

JKW Logistics & Consultancy Pty Ltd Terms and Conditions

1. These Terms and Conditions shall apply to all Services provided by JKW in connection with any contract entered into by JKW with a Customer. These Terms and Conditions cannot be waived or varied without the written consent of JKW.

2. Definitions

- 2.1. “**JKW**” means JKW Logistics & Consultancy Pty Ltd (ABN 87 600 184 209). JKW also includes its successors, Associated Entities or any person acting on behalf of, and with the authority of, JKW;
- 2.2. “**Associated Entities**” has the meaning given to it by section 50AAA of the *Corporations Act* (Cth);
- 2.3. “**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;
- 2.4. “**Carriage**” means the carriage, storage services, transit store service, packaging or handing of Goods, the packaging or loading of containers, any Service by JKW including forwarding, transporting, customs or shipping agent of the Customer and any service ancillary to or connected with the Services including the provision of credit facilities;
- 2.5. “**Consignee**” means the person whose name appears on the shipment record, and the party to whom the Goods are to be delivered;
- 2.6. “**Customer**” means any person at whose request or on whose behalf JKW provides a Service and includes any person or persons acting on behalf of, and with the authority of, the Customer;
- 2.7. “**Dangerous Goods**” means Goods which are volatile or explosive or which are or may become dangerous, noxious, hazardous, inflammable or offensive (including radioactive material) or which may become liable to damage any person or property whatsoever and includes all Goods which are likely to fall within the definition of hazardous, noxious, dangerous, explosive, inflammable or radioactive goods in any legislation, regulations, code or convention (whether or not legally enforceable);
- 2.8. “**Due Date**” means the date as set in accordance with clause 5.4 of these Terms and Conditions;
- 2.9. “**Goods**” means any goods provided by Customer to JKW together with any associated packaging, or anything supplied with them which are the subject of the Services pursuant to these Terms and Conditions;
- 2.10. “**GST**” has the meaning given in section 195-1 of the *A new Tax System (Goods and Services Tax) Act* (1999) (Cth);
- 2.11. “**Guarantor**” means a person (or persons or entity) who agrees to be liable for the debts of the Customer;
- 2.12. “**Premises**” means any place or places nominated or used by JKW where Goods are handled, held, packaged, packed, repacked, unpacked, unled, dispatched, warehoused, stored or removed from time to time;
- 2.13. “**Price**” means the price payable as agreed between JKW and the Customer for the Services.
- 2.14. “**Privacy Laws**” means the *Privacy Act 1988* (Cth).
- 2.15. “**PPSR**” means the *Personal Property Securities Act 2009* (Cth).
- 2.16. “**Services**” means all services supplied by JKW to the Customer. Such services include, but are not limited to the following:
 - 2.16.1. anything relating to the Goods;
 - 2.16.2. transportation and/or Carriage of the Goods as directed by the Customer;

- 2.16.3. the provision of any services ancillary to the Carriage of the Goods - including moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place, area or Premises;
 - 2.16.4. loading or unloading the Goods from any vehicle, vessel, aircraft, train, vehicle or other form of transport;
 - 2.16.5. stowing or packing the Goods;
 - 2.16.6. transshipping, or otherwise handling the Goods;
 - 2.16.7. the provision of consultancy advice generally in relation to the Goods or as specifically requested by the Customer from time to time;
 - 2.16.8. the provisions of consultancy advice in relation to third party logistics and warehouse management and management systems implementation; and/or
 - 2.16.9. anything else JKW considers necessary to be done (including the offering of any advice or recommendations).
- 2.17. **“Sub-Contractor”** and/or **“Carriage Partner”** includes:
- 2.17.1. railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - 2.17.2. any other person or entity with whom JKW may arrange for the Carriage or storage of any Goods the subject of these Terms and Conditions; and/or
 - 2.17.3. all licenced Customs Brokers who may be engaged by JKW from time to time.
- 2.18. **“Terms and Conditions”** means these Terms and Conditions including any amendment or variation to them agreed to in writing by JKW.

3. Provision of Services

- 3.1. All Services are provided by JKW as agents only except in the following circumstances where JKW agrees to act as principal:
- 3.1.1. where JKW performs any Carriage, handling or storage of the Goods, but only to the extent that such Carriage, handling or stage is performed by JKW itself or by its servants and the Goods are in the actual custody and control of JKW. This clause will not apply where the Goods are in the custody and control of a Sub-Contractor and/or Carriage Partner; or
 - 3.1.2. to the extent that JKW agrees in writing to act as principal; or
 - 3.1.3. to the extent that that JKW is held by a court of law to have acted as a principal.
- 3.2. Without limiting the generality of clause 3.1:
- 3.2.1. the charging by JKW of a fixed price for any Services whatsoever, does not in itself determine or is not evidence of JKW acting as an agent or a principal in respect of those Services;
 - 3.2.2. the supply by JKW of its own or leased equipment shall not in itself determine or be evidence that JKW is acting as agent or as a principal in respect of any Carriage, handling or storage Goods;
 - 3.2.3. JKW acts as an agent where it procures a bill of lading, sea or air waybill or other document evidencing a contract or carriage between a person, other than JKW and the Customer;
 - 3.2.4. JKW acts as agent and never as principal in relation to the provision of all and any services related to customs brokerage including all services that relate to advising on, or completing custom required documents, inspections, taxes, licenses and/or certificates of origin; and

3.2.5. JKW acts as agent and never as principal in relation to the provision of all and any services related to insurance and/or insurance brokerage including all services that relate to advising on or obtaining insurance, certificates of insurance on behalf of the Customer or in any way connected or related to the Goods.

3.3. JKW is not a common carrier and does not accept liability as such.

3.4. JKW reserves the right to accept or refuse the carriage of any Goods and/or to provide any other Services at its sole discretion.

4. **Acceptance**

4.1. Upon JKW receiving any instructions from the Customer for Services to be supplied or upon the Customer accepting the Services provided by JKW, the Terms and Conditions contained herein will be deemed to have been accepted.

4.2. If one or more Customers have accepted these Terms and Conditions, those Customers shall be jointly and severally liable for any and all payments of the Price.

4.3. These Terms and Conditions are binding on the Customer once they are accepted. Any amendments to the Terms and Conditions set out herein can only be made upon written consent being obtained from JKW.

4.4. If there are any changes in ownership of the Customer, JKW shall be given no less than 14 days written notice of any such change (including change in contact details for the Customer (i.e. address, facsimile or business practice)).

4.5. If for any reason JKW is unable to supply the Services described herein, the Customer acknowledges and agrees that no action at common law arises against JKW and that such conduct by JKW does not amount to a repudiation of these Terms and Conditions or any contract existing between JKW and the Customer.

4.6. JKW is not liable for any direct or consequential loss or damage arising from any failure of JKW to supply the Services where such circumstances are beyond the reasonable control of JKW.

5. **Price, Payment and Charges**

1. At JKW's discretion, the Price shall be indicated on any tax invoice/s issued by JKW to the Customer in respect of the Services to be supplied from time to time.

2. A description of the Services provided by JKW and the subject of any tax invoice/s issued by JKW to the Customer will be described on the tax invoice/s or on any consignment notice, airway bill, sales order or any other form or document as provided by JKW to the Customer.

3. The Customer shall pay to JKW the Price asset out on any tax invoice/s issued to it by JKW without any counterclaim, offset or deduction by the Due Date.

4. The due date for payment of a tax invoice is as stated on the tax invoice issued by JKW to the Customer. If no due date for payment is provided, then payment is to be cash on delivery (**COD**).

5. Time for payment to JKW for the Services provided to the Customer shall be of the essence.

6. GST and other taxes and duties may be applicable to the Price unless they are expressly noted in the Price.

7. If JKW receives payment in a form other than cash, such payment will not be deemed as paid until such time as that payment has been honoured, cleared, or recognised. Until such payment is processed, JKW retains ownership or rights in respect of the Price, Services and these Terms and Conditions.

8. If JKW is instructed to collect freight, duties, charges or expenses from any person other than the Customer, the Customer shall remain responsible for these amounts and shall pay these amounts to JKW on demand where such amounts have become due and have not been paid by such other person.

9. JKW shall be entitled to interest on any tax invoice issued to the Customer that has been not been paid by the Due Date at a rate of 10% per annum.
10. The Customer shall be liable for, and shall indemnify JKW for all legal costs (on a solicitor and own client basis) or other associated costs incurred by JKW in relation to the recovery of any sum due and payable to it by the Customer in relation to the provision of the Services including those set out at clause 5.8 herein.
11. Without prejudice to any other right or remedy that JKW may have at law, if at any time the Customer is in breach of any obligations under these Terms and Conditions (including those relating to payment) JKW may suspend or terminate the supply of Services to the Customer and any of its other obligations under these Terms and Conditions upon the provision of 14 days' notice to the Customer. If such suspension or termination occurs, JKW will not be responsible or liable for any loss suffered by the Customer by reason of JKW exercising its rights under this clause.

6. Price Variation

- 6.1. JKW may charge freight by weight, measurement or value, and may at any time, reweigh, or revalue or remeasured any Goods or cause for them to be reweighed, or revalued or remeasured and shall be entitled to charge the Customer for such Services. JKW shall be entitled to increase the Price having regard to any need to reweigh, revalue or remeasure the Goods.
- 6.2. The Customer will be, and shall remain, responsible to JKW for all proper charges incurred by it in relation to the provision of the Services howsoever incurred.
- 6.3. JKW may charge the Customer a service fee for any delay in excess of sixty (60) minutes in relation to loading or unloading of the Goods for Carriage unless such delay is caused by the default of JKW. Commencement of the sixty-minute period will begin upon JKW reporting for loading or unloading of the Goods.
- 6.4. Any labour costs incurred by JKW for the purposes of loading or unloading the Goods shall be the responsibility of the Customer.

7. Lien

- 7.1. JKW shall have a particular and general lien on all Goods and documents relating to or associated with the Goods in its possession for all sums due and payable from time to time by the Customer.
- 7.2. Where any sum due to JKW by the Customer is not paid, upon giving 28 day's notice to the Customer, JKW shall be entitled (without liability to the Customer) to sell or disposal of such Goods or documents by public auction or by private treaty at the risk and expense of the Customer and to apply the proceeds of any such sale or disposal to or towards the payment of the sums due to it.

8. Security and Charge

- 8.1. Notwithstanding anything to the contrary contained herein or any other rights which JKW may have at law or otherwise:
 - 8.1.1. where the Customer and/or the Guarantor (if any) is the owner of real property or any other asset capable of being charged (**Assets**), both the Customer and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the Assets in favour of JKW or the JKW's nominee to secure all amounts and other monetary obligations payable under these Terms and Conditions;
 - 8.1.2. the Customer and/or the Guarantor acknowledge and agree that JKW (or the JKW's nominee) shall be entitled to lodge where appropriate, a caveat, which caveat shall be released once all payments and other monetary obligations payable hereunder have been met;
 - 8.1.3. should JKW elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Customer and/or Guarantor shall indemnify the JKW for and against all loss, damage, costs and disbursements including legal costs on a solicitor and own client basis;

8.1.4. to give effect to this clause, the Customer and/or the Guarantor (if any) hereby irrevocably nominate and appoint JKW or JKW's nominee at its/their lawful attorney to execute mortgages and charges (whether registrable or not) including such Terms and Conditions as JKW or its nominee shall think fit in its/their absolute discretion.

9. Customer Warranties

9.1. The Customer warrants that:

- 9.1.1. it is the owner or the authorised agent of the owner of the Goods and that it is authorised to accept these Terms and Conditions in its capacity as principal or agent;
- 9.1.2. it has reasonable knowledge of the Goods and all other matters relating thereto;
- 9.1.3. it is authorised to instruct JKW to provide the Services;
- 9.1.4. it will and/or has given sufficient and executable instructions to JKW in relation to the Carriage, of the Goods;
- 9.1.5. the description and particulars of the Goods are complete and correct;
- 9.1.6. the Goods are properly packed and labelled, except in circumstances where JKW has accepted instructions in respect of packaging and/or labelling and in those circumstances, the Customer warrants that instructions provided in respect of packaging and labelling are correct, sufficient and executable;
- 9.1.7. it has complied with and undertakes that it will continue to comply with all applicable laws, customs, conventions, codes and other regulations, including those in any way relating to the Carriage of the Goods;
- 9.1.8. it will provide JKW with all necessary documentation, valuations or other material relevant to the Goods and/or associated with the provision of the Services as may be requested by JKW from time to time; and
- 9.1.9. the Goods do not contain any Dangerous Goods.

10. Nature of the Goods

- 10.1. Unless agreed to in writing, the Customer shall not deliver to JKW, or cause JKW to deal with or handle Dangerous Goods.
- 10.2. If the Customer breaches clause 10.1;
 - 10.2.1. the Customer shall be liable for all loss or damage whatsoever cause by or in connection with the Goods howsoever arising;
 - 10.2.2. the Customer shall indemnify JKW and hold it harmless in respect of any penalties, claims, causes of action, damages, costs and/or expenses howsoever arising; and
 - 10.2.3. JKW may at its sole discretion have the Dangerous Goods destroyed or otherwise dealt with. For the purposes of this subclause, notice is not required to be given to any person of the intention to destroy or otherwise deal with the Dangerous Goods.
- 10.3. The Customer undertakes not to tender for transportation any Goods which require temperature control without giving written notice to JKW of their nature and the particular temperature range to be maintained and, in the case of temperature controlled Container packed by or on behalf of the Customer, the Customer further undertakes that:
 - 10.3.1. the container has been properly precooled or preheated as appropriate;
 - 10.3.2. the Goods have been properly packed in the container; and

10.3.3.the container thermostatic controls have been properly set by the Customer.

10.4. JKW will not be liable for any loss, damage, cost or expense arising in respect of the Customer's failure to comply with the undertaking provided at clause 10.3 herein.

11. Insurance

11.1. Unless express written instructions are given to JKW, no insurance will be effected in relation to the Goods and/or Carriage of the Goods and/or the provision of the Services.

11.2. All insurances procured by JKW are as agent only for the Customer and all such insurance is subject to the usual exceptions and conditions of the policies of the insurance company or underwriters taking the risk.

11.3. Unless agreed in writing, JKW is not under any obligation to effect a separate insurance on each Carriage of Goods but may declare it on any open or general policy.

11.4. Should any insurer dispute their liability for any reason, the Customer (as the insured) shall have recourse against the insurers only and JKW shall not, in any circumstances, be responsible or liable whatsoever in relation thereto, notwithstanding that any premium on the policy may have been paid by JKW, may not be at the same rate as that charged by JKW or paid to JKW by the Customer at any time.

12. Carriage and Delivery of Goods

12.1. Where the Services include the Carriage of Goods, the following will apply:

12.1.1.the Goods shall be and remain at the risk of the Customer;

12.1.2.delivery of the Goods shall be deemed to have occurred when such Goods are delivered to the address provided by the Customer to JKW and it is expressly agreed that JKW will be deemed to have delivered the Goods in accordance with these Terms and Conditions if at that address, JKW obtains from any person a signature accepting the Goods;

12.1.3.for the avoidance of any doubt, delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of these Terms and Conditions;

12.1.4.JKW may deliver the Goods by separate instalment and each separate instalment shall be involved and paid for in accordance with the provision of these Terms and Conditions;

12.1.5.goods may from time to time be held at any Premises and may at any time and from time to time be removed from any Premises at which they are being held to be held at any other Premises at the sole discretion of JKW and in every case at the Customers risk and expense;

12.1.6.JKW may adopt any means, mode, route or procedure whatsoever for Carriage of the Goods whether by land, sea, air or a combination thereof without any requirement for notice to the Customer. If the Customer instructions JKW to use a particular means, mode, route or procedure for Carriage of the Goods, JKW will give priority thereto but is authorised by the Customer to use whatever means, mode, route or procedure it chooses at its sole discretion;

12.1.7.the Customer must make all necessary arrangements to take delivery of the Goods whenever they are tendered for delivery;

12.1.8.in the event that the Goods need to be returned to the Customer, all costs and expenses associated with the same are to be paid by the Customer;

12.1.9.unless agreed in writing that the Goods shall depart by or arrive by a particular date, JKW accepts no responsibility for departure or arrival dates of the Goods;

12.1.10.if the Goods are perishable, and are not sufficiently labelled, addressed or marked to or are otherwise not taken up immediately on arrival, JKW are permitted to dispose, or authorise a Sub-Contractor to

dispose of such perishable Goods without notice to the Customer and JKW will remain entitled to charge the Customer for the Services;

12.1.11. JKW may at any time comply with orders or recommendations given by any Authority whether or not compliance with the same will effect, disrupt or prevent delivery/Carriage of the Goods and JKW will not be liable for any loss, damage, expense or otherwise suffered by the Customer arising from the same;

12.1.12. JKW will, at any reasonable time, be entitled to inspect, the Goods and remove from any containers any Goods provided by the Customer;

12.1.13. if any time JKW reasonably considers that the Carriage of Goods should not be undertaken or continued or only continued after effecting any necessary incidental matters or incurring additional expense or risk, JKW shall be entitled to:

12.1.13.1. abandon the Carriage of such Goods or to effect such additional incidental matters and incur such additional expenses as may be reasonably necessary in order to enable the Carriage of the Goods to be effected or further effected; and

12.1.13.2. be reimbursed by the Customer for the costs of all such additional incidental matters and all such additional expenses incurred.

12.1.14. the Customer acknowledges that where JKW is required to arrange for the Carriage of Goods by air freight, the same is subject to all applicable international treaties, including the Convention of the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929 or that Convention as amended by the Hague Protocol 1955 including any applicable amendments as from time to time may be made and the Montreal Convention signed 28 May 1999. The Customer's recovery of any loss or damage is against the airline carrier and is limited in accordance with these or any other conventions that may be applicable; and

12.1.15. the Customer acknowledges that where JKW is required to arrange for the Carriage of Goods by ocean freight, the same is subject to the applicable international treaties including the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924 (the Hauge Rule) or those rules as amended by the Protocol signed at Brussels on 23 February 1968 (the Hauge Visby) Rules, the United Nations Convention on the Carriage of Goods by Sea signed 1 November 1992 and the SDR Protocol (1979) and including any applicable amendments as from time to time may be made. The Customer's recovery of any loss of damage is against the ocean freight carrier and is limited in accordance with these or any other conventions that may be applicable.

13. Subcontracting

13.1. JKW is authorised at its own discretion to enter into contracts with any Sub-Contractor and/or Carriage Partner, or third party (on its own behalf or for and on behalf of the Customer) and without notice for the purposes of the:

13.1.1. Carriage of Goods by any route, means, mode or person;

13.1.2. storage, packing, transshipment, loading, unloading or handling of Goods by any means and person at any place or Premises whether on shore or afloat and for any length of time;

13.1.3. Carriage or storage of Goods in containers, or with other goods of whatever nature; and

13.1.4. performance of its own obligations and to do such acts as JKW reasonably considers may be necessary or incidental to the performance of JKW's obligations pursuant to the contract between it and the Customer and these Terms and Conditions.

13.2. Any Sub-Contractor and or Carriage Partner engaged by JKW upon the Goods being delivered or collected by such Sub-Contractor, shall be entitled to the full benefit of these Terms and Conditions to the same extent as JKW. Insofar as it is necessary, JKW shall be deemed to enter into any contract for the Services or Carriage of the Goods for its own benefit and also for the benefit and as agent and trustee for any Sub-Contractor and/or Carriage Partner and its officers, employees, agents and representatives.

14. Liability of Customer and Indemnities

14.1. The Customer shall indemnify JKW and keep it indemnified against all liability, loss, damage, costs and expenses including direct and consequential loss howsoever arising:

14.1.1. from the nature of the Goods;

14.1.2. from the Carriage and/or transportation of the Goods, including any loss, destruction and/or damage to the Goods;

14.1.3. from the handling, packing, storage and/or delivery of the Goods;

14.1.4. from the provision of the Services by JKW to the Customer;

14.1.5. from any advice, representation and/or information given by JKW in relation to the Services to the Customer and the provision thereof;

14.1.6. from the Customer's instructions to JKW at any time;

14.1.7. from any breach of contract or warranty provided or obligation of the Customer;

14.1.8. from any insurance of the Goods or any failure to insure the Goods;

14.1.9. from any claim of general average; and/or

14.1.10. from any death, accident, or injury to persons or property arising from the provision of the Services.

14.2. The Customer acknowledges and hereby agrees that it will indemnify JKW and hold it harmless in respect of all duties, taxes, imposts, levies, deposits and outlays imposed on it whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatever incurred or sustained by JKW in connection with the provision of the Services to the Customer.

14.3. Any advice or information provided by JKW to the Customer is for the Customer only and the Customer shall indemnify JKW and hold it harmless for all and any liability, loss, damage, costs and expenses arising out of any other person relying on such advice or information.

14.4. The Customer shall be liable for the loss, damage, contamination, soiling, detention or demurrage before, during and after Carriage of Goods and shall indemnify JKW for such loss or damage in the event that the same is charged to JKW by a Sub-Contractor.

14.5. The Customer shall indemnify JKW and hold it harmless in respect of any loss, damage, expense and/or liability of or incurred by JKW arising in respect of any cause of action or other dispute which the Customer has with any Sub-Contractor and/or Carriage Partner.

14.6. The indemnities provided by the Customer in these Terms and Conditions extend to all of JKW's directors, employees, servants, agents and/or assigns.

14.7. Clauses 14.1 to 14.6 shall apply whether or not any such loss, destruction, damage, non-delivery, mis-delivery, delay in delivery or failure to produce arising out of or in connection with any breach of contract by JKW which would constitute a fundamental breach of contract or a breach of a fundamental term of a contract, and , except as provided in these Terms and Conditions, JKW's liability is excluded or limited accordingly.

14.8. The indemnities contained at clause 14.1, 14.2, 14.3, 14.4 and 14.5 will not apply in respect of any claim, loss, damage or expense arising from the negligence, misconduct, or wilful default of JKW or by any officer, employee or agent of JKW or any Sub-Contractor and/or Carriage Partner of JKW.

14.9. In all cases where liability has not been effectively excluded, whether by these Terms and Conditions or by statute, convention or otherwise, the total liability of the JKW is limited to the lesser of;

14.9.1. the Price;

14.9.2. the value of the Goods at the time the Goods were received by JKW; or

14.9.3. a resupply of the Goods or payment of the cost of resupplying the Goods.

15. The Commonwealth Competition and Consumer Act 2010 (“CCA”) and Fair Trading Acts (“FTA”)

15.1. These Terms and Conditions do not have the effect of contracting out of any provisions of the FTA (where applicable provisions apply) in any of the States and Territories of Australia and/or the CCA except to any extent where such is permitted by the FTA and/or the CCA.

15.2. Whereby the Customer purchases, as a consumer (as that term is defined in the FTA and/or the CCA), the Services – the Terms and Conditions contained herein shall be subject to any laws or legislation which govern the rights of any consumer and such shall not affect the consumer’s statutory rights.

16. Privacy Laws

16.1. The Customer and/or the Guarantor/s agree that JKW is entitled to obtain from a credit reporting agency, a credit report containing personal credit information about the Customer and Guarantor/s in relation to any credit and/or credit facility provided by JKW.

16.2. The Customer and/or the Guarantor/s agree that JKW may exchange information about the Customer and Guarantor/s with those credit providers named in any application for credit account or named in a consumer credit report issued by a reporting agency for the following purposes:

16.2.1. to assess an application by Customer;

16.2.2. to notify other credit providers of a default by the Customer;

16.2.3. to exchange information with other credit providers as to the status of a credit account, where the Customer is in default with other credit providers; and/or

16.2.4. to assess the credit worthiness of Customer and/or Guarantor/s.

16.3. The Customer agrees that personal data provided may be used and retained by JKW for the following purposes and for other purposes as shall be agreed between the Customer and JKW or required by law from time to time:

16.3.1. the provision of Goods and Services;

16.3.2. the marketing of Services by JKW, its agents or distributors in relation to the Goods and Services;

16.3.3. analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services;

16.3.4. processing of any payment instructions, direct debit facilities and/or credit facilities requested by Customer; and/or

16.3.5. enabling the daily operation of Customer's account and/or the collection of amounts outstanding in the Customer's account in relation to the Services.

16.4. JKW may give, information about the Customer to a credit reporting agency for the following purposes:

16.4.1. to obtain a consumer credit report about the Customer; and/or

16.4.2. allow the credit reporting agency to create or maintain a credit information file containing information about the Customer.

17. PPSR

17.1. If a term used in this clause has a particular meaning in the PPSA, it has the same meaning in this clause.

17.2. This clause applies to the extent that the JKW's interest in any Goods and documents relating to Goods is a security interest.

17.3. The Customer agrees that the security interest is over the Goods, documents relating to the Goods and any proceeds of the Goods.

17.4. The Goods, documents and proceeds are referred to in this clause collectively as the "Collateral".

17.5. The Customer acknowledges that JKW may register a financing statement in relation to its security interest. The Customer waives its rights under section 157 of the PPSA to receive notice of any verification statement relating to the registration of such finance statement or any related financing change statement.

17.6. The Customer and JKW agree not to disclose information of the kind mentioned in section 275(1) of the PPSA, except in the 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) if JKW approves. Nothing in this clause will prevent any disclosure by JKW that it believes is necessary to comply with its other obligations under the PPSA.

17.7. To the extent that it is not inconsistent with clause 23(c) constituting a "confidentiality agreement" for the purposes of section 275(6)(a) of the PPSA, the Customer agrees that JKW may disclose information of the kind mentioned in section 275(1) of the PPSA to the extent that JKW is not doing so in response to a request made by an "interested person" (as defined in section 275(9) of the PPSA) pursuant to section 275(1) of the PPSA.

17.8. If the Customer defaults in the timely performance of any obligation owed to JKW, JKW may enforce its security interest in any Collateral by exercising all or any of its rights under these Terms and Conditions, the general law and/or the PPSA. To the extent that Chapter 4 of the PPSA would otherwise apply to an enforcement by JKW of its security interest in the Collateral, the Customer and JKW agree that the following provisions of the PPSA do not apply:

17.8.1. to the extent that section 115(1) of the PPSA allows them to be excluded: ss 95, 118, 121(4), 125, 130, 132(3)(d), 132(4), 135, 138B(4), 142 and 143; and

17.8.2. in addition, to the extent that section 115(7) of the PPSA allows them to be excluded: ss 127, 129(2) and (3), 132, 134(2), 135, 136(5) and 137.

17.9. The Customer must promptly do anything JKW requires to ensure that its security interest is a perfected security interest and has priority over all other security interests.

17.10. Nothing in this clause is limited by any other provision of these Terms and Conditions or any other agreement between JKW and the Customer. Nothing in this clause limits JKW's rights or the Customer's obligations apart from under this clause.

17.11. The Customer:

- 17.11.1. acknowledges and agrees that these Terms and Conditions and the Carriage of Goods do not create or provide for any security interest in favour of the Customer;
- 17.11.2. must not register any financing statement against JKW in relation to these Terms and Conditions or the Carriage of Goods; and
- 17.11.3. must immediately, upon JKW's request, register a financing change statement or remove any registration against JKW made by or on behalf of the Customer in relation to these Terms and Conditions or the Carriage of Goods.

18. Customer-Packed Goods

- 18.1. If a Customer provides Goods for transportation that have been be prepacked by the Customer, JKW shall not be liable for any loss or damage to the Goods caused by:
 - 18.1.1. the manner in which the Goods has been stored or packed;
 - 18.1.2. the unsuitability of the Goods for carriage as packed or otherwise unless JKW has preapproved the suitability;
 - 18.1.3. the unsuitability or defective condition of the Goods or packaging of the Goods, provided that where packaging has been supplied by or on behalf of JKW, this paragraph shall only apply if the unsuitability or defective condition arose:
 - 18.1.3.1. without any negligence on behalf of JKW; or
 - 18.1.3.2. it would have been apparent upon a reasonable inspection by the Customer or person acting on behalf of the Customer;

19. General Liability

- 19.1. Except where otherwise provided for in these Terms and Conditions and to the extent permitted by law, JKW shall not be liable for any loss or damage arising from or in relation to:
 - 19.1.1. any act or omission of the Customer or any person acting or purporting to act on behalf of the Customer;
 - 19.1.2. JKW's compliance with the instructions given to it by the Customer or any other person acting or purporting to act on behalf of the Customer;
 - 19.1.3. the insufficient packing or labelling of the Goods, except where JKW has been instructed by the Customer to undertake the same as part of the Services;
 - 19.1.4. handling, loading, stowage or underloading of the Goods by the Customer or any person acting or purporting to act on its behalf;
 - 19.1.5. any inherent vice of the Goods;
 - 19.1.6. riots, civil commotions, strikes, lockouts, lockdowns, stoppage or retain of labour from whatsoever cause including pandemic, epidemic or otherwise;
 - 19.1.7. fire, flood, storm, war, explosion or theft; and/or
 - 19.1.8. any cause which JKW could not avoid and the consequences whereof it could not be prevented by the exercise of reasonable diligence.
- 19.2. JKW shall be under no liability to the Customer for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Customer arising out of a breach/es of these Terms and Conditions by JKW.

19.3. Any claim for loss, damage or delay or any other claim arising from Carriage of the Goods must be notified in writing to JKW within seven (7) days of delivery of the Goods or the date upon which the Goods should have been delivered, failing which JKW shall be discharged of all liability whatsoever and howsoever arising. Time shall be of the essence for this clause. For the avoidance of any doubt, an endorsement on a freight note, delivery docket or other note or document in respect of that Carriage does not constitute notice in writing for the purposes of this clause.

19.4. Notwithstanding any other provision of these Terms and Conditions, in the event that JKW is requested by a Customer to perform or undertake Services but that request for Services is cancelled by the Customer prior to the Services being substantially performed by JKW then JKW may, at its option, require the Customer to pay to JKW all costs incurred by it prior to the cancellation of the Services or arising from therefrom.

20. Miscellaneous

20.1. Any notice served by post shall be deemed to have been given on the third day following the day on which it was posted to the address last known to JKW and/or the Customer.

20.2. The defences and limits of liability provided for in these Terms and Conditions shall apply in any action against JKW whether founded in contract, tort or otherwise.

20.3. Headings of clauses or groups of clauses in these Terms and Conditions are for convenience only.

20.4. A reference to:

20.4.1. a party to these Terms and Conditions or contract entered into by JKW with a Customer, or a party to any other document or agreement, includes that party's executors, administrators, permitted substitutes and permitted assigns;

20.4.2. all references to money and Price is a reference to Australian currency;

20.4.3. a singular word includes the plural and vice versa;

20.4.4. an obligation on, warranty by, or right of:

20.4.4.1. two or more persons; or

20.4.4.2. a party that comprises two or more persons,

is the obligation, warranty or right (as the case may be) of those persons jointly and severally.

20.5. If any provision of these Terms and Conditions are invalid, void, illegal or enforceable it is severed. The remainder of these Terms and Conditions have full force and effect. This clause has no effect if the severance materially alters the nature or intended effect of these Terms and Conditions.

20.6. If any provisions of these Terms and Conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.

20.7. These Terms and Conditions embody the entire agreement between JKW and the Customer and supersede all previous agreements, understandings, negotiations, warranties and representations on the subject matter of the Services to be provided by JKW.

20.8. The Customer agrees that JKW may review these Terms and Conditions at any time. If following such review there is to be a change to these Terms and Conditions, then that change will take effect from the date on which JKW notifies the Customer of such change. The Customer shall be under no obligation to accept such changes except where JKW supplies further Services to the Customer and the Customer accepts such Services.

20.9. The rights and remedies provided for in these Terms and Conditions are in addition to all other rights and remedies given by law independent of these Terms and Conditions except to the extent that those other rights and remedies are expressly excluded by these Terms and Conditions.

20.10. The law of New South Wales governs these Terms and Conditions.

20.11. JKW and the Customer submit to the non-exclusive jurisdiction of the Courts of New South Wales and the Commonwealth of Australia and any court that may hear appeals from any of those Courts.