or
 - (ii) except in the normal course of business, sell, lease or dispose of, or permit the sale, lease or disposal of, the Goods.

- (h) **FFS's Rights:** In addition to any rights FFS has under the PPSA, FFS shall have the right, as the Customer's agent, at any time while any amounts owing by the Customer to FFS under any Contract remains outstanding, to enter into the premises where Goods are stored and remove them. The Customer shall indemnify FFS for all such moneys and all costs, charges and expenses in repossessing the Goods.
- (i) **Confidentiality:** The Customer and FFS agree not to disclose information of the kind mentioned in Section 275(1) of the PPSA, except in circumstances required by Sections 275(7) (b) to (e) of the PPSA. The Customer agrees that it will only authorise the disclosure of information under Section 275(7)(c), or request information under Section 275(7)(d), unless FFS approves. Nothing in this Clause 12(i) will prevent any disclosure by FFS that it believes is necessary to comply with its other obligations under the PPSA or any other law.

13. Containers

- (a) The Customer shall defend, indemnify and hold harmless FFS against all liability, loss, damage, costs and expenses arising from:
 - (i) the manner in which the Container has been packed or stuffed (unless FFS or its servants or agents were responsible for the packing or stuffing);
 - (ii) the unsuitability of the contents for carriage in Containers;
 - (iii) the unsuitability or defective condition of the Container (unless the Container was made available to the Customer by FFS directly, in such a defective condition); or
 - (iv) the fact that the Container is not sealed.
- (b) Where FFS is instructed to provide a Container, in the absence of a written request to the contrary, FFS is not under an obligation to provide a Container of any particular type or quality.
- (c) The Customer agrees to indemnify and keep indemnified FFS for all hire and other charges charged for the Customer's use of Containers provided by FFS, and for any costs incurred by FFS for the cleaning of Containers.

14. Australian Consumer Law (ACL)

- (a) If the Customer is a Consumer, then FFS's supply of Services comes with guarantees that cannot be excluded under the ACL, and the balance of this Clause 14 applies.
- (b) For major failures with the Services, the Customer is entitled:
 - (i) to cancel its Agreement with FFS; and
 - (ii) to a refund for the unused portion, or to compensation for its reduced value.
- (c) If a failure with the service does not amount to a major failure, the Customer is entitled to have the failure rectified in a reasonable time. If this is not done, the Customer is entitled to cancel its Agreement and obtain a refund of any unused portion. Subject to clauses 15(a) and 15(b), the Customer is also entitled to be compensated for any other reasonably foreseeable direct loss or damage.
- (d) The Customer notes and confirms it is aware that:
 - (i) where the Services relate to the transportation or storage of Goods; and
 - (ii) any consignee of Goods is carrying on or engaged in a business, trade, profession or occupation in relation to the Goods,
 the Services provided will be covered by s 63 of the ACL and, as a result, the consumer guarantees in relation to services in ss 60 to 62 (inclusive) of the ACL, will not apply.
- (e) To the extent permitted by the ACL and the law, if FFS is liable for a breach of a guarantee imposed by the ACL, then FFS and the Customer note that the Services are not of a kind ordinarily acquired for personal, domestic or household use or consumption, and FFS's liability for a breach of any such guarantee (or condition or warranty, express or implied) will be limited, at its option, to any one or more of the following:
 - (i) the supply of the Services again;
 - (ii) the payment of the cost of having the Services supplied again.

15. Limitation of Liability

- (a) Subject to Clause 15(b) and to the extent permitted by the ACL and the law, FFS's liability for any claim, loss or damage arising out of these Conditions (notwithstanding that the cause of loss or damage be unexplained), including liability for breach of any agreement, delay, in negligence or in tort or for any other common law or statutory action, shall:

- (i) be limited to the extent the loss or damage was caused directly by FFS;
- (ii) in all events, exclude any Consequential Loss;
- (iii) be subject to mandatorily applicable international conventions or national laws; and
- (iv) in any one case be limited to re-supplying or paying an amount equal to the cost for the re-supply of the Services; or
- (v) 4 SDR per kg of the relevant Goods
 Whichever is the greater.
- (b) In any event and to the extent permitted by the ACL, the total liability of FFS for any and all claims, under any agreement the subject of these Conditions:
 - (i) is limited to AUD \$30,000 per event or events arising from common cause; and
 - (ii) for Services expressed to be for a period of at least 12 months, or where the Services have been ongoing for 12 months or more, shall not exceed an annual aggregate of AUD\$100,000 (calculated from the date which is one year preceding the relevant claim event),
 unless a higher limit is agreed in writing between the Customer and FFS.
- (c) Except to the extent reasonably attributable to acts or omissions of FFS, its agents, servants or subcontractors, the Customer indemnifies FFS for any loss, damage cost or expense incurred by FFS, to the maximum extent permitted by law, for any breach of these Conditions by the Customer, negligence by or on behalf of the Customer, or any breach or non-compliance with any relevant law or regulation by the Customer.
- (d) Nothing in these Conditions is to be interpreted as excluding, restricting or modifying or having the effect of excluding, restricting or modifying the application of any State or Federal legislation applicable to the supply of Services which cannot be excluded, restricted or modified.
- (e) Where FFS provides Services in relation to warehousing and those Services are expressed to be for a period of at least 12 months, or where the Services have been ongoing for 12 months or more:
 - (i) the Customer agrees that a monthly stock loss and damage ullage of 0.4% of the total value of all Goods, stored by FFS applies, and that FFS will not be liable for any loss or damage falling within this allowance. In this regard:
 - (A) FFS will undertake regular cycle counts and an annual stocktake in relation to the Goods, at the Customer's cost subject to it being market related Fees; and
 - (B) if a stocktake identifies a surplus or excess of Goods, that excess will be credited against and reduce the calculated stock ullage tolerance for that period.
 - (ii) where both FFS and the Customer operate their own warehouse management systems (WMS) or inventory systems within a warehouse, and a discrepancy arises between the systems, the inventory records and data recorded in FFS's WMS will be deemed accurate and conclusive for the purpose of stock calculations, stocktakes, ullage assessments and the like, unless the Customer provides clear documentary evidence demonstrating an error in FFS's WMS data.
- (f) Except insofar as otherwise provided by these Conditions, FFS shall not be liable for any loss or damage whatsoever arising from:
 - (i) the act or omission of the Customer or Owner of the Goods or any person acting on their behalf,
 - (ii) compliance with the Instructions given to the FFS by the Customer, Owner of the Goods, or any other person entitled to given them,
 - (iii) insufficiency of the packing or labelling of the Goods, except where, such service has been provided by FFS,
 - (iv) handling, loading, stowage or unloading of the Goods by the Customer or the Owner of the Goods or any person acting on their behalf,
 - (v) inherent vice of the Goods,
 - (vi) any Force Majeure Event, or
 - (vii) any cause which FFS could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.

16. Claims, Notice of Loss, Time Bar

- (a) The Customer must give FFS notice of any claim in writing within 7 days after the date specified in Clause 16(c) (or within a reasonable time after that date if the Customer can show that it was not

reasonably practicable to give such notice within 7 days). For the avoidance of doubt, this procedure is necessary in order to enable FFS to assess whether it has caused or contributed to any relevant claim and to allow FFS to identify potential operational issues and to mitigate the potential for future claims.

- (b) To the full extent permitted by law, FFS shall be discharged of all liability unless a suit is brought in the proper forum and written notice thereof received by FFS within 12 months after the date specified in Clause 16(c).
- (c) For the purposes of Clause 16(a) and 16(b), the applicable dates are:
 - (i) in the case of loss or damage to Goods, the date of delivery of the Goods;
 - (ii) in the case of delay or non-delivery of the Goods, the date that the Goods should have been delivered;
 - (iii) in any other case, the event giving rise to the claim.
- (d) Where FFS or its insurers pays or settles any claim for loss of or damage to Goods, FFS or its insurers is entitled to the salvage value of any affected Goods, insofar as this is permitted by law. The Customer must provide all reasonable cooperation to enable FFS to realise any salvage.
- (e) Notwithstanding this clause 16, where any international convention or mandatory law applies to the Services and prescribes a different notice requirement, claim procedure or limitation period, that convention or law will prevail to the extent of any inconsistency.

17. General Average

- (a) The Customer shall defend, indemnify and hold harmless FFS in respect of any claims of a General Average nature, including any claims or demands for General Average security which may be made on FFS, and the Customer shall forthwith provide such security as may be required by FFS in this connection.

18. Chain of Responsibility

- (a) FFS maintains a policy of compliance with its CoR obligations and the Customer must comply with its CoR obligations at all times.
- (b) The Customer must comply with, and ensure that its employees, agents and contractors comply with, their respective CoR obligations. The Customer must provide FFS, in a timely manner, with all information and assistance reasonably required by FFS to comply with its CoR obligations in connection with the Services, including information relevant to the safe and lawful transport or handling of the Goods. The Customer warrants that all such information is accurate, complete and current, and must promptly notify FFS if it becomes inaccurate or incomplete.
- (c) FFS is not obliged to comply with any Instruction which, in its reasonable opinion, may cause or contribute to a breach of any CoR obligation or otherwise create a risk to the safe or lawful transport or handling of the Goods. In those circumstances, FFS may, acting reasonably and at the risk and cost of the Customer, refuse, suspend or vary the Services or any Instruction, delay or re-schedule collection or delivery, require the Goods to be reweighed, repacked or reloaded, or hold, return or store the Goods.
- (d) The Customer must maintain such records and provide such cooperation as FFS reasonably requires in connection with any audit, investigation, inquiry or request of an Authority relating to CoR or the Services.
- (e) The Customer indemnifies FFS for all fines, penalties, costs, expenses, losses and damage incurred or sustained by FFS in connection with any breach of CoR obligations by the Customer or any of its employees, agents or contractors, including in connection with any investigation, prosecution, notice, delay, detention, business interruption, legal costs, professional costs or third party claim, except to the extent caused by FFS.

19. Force Majeure

- (a) Other than the Customer's obligation to pay the Fees, neither Party shall be deemed in default of these Conditions for any delay or failure to fulfill any obligation under these Conditions so long as, and to the extent to which, any delay or failure in the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of a Force Majeure Event. If the Force Majeure Event continues for a period longer than ninety days from its initial occurrence, then either party may terminate the agreement by written notice to the other party.

20. Termination

- (a) Either Party may terminate this Agreement immediately by written notice to the other Party if the other Party:
 - (i) breaches any applicable Compliance Law in connection with the performance of the Agreement;
 - (ii) breaches any of these Conditions (including without limitation an obligation to pay) and fails to remedy the breach within 30 days of receiving notice requiring it to do so;
 - (iii) breaches any of these Conditions and the failure is not capable of remedy;
 - (iv) becomes insolvent, enters into liquidation, administration, receivership or any analogous insolvency process, suspends payment of its debts, or is unable to pay its debts as and when they fall due; or
 - (v) ceases, or threatens to cease, carrying on its business in a manner that materially affects its ability to perform its obligations under the Agreement.
- (b) Termination under this clause is without prejudice to any rights or remedies accrued prior to termination.

21. Dispute Resolution

- (a) If a dispute arises out of or in connection with these Conditions or the Services ("Dispute"), the party raising the Dispute must promptly notify the other party in writing and provide details of the Dispute.
- (b) Within 10 days of a notice being issued under Clause 21(a), senior representatives of FFS and the Customer must use reasonable endeavors to resolve the Dispute.
- (c) If the Dispute is not resolved within the time period specified in Clause 21(b), the parties may proceed to Court under the provisions of Clause 25 (f).

22. Ethics and Compliance

- (a) Each Party must, in connection with the performance of this Agreement, comply with all applicable Compliance Laws.
- (b) Without limiting Clause 22(a), each party represents and warrants that it will not, and will ensure that its officers, employees and agents do not:
 - (i) engage in any form of bribery, corruption, improper payment, facilitation payment or other unlawful or unethical conduct;
 - (ii) breach any applicable sanctions, trade control or export control laws, including by dealing with sanctioned persons, entities, countries or goods; or
 - (iii) engage in conduct that would contravene applicable modern slavery, human trafficking or forced labour laws or standards.
- (c) Each Party must maintain appropriate policies, procedures and internal controls designed to ensure compliance with applicable Compliance Laws and enforce such measures where appropriate.
- (d) Each Party must promptly notify the other in writing if it becomes aware of any actual or suspected breach of this clause or any matter that could reasonably be expected to result in a breach.

23. Data Privacy and Protection

- (a) Each Party must comply with all applicable data protection and privacy laws in connection with this Agreement.
- (b) To the extent FFS processes Personal Information (as defined in the Privacy Act 1988 (Cth)) on behalf of the Customer in providing the Services, FFS will:
 - (i) process such Personal Information only for the purpose of performing the Services;
 - (ii) implement appropriate technical and organisational measures appropriate and proportionate to protect Personal Information against unauthorised or unlawful processing, loss or damage; and
 - (iii) without undue delay notify the Customer of any material data breach affecting such Personal Information, to the extent required by and in accordance with the law.
- (c) The Customer warrants that it has all necessary rights and authorities to provide any Personal Information to FFS for processing in connection with the Services.
- (d) FFS may use subcontractors to process Personal Information as reasonably required for the Services, subject to appropriate confidentiality and equivalent data protection obligations.

- (e) FFS and its subcontractors may process, transfer or store Personal Information outside Australia where reasonably necessary for the Services, which it will do in accordance with the applicable privacy laws.
- (f) Upon termination or expiry of this Agreement, and subject to any legal or regulatory retention requirements, the Parties will, upon request, return or securely destroy Personal Information processed on behalf of each other.
- (g) Nothing in this clause limits any rights or obligations that cannot be excluded or limited under applicable privacy laws.

24. Intellectual Property

- (a) Each Party retains all right, title and interest in and to its respective Intellectual Property existing prior to, or developed independently of, this Agreement.
- (b) All Intellectual Property created, developed or used by FFS in the course of providing the Services (including methodologies, processes, systems, documentation and know-how) remains the property of FFS.
- (c) To the extent any Intellectual Property owned by FFS is incorporated into the deliverables or used in connection with the Services, FFS grants the Customer a non-exclusive, non-transferable licence to use such Intellectual Property solely for the Customer's internal purposes and only to the extent necessary to receive the benefit of the Services.
- (d) The Customer must not copy, modify, reverse engineer or otherwise exploit FFS's Intellectual Property except as expressly permitted under this Agreement.
- (e) Nothing in this Agreement transfers ownership of any Intellectual Property rights unless expressly stated.

25. Miscellaneous

- (a) **Notice:** Any notice served by:
 - (i) post shall be deemed to have been given on the third calendar day following the day on which it was posted to the address last known to FFS to be the address of the recipient of the notice; and
 - (ii) email must be delivered to the intended recipient by email to the address last notified by the intended recipient to the sender and shall be deemed to have been given when sent, unless the sender received a delivery failure notification indicating otherwise.
- (b) **Defences and Limits of Liability:** Unless prohibited by law, the defences and limits of liability provided in these Conditions shall apply in any action against FFS whether founded in contract or in tort or howsoever otherwise founded.
- (c) **Legislation:** If these Conditions are held to be subject to the laws of the Commonwealth of Australia or of any particular State or Territory then these Conditions shall continue to apply and shall be void only to the extent that they are inconsistent with or repugnant to those laws and no further. Nothing in these Conditions is intended to have the effect of contracting out of any applicable provisions of the Competition and Consumer law, except to the extent permitted by those provisions where applicable.
- (d) If any other legislation is compulsorily applicable to any business undertaken, these Conditions shall, as regards such business, be read as subject to such legislation and nothing in these Conditions shall be construed as a surrender by FFS of any of its rights or immunities or as an increase of any of its responsibilities or liabilities under such legislation and if any part of these Conditions is held to be repugnant to such legislation to any extent such part shall as regards such business be over-riden to that extent and no further.
- (e) **Headings:** Headings of clauses or groups of clauses in these Conditions are for indicative purposes only.
- (f) **Governing Law and Jurisdiction:** These Conditions and any claim or Dispute arising out of or in connection with the Services shall be subject to the law of New South Wales and any such claim or Dispute shall be determined by the Courts of New South Wales and no other Court.

PART II: FFS AS AGENT

26. Special Liability and Indemnity Conditions

- (a) To the extent that FFS acts as an agent, FFS does not make or purport to make any contract with the Customer for the carriage, storage or handling of the Goods nor for any other physical service in relation to them and acts solely on behalf of the Customer in securing such services by establishing contracts with third parties so that direct contractual relationships are established between the Customer and such third parties.
- (b) FFS shall not be liable for the acts and omissions of third parties referred to in Clause 26(a) because, in that case, FFS will be a mere conduit in the creation of a contract between the Customer and those third parties.
- (c) FFS, when acting as an agent, has the authority of the Customer to enter into contracts on the Customer's behalf and to do acts which bind the Customer in all respects.
- (d) Except to the extent caused by FFS's negligence, the Customer shall defend, indemnify and hold harmless FFS in respect of all liability, loss, damage, costs or expenses arising out of any contracts made in the procurement of the Customer's requirements in accordance with Clause 26(a).

27. Choice of Rates

- (a) Where there is a choice of rates according to the extent or degree of liability assumed by persons carrying, storing, or handling the Goods, no declaration of value (where available) will be made by FFS unless previously agreed in writing between the Customer and FFS.

PART III: FFS AS PRINCIPAL

28. Special Liability Conditions

- (a) Where FFS contracts as principal for the performance of the Customer's Instructions, FFS undertakes to perform, or in its own name to procure, the performance of the Customer's Instructions and, subject to the provisions of these Conditions, shall be liable for the loss of or damage to the Goods occurring from the time that the Goods are taken into its charge until the time of delivery.
- (b) Where:
 - (i) FFS contracts as a principal and sub-contracts the performance of FFS's Services; and
 - (ii) the loss of or damage to or in respect of the Goods arose or was caused whilst the Goods were in the care or custody of the sub-contractor,
 then, to the full extent permitted by law, FFS shall have the full benefit of all rights, limitations and exclusions of liability available to the sub-contractor in any law, statute or regulation, and the liability of FFS shall not exceed the liability as set out in Clause 15 of Part I of these Conditions.
- (c) Notwithstanding other provisions in these Conditions, if it can be proved where the loss of or damage to the Goods occurred, FFS's liability shall be determined by the provisions contained in any international convention or national law, the provisions of which:
 - (i) cannot be departed from by private contract, to the detriment of the claimant; and
 - (ii) would have applied if the claimant had made a separate and direct contract with the actual provider of the particular service in respect of that service or stage of carriage where the loss or damage occurred and received as evidence thereof any particular document which must be issued if such international convention or national law shall apply.
- (d) Notwithstanding other provisions in these Conditions, if it can be proved that the loss of or damage to the Goods occurred at sea or on inland waterways and the provisions of Clause 28(b) do not apply, FFS's liability shall be determined by the Hague-Visby Rules. Reference in the Hague-Visby Rules to carriage by sea shall be deemed to include reference to carriage by inland waterways and the Hague-Visby Rules shall be construed accordingly.
- (e) Notwithstanding the provisions of Clauses 28(b), 28(c) and 28(d) but subject to this Clause 28(e) if the loss of or damage to the Goods occurred at sea or on inland waterways, and the owner, charterer or operator of the carrying vessel is entitled to limit its liability at law and establishes a limited fund, the liability of FFS shall be limited to the proportion of such limitation fund as is allocated to the Goods.
- (f) In the event of any inconsistency between these Conditions and the conditions of any bill of lading or sea waybill or air waybill issued by or on behalf of FFS as principal, the conditions of any such bill of lading or sea waybill or air waybill shall prevail to the extent of such inconsistency but no further.

29. Both-to-Blame Collision Clause

- (a) The Both-to-Blame Collision Clause as recommended by BIMCO as at the time of the provision of Services is incorporated into and forms part of these Conditions.

30. USA and/or Canada and Additional Responsibility Clause

- (a) With respect to transportation within the USA or Canada, the responsibility of FFS shall be to procure transportation by carriers (one or more) and such transportation shall be subject to such carrier's contracts and tariffs and any law compulsorily applicable. FFS guarantees the fulfilment of such carrier's obligations under their contracts and tariffs.
- (b) If and to the extent that the provisions of the Harter Act of the USA 1893 would otherwise be compulsorily applicable to regulate FFS's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, FFS's responsibility shall instead be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions in the Carriage of Goods by Sea Act of the USA Approved 1936.
- (c) If and to the extent that the provisions of the regulations made pursuant to the Carriage of Goods by Sea Act 1991 (as amended) of the Commonwealth of Australia (or any amendments to such regulations) would otherwise be compulsorily applicable to regulate FFS's responsibility for the Goods during any period prior to loading on or after discharge from the vessel on which the Goods are to be or have been carried, FFS's responsibility shall be determined by these Conditions. If such provisions are found to be invalid such responsibility shall be determined by the provisions of the said Carriage of Goods by Sea Act.
- (d) If the Hamburg Rules should be held to be compulsorily applicable to any carriage of goods by sea undertaken by FFS as principal, these Conditions shall be read subject to the provisions of the Hamburg Rules and any term of these Conditions that is repugnant to the Hamburg Rules shall be void to the extent of such repugnancy but no further.

31. Air Carriage

- (a) Where FFS acts as a principal in respect of a carriage of Goods by air, the following notice is hereby given:
If the carriage involves an ultimate destination or stop in a country other than the country of departure, the Montreal Convention may be applicable and the Convention governs and in most cases limits the liability of carriers in respect of loss of or damage to Goods. Agreed stopping places are those places (other than the places of departure and destination) shown under requested routing and/or those places shown in carrier's timetables as scheduled stopping places for the route. The address of the first carrier is the airport of departure.
- (b) Notwithstanding any other provision of these Conditions, where FFS acts as a principal in respect of a carriage of Goods by air, FFS's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.

Schedule 1: Additional Administrative Conditions

These Conditions apply, read with the FFS Service Terms & Conditions (STCs). If inconsistent, the STCs prevail unless expressly stated otherwise.

- 1. Regulatory Requirements** Customer must determine and comply with all applicable customs, quarantine, licensing, permit and regulatory requirements before import/export. Assistance may be provided on request and may incur additional charges.
- 2. Quotation Basis** Quotes are based on rates, tariffs, surcharges, exchange rates and availability applying on the quotation date. Any subsequent carrier, terminal, government or third-party charges may be passed through at cost.
- 3. Freight Availability** Rates are subject to space/equipment availability and final carrier, shipping or airline acceptance at booking.
- 4. Currency Adjustment** Foreign currency costs may be converted to AUD and include any currency adjustment, recovery surcharge or similar carrier or supplier imposed charge.
- 5. Letter of Credit Shipments** Customer must ensure Letter of Credit requirements align with transport documents issued, including acceptance of freight forwarder transport documents where applicable.
- 6. Customs Clearance Scope** Unless agreed otherwise in writing, charges cover one customs entry and up to five tariff lines per shipment; additional entries, tariff lines, suppliers or related transactions may incur extra charges.
- 7. Excluded Customs and Government Charges** Charges exclude permits, consultancy, duty, GST, customs/quarantine inspections, government fees, storage, wharf charges, detention, demurrage and other third-party costs.
- 8. Cartage Detention** Rates include 1 hour for live unloads and 15 minutes for side-loader deliveries. Extra waiting time is charged in 15-minute increments, minimum additional charge of 30 minutes.
- 9. Wharf and Dehire Delays** Rates include 30 minutes for wharf collection and 30 minutes for empty container returns. Further delays may incur detention charges.
- 10. Empty Container Return Requirements** Customer must return containers within free time, clean, dehire-ready, compliant with shipping line requirements and only notify collection once unpacking is complete. Detention, demurrage, storage, redirection, cleaning and related costs remain the Customer's responsibility. Reefers, Open-Tops and Flat Racks may have reduced free time. Open-Top tarpaulins must be refitted; failing which additional costs may apply.
- 11. Empty Container Notice** Notify FFS only when containers are empty. Transport providers generally require 3 working days' notice; notices after 12pm commence the next working day.
- 12. Regional Dehire Depots** Additional transport charges may apply where dehire depots are outside the agreed operating area.
- 13. Operational Delays Outside Our Control** We are not liable for additional costs, delays or charges arising from port congestion, terminal delays, depot restrictions, shipping line requirements, labour shortages, industrial action, government intervention, equipment shortages, demurrage, detention, storage or other circumstances beyond our reasonable control.
- 14. After-Hours Transport** Weekend, public holiday or after-hours transport attracts additional charges.
- 15. Fuel Surcharge** A variable fuel surcharge may apply and be adjusted periodically.
- 16. GST** All quoted rates and charges are exclusive of GST unless stated otherwise.
- 17. COD Security Deposit** Cash-before-delivery customers may be required to provide a refundable deposit of up to AUD 500 per FCL shipment or AUD 250 per LCL shipment. Higher deposits may apply for personal effects or special arrangements. Deductions are limited to actual shipment-related charges, supporting documents are available on request, and any unused balance will be refunded once all charges are finalised.
- 18. Pallet Requirements** Services are subject to FFS's Pooled Equipment Policy, as amended from time to time, which is incorporated into and forms part of this Schedule. A copy of the policy will be made available by FFS upon request.