

1. Definitions

- 1.1 **“Client”** means the person/s, entities or any person acting on behalf of and with the authority of the Client requesting MR to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Client, is a reference to each Client jointly and severally; and
 - (b) if the Client is a partnership, it shall bind each partner jointly and severally; and
 - (c) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (d) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.2 **“Confidential Information”** means information of a confidential nature whether oral, written or in electronic form including, but not limited to, this Contract, either party’s intellectual property, operational information, know-how, trade secrets, financial and commercial affairs, contracts, client information (including but not limited to, **“Personal Information”** such as: name, address, D.O.B, occupation, driver’s license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) and pricing details.
- 1.3 **“Consignee”** means the person to whom the Goods are to be delivered by way of the Services.
- 1.4 **“Contract”** means the terms and conditions contained herein, together with any quotation, order, invoice or other document or amendments expressed to be supplemental to this Contract.
- 1.5 **“Cookies”** means small files which are stored on a user’s computer. They are designed to hold a modest amount of data (including Personal Information) specific to a particular client and website and can be accessed either by the web server or the client’s computer. **If the Client does not wish to allow Cookies to operate in the background when using MR’s website, then the Client shall have the right to enable / disable the Cookies first by selecting the option to enable / disable provided on the website, prior to making enquiries via the website.**
- 1.6 **“Dangerous Goods”** shall mean all Goods which are or may become of a dangerous, inflammable, radio-active, noxious or damaging nature and Goods likely to harbour or encourage vermin or other pests.
- 1.7 **“Goods”** means any cargo, together with any container, packaging, or pallet(s), to be moved from one place to another by way of the Services.
- 1.8 **“GST”** means Goods and Services Tax as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).
- 1.9 **“Guarantor”** means that person (or persons) who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.10 **“MR”** means Mullumbimby Removals Pty Ltd its successors and assigns or any person acting on behalf of and with the authority of Mullumbimby Removals Pty Ltd.
- 1.11 **“Price”** means the Price payable for the Services (plus any GST where applicable) as agreed between MR and the Client in accordance with clause 7 below.
- 1.12 **“Services”** shall mean all Services supplied by MR to the Client (which shall be as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by MR to the Client) and shall include any advice or recommendations
- 1.13 **“Sub-Contractor”** means and includes:
- (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
 - (b) any other person or entity with whom MR may arrange for the carriage or storage of any Goods the subject of the Contract; or
 - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in sub-clauses (a) and (b).

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

- 2.1 Nothing in this Contract is intended to have the effect of contracting out of any applicable provisions of the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.
- 2.3 Liability of MR arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the CCA or howsoever arising, is limited to any of the following as determined by MR:
- (a) rectifying the Services; or
 - (b) providing the Services again; or
 - (c) paying for the Services to be provided again.
- 2.4 If MR is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.3 or the CCA, but is unable to do so, then MR may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

3. Acceptance

- 3.1 The parties acknowledge and agree that:
- (a) they have read and understood the terms and conditions contained in this Contract; and
 - (b) the parties are taken to have exclusively accepted and are immediately bound, jointly and severally, by these terms and conditions if the Client places an order for or accepts Services provided by MR.
- 3.2 These terms and conditions are to be read in conjunction with MR’s quotation, consignment note, hire form, agreement, airway bills, manifests, or any other forms as provided by MR to the Client. In the event of any inconsistency between the terms and conditions of this Contract and any other prior document or schedule that the parties have entered into, the terms of this Contract shall prevail.
- 3.3 Any amendment to the terms and conditions contained in this Contract may only be amended in writing by the consent of both parties.
- 3.4 The Client acknowledges that the supply of Goods on credit shall not take effect until the Client has completed a credit application with MR and it has been approved with a credit limit established for the account.
- 3.5 In the event that the supply of Goods request exceeds the Client’s credit limit and/or the account exceeds the payment terms, MR reserves the right to refuse delivery.

- 3.6 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 4. Errors and Omissions**
- 4.1 The Client acknowledges and accepts that MR shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MR in the formation and/or administration of this Contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by MR in respect of the Services.
- 4.2 In circumstances where the Client is required to place an order for Services, in writing, or otherwise as permitted by these terms and conditions, the Client is responsible for supplying correct order information such as, without limitation, measurements and quantity, when placing an order for Services ("**Client Error**"). The Client must pay for all Services it orders from MR notwithstanding that such Services suffer from a Client Error and notwithstanding that the Client has not taken or refuses to take delivery of such Services. MR is entitled to, at its absolute discretion to waive its right under this sub-clause in relation to Client Errors.
- 5. Change in Control**
- 5.1 The Client shall give MR not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client and/or any other change in the Client's details (including but not limited to, changes in the Client's name, address, contact phone or fax number/s, change in trustees, or business practice). The Client shall be liable for any loss incurred by MR as a result of the Client's failure to comply with this clause.
- 6. Credit Card Information**
- 6.1 MR will:
- (a) keep the Client's personal details, including credit card details for only as long as is deemed necessary by MR;
 - (b) not disclose the Client's credit card details to any third party; and
 - (c) not unnecessarily disclose any of the Client's personal information, except in accordance with the Privacy Act (clause 31) or where required by law.
- 6.2 The Client expressly agrees that, if pursuant to this Contract, there are any unpaid charges, other amounts due and outstanding by the Client, MR is entitled to immediately charge the Client's nominated credit card for these amounts, and is irrevocably authorised to complete any documentation and take any action to recover from the credit card issuer any and all amounts which may be due by the Client pursuant to the terms of this Contract.
- 7. Price and Payment**
- 7.1 At MR's sole discretion, the Price shall be either:
- (a) as indicated on invoices provided by MR to the Client upon placement of an order for the Services; or
 - (b) MR's quoted Price (subject to clauses 7.2, 7.3 and 7.4) which shall be binding upon MR provided that the Client shall accept in writing MR's quotation within seven (7) days.
- 7.2 MR may, by giving notice to the Client, increase the Price of the Services to reflect any increase in the cost to MR beyond the reasonable control of MR (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 7.3 In the event MR appears likely to incur any extraordinary expenses in connection with a consignment MR shall immediately consult the Client and shall only proceed with the Services with the Client's approval to do so. The Client acknowledges and agrees that once such approval is given that they shall immediately become liable to reimburse MR for all such extraordinary costs then incurred.
- 7.4 MR may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.
- 7.5 Variations will be charged for on the basis of MR's quotation, and will be detailed in writing, and shown as variations on MR's invoice. The Client shall be required to respond to any variation submitted by MR within ten (10) working days. Failure to do so will entitle MR to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.
- 7.6 At MR's sole discretion, a reasonable deposit may be required upon placement of an order for Services, in accordance with any quotation provided by MR or as notified to the Client prior to the placement of an order for the Services.
- 7.7 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by MR, which may be:
- (a) on delivery of the Goods;
 - (b) before delivery of the Goods;
 - (c) by way of instalments in accordance with MR's payment schedule;
 - (d) thirty (30) days following the end of the month in which a statement is posted to the Client's address or address for notices;
 - (e) the date specified on any invoice or other form as being the date for payment; or
 - (f) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by MR.
- 7.8 Payment may be made by cash, cheque, bank cheque, electronic/on-line banking, credit card (a surcharge may apply per transaction), or by any other method as agreed to between the Client and MR.
- 7.9 Receipt by MR of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then MR's ownership or rights in respect of the Services shall continue.
- 7.10 The Client acknowledges and agrees that the Client's obligations to MR for the supply of Services shall not cease until:
- (a) the Client has paid MR all amounts owing for the particular Services; and
 - (b) the Client has met all other obligations due by the Client to MR in respect of all contracts between MR and the Client.
- 7.11 MR may in its discretion allocate any payment received from the Client towards any invoice that MR determines and may do so at the time of receipt or at any time afterwards. On any default by the Client MR may re-allocate any payments previously received and allocated. In the

absence of any payment allocation by MR, payment will be deemed to be allocated in such manner as preserves the maximum value of MR's Purchase Money Security Interest (as defined in the PPSA) in respect of the Services provided.

- 7.12 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by MR nor to withhold payment of any invoice because part of that invoice is in dispute. Once in receipt of an invoice for payment, if any part of the invoice is in dispute, then the Client must notify MR in writing within three (3) business days, the invoice shall remain due and payable for the full amount, until such time as MR investigates the disputed claim, no credit shall be passed for refund until the review is completed. Failure to make payment may result in MR placing the Client's account into default and subject to default interest in accordance with clause 27.1.
- 7.13 Unless otherwise stated the Price does not include GST. In addition to the Price the Client must pay to MR an amount equal to any GST MR must pay for any provision of Services by MR under this Contract or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition, the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

8. MR is not a Common Carrier

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

9. Client-Packed Containers

- 9.1 If a container has not been stowed by or on behalf of MR, MR shall not be liable for loss of or damage to the Goods caused by:
- (a) the manner in which the container has been stowed; or
 - (b) the unsuitability of the Goods for carriage or storage in containers; or
 - (c) the unsuitability or defective condition of the container.

10. Nomination of Sub-Contractor

- 10.1 The Client hereby authorises MR (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the Contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as MR. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled MR shall be deemed to enter into this Contract for its own benefit and also as agent for the Sub-Contractor.

11. MR's Servants or Agents

- 11.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of MR which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify MR and any such servant or agent against all consequences thereof.

12. Provision of Services

- 12.1 If the Client instructs MR to use, or it is agreed MR will use, a particular method of carriage, handling or storage then MR will give priority to that method where convenient for MR, but the end method of carriage, handling or storage shall be as determined by MR in its sole discretion.
- 12.2 MR may in its absolute discretion, notwithstanding any prior instruction or agreement between the Client and MR, select the route of carriage or place of storage for the Goods.
- 12.3 If any identifying document or mark is lost, damaged, destroyed or defaced then MR may open any document, wrapping, package or other container to inspect the Goods in order to determine their nature, condition, ownership or destination.

13. Method of Transport

- 13.1 Further to clause 12, if the Client instructs MR to use a particular method of carriage whether by road, rail, sea or air MR will give priority to the method designated but if that method cannot conveniently be adopted by MR the Client shall be deemed to authorise MR to carry or have the Goods carried by another method or methods.

14. Route Deviation

- 14.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of MR be deemed reasonable or necessary in the circumstances.

15. Charges Earned

- 15.1 MR's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

16. Demurrage

- 16.1 The Client will be and shall remain responsible to MR for all its proper charges incurred for any reason. A charge may be made by MR in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of MR. Such permissible delay period shall commence upon MR reporting for loading or unloading. Labour to load or unload the vehicle shall be the responsibility and expense of the Client or Consignee.

17. Dangerous Goods

- 17.1 Unless otherwise agreed in advance (in writing) with MR the Client shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods.

- 17.2 If MR agrees to accept Dangerous Goods for carriage or storage, then:
- (a) such Goods must be accompanied by a full written declaration disclosing the nature of such Goods; and
 - (b) if MR (or any other person) reasonably forms the view that those Goods constitute a risk to other goods, property, life or health, MR may (without notice and without liability to the Client, the Consignee, or any other party) have the Goods destroyed or otherwise dealt with at the expense of the Client.
- 17.3 The Client agrees to indemnify MR against all loss (including consequential loss), damage or injury howsoever caused or arising out of the carriage or storage of any Dangerous Goods, whether declared as such or not, and whether or not the Client was aware of the nature of the Goods.

18. Consignment Note

- 18.1 It is agreed that the person delivering any Goods to MR for carriage or forwarding is authorised to sign the consignment note for the Client.

19. Client's Warranties

- 19.1 The Client expressly warrants, represents, confirms and/or acknowledges that:
- (a) MR has relied upon the Client in its description of the Goods (including height, measure, standard, strength, quantity, quality, figures, dimensions and values). Accordingly, MR accepts no liability for any discrepancy that may arise with the description;
 - (b) unless specified otherwise in writing, MR has relied upon the Client's skill in properly packaging, labelling, marking, securing and preparing the Goods, and that the Client has complied with all applicable laws and regulations (including those applicable to Dangerous Goods) and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations and that the Goods are packaged in a manner to withstand ordinary risks associated with their carriage and storage having regard to their nature or condition. MR may at any time request the Client by notice in writing to remove the Goods within a specified time and if such notice is not complied with, may dispose of (including by way of sale), remove or destroy at the expense of the Client any or all of the Goods which in the opinion of MR have become or are likely to become deleterious, deteriorated, objectionable, unwholesome, damaged or contaminated. If Goods are sold under this clause, then such sale shall be made under the provisions contained in clause 25 below;
 - (c) the Client is either the owner or the authorised agent of the owner of any Goods or property that is the subject matter of this Contract of cartage and/or storage and by entering into this Contract the Client accepts these conditions of Contract for the Consignee as well as for all other persons on whose behalf the Client is acting. Furthermore, should any person make a claim or commence proceedings against MR alleging an interest in any part of the consigned Goods then the Client agrees to indemnify MR from and against all liability, injury, loss or damage suffered by MR as a result of such actions;
 - (d) the Goods are fit for carriage, having undertaken due and careful enquiry the Goods are not dangerous, illegal, hazardous and do not contain any substance resulting in risks not readily apparent from the Client's description of the Goods; and
 - (e) it is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.

20. Delivery

- 20.1 MR is authorised to deliver the Goods at the address given to MR by the Client for that purpose and it is expressly agreed that MR shall be taken to have delivered the Goods in accordance with this Contract if at that address MR obtains from any person a receipt or a signed delivery docket for the Goods.
- 20.2 MR may deliver the Goods by separate instalments (in accordance with the agreed delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this Contract.
- 20.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this Contract.
- 20.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 20.5 If the delivery address or the site delivery location is unattended, or if delivery cannot be effected by MR (whether due to lack of equipment at the relevant location or otherwise) then MR at its sole discretion may:
- (a) deposit the Goods at that place and such action will be deemed to constitute valid delivery; or
 - (b) return the Goods to the sender and charge the Client any costs incurred by MR in so doing; or
 - (c) store the Goods, in which case the Client shall be liable for, and shall reimburse MR for all costs and expenses incurred in connection with such storage.
- 20.6 MR may refuse to make a site delivery for any reason whatsoever and clauses 20.5(b) and 20.5(c) shall then immediately apply. This clause shall apply in particular if:
- (a) delivery site documentation in a form satisfactory to MR has not been completed and/or executed by the Consignee; or
 - (b) the equipment required to unload the Goods is not available at the delivery site; or
 - (c) access to the delivery site is restricted.
- 20.7 In the event that MR stores the Goods under clause 20.5(c) then MR will re-deliver the Goods to the Consignee at a time mutually agreed between the parties. The Client shall be liable for any costs incurred by MR in both the initial delivery and the re-delivery.
- 20.8 Where the Goods are accepted for forwarding by rail to an address at a place where MR has no receiving depot then the Goods will be deemed duly delivered when they are delivered to the nearest railhead.
- 20.9 If the Consignee requests MR upon delivery to make a subsequent site delivery of the Goods, then MR may at MR's discretion charge either the receiver or the sender the relevant fee as set out in the authorisation form.
- 20.10 If the Consignee requests MR to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts) then MR shall only do so on completion of a written release by the Consignee acknowledging that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of MR in providing such assistance, notwithstanding that MR may at its sole discretion return the Goods to their depot without any liability to the Consignee whatsoever should they believe that the risk in providing such assistance is unacceptable.

- 20.11 The Client will be and shall remain responsible to MR for all its proper charges incurred for any reason. A charge may be made by MR in respect of any delay in excess of thirty (30) minutes in loading or unloading occurring other than from the default of MR. Such permissible delay period shall commence upon MR reporting for loading or unloading. Labour to load or unload MR's vehicle shall be the responsibility and expense of the Client or Consignee.
- 20.12 The Client shall be deemed to have received all Goods in full and in good order and condition unless a written claim is lodged within two (2) days of the termination of any storage arrangements, delivery of the Goods, or a request for removal of the Goods by MR, whichever is the earlier.
- 20.13 If the Client requests MR to provide proof of delivery of a consignment, then MR will provide such proof only upon payment of the relevant fee as set out in MR's Price list from time to time.
- 20.14 The failure of MR to deliver as arranged shall not entitle either party to treat this Contract as repudiated.

21. Carriage and Return of Pallets

- 21.1 The Client is at all times responsible for the return of any pallets (used during the provision of the Services) to the pallet owner or any other nominated person as instructed by the pallet owner. The Client agrees that they shall not transfer any pallets to any account that they may hold with a pallet hirer.

22. Loss or Damage

- 22.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):
- (a) MR shall not be under any liability for any damage to, loss, deterioration, misdelivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of MR or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Client will indemnify MR against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by MR in connection with the Goods.

23. Insurance

- 23.1 The Client acknowledges that:
- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of MR;
- (b) MR is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will MR be under any liability with respect to the arranging of any such insurance and no claim will be made against MR for failure to arrange or ensure that the Goods are insured adequately or at all.
- 23.2 The Client accepts that MR's carrier insurance is limited to loss or damage to goods or death of livestock caused by the following defined events as per MR's insurance policy:
- (a) fire, explosion, lightning or flood;
- (b) collision, overturning, jackknifing or derailment of the conveying vehicle; and
- (c) impact of goods while on the conveying vehicle with something not on or part of that vehicle (other than water).

24. Special Terms Relating to the Storage of Goods

- 24.1 If requested, MR will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory or does not do so and fails to object to its accuracy within seven (7) days of receiving it from MR, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client ask for the contents to be listed, in which case MR will be entitled to make a reasonable additional charge.
- 24.2 The Client acknowledges and agrees that (unless specifically advised to MR) the quality, quantity and condition of the contents of any packages tendered for storage are generally unknown to MR.
- 24.3 The Client shall ensure that all Goods (and/or containers/boxes in which the Goods are packaged) tendered for storage shall be clearly, distinctively, and indelibly branded.
- 24.4 The Client shall immediately notify MR of any change of the ownership of any Goods which are stored on the Client's behalf under this Contract.
- 24.5 MR reserves the right at any time to require the removal of any Goods held in storage on the Client's behalf by giving not less than one week's notice to the Client that they wish them to do so.
- 24.6 The Client shall on request by MR provide samples of the signature(s) of any person(s) entitled to uplift the Goods from storage.
- 24.7 The Client agrees to give MR at least forty-eight (48) hours of their intent to remove the Goods from storage. In the event the Client fails to give such notice then MR may at its sole discretion agree to facilitate the immediate removal of the Goods but shall be entitled to charge the Client an additional fee for so doing.
- 24.8 An inward receipt in relation to Goods stored by MR shall not constitute a document of title to those Goods, or be negotiable, nor shall any right of the Client storing the Goods be assignable.
- 24.9 MR shall store the Goods in bulk or in assorted lots at the convenience of MR unless the Client furnishes MR, prior to, or at the time of the receipt of the Goods, a manifest showing marks, brands or sizes to be kept and accounted for separately and the class of storage desired in which case the Client shall be liable for all additional costs incurred by MR in facilitating the particular method of storage chosen.
- 24.10 The Client shall be liable to MR on demand and at any rate before removal of the Goods from storage, for all charges or fees in connection handling, loading or unloading, palletising, re-palletising, re-packing and/or delivery of the Goods, as the case may require, which charges and fees shall be in accordance with MR's standard Price list, as amended from time to time, and in addition to any storage fee.

- 24.11 MR is authorised to remove the goods from one warehouse to another without cost to the Client. MR will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).
- 24.12 The Client is entitled upon giving MR reasonable notice to inspect the Goods in store, but a reasonable charge may be made by MR for this service.
- 24.13 Subject to payment for the balance of any fixed or minimum period of storage agreed the Client may require the Goods to be removed from the store at any time on giving MR not less than five (5) working days' notice. If the Client gives MR less than the required notice MR will still use their best endeavours to meet the Client's requirements but shall be entitled to make a reasonable additional charge for the short notice.
- 24.14 Subject to clause 28, the Client agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from MR to do so. In default, MR may after fourteen (14) days' notice to the Client SELL ALL OR ANY OF THE GOODS by public auction or, if that is not reasonably practicable by private treaty and apply the net proceeds in satisfaction of any amount owing by the Client to MR.

25. Claims

- 25.1 Notwithstanding any other provision herein (and to the maximum extent allowed by statute) MR shall in any event be discharged from all liability whatsoever in respect of the Goods unless written notice of a claim or an intend claim (together with particulars of the circumstances on which the claim is based) is received by MR:
- (a) in the case of Goods allegedly lost or damaged in the course of loading, unloading, or transit within fourteen (14) days of the delivery of the Goods, or from the date on which in the ordinary course of business, delivery would have been effected;
 - (b) in the case of Goods allegedly lost or damaged during storage, within fourteen (14) days of the date the Goods were removed from storage.
- 25.2 MR shall in event be discharged from all liability whatsoever in respect of the Goods unless suit is brought:
- (a) in the case of Goods allegedly lost or damaged in the course of loading, unloading, or transit within one (1) year of the date on which the Goods were, or should have been, delivered; and
 - (b) in the case of Goods allegedly lost or damaged during storage, within one (1) year of the date on which the Goods were removed from storage.

26. Compliance with Laws

- 26.1 The Client and MR shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services.

27. Default and Consequences of Default

- 27.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and one half percent (2.5%) per calendar month (and at MR's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 27.2 If the Client owes MR any money the Client shall indemnify MR from and against all costs and disbursements:
- (a) incurred; and/or
 - (b) which would be incurred and/or
 - (c) for which by the Client would be liable;
- in regard to legal costs on a solicitor and own client basis incurred in exercising MR's rights under these terms and conditions, internal administration fees, MR's contract fees owing for breach of these terms and conditions', including, but not limited to, contract default fees and/or recovery costs (if applicable), as well as bank dishonour fees.
- 27.3 Further to any other rights or remedies MR may have under this Contract, if the Client has made payment to MR, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MR under this clause 27 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this Contract.
- 27.4 Without prejudice to MR's other remedies at law MR shall be entitled to cancel all or any part of any order of the Client which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to MR shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to MR becomes overdue, or in MR's opinion the Client will be unable to meet its payments as they fall due; or
 - (b) the Client has exceeded any applicable credit limit provided by MR;
 - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

28. MR's Rights To A Lien On Goods

- 28.1 MR shall have a right to take a particular and general lien on any Goods the property of the Client or a third party owner which are in the possession or control of MR (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to MR (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and MR shall have the right to sell such Goods or cargo by public auction or private treaty after giving written notice to the Client. MR shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 28.2 Notwithstanding clause 28.1 nothing shall prejudice MR's rights to use any of MR's other rights and remedies contained in this Contract to recover any outstanding charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 28.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

29. Personal Property Securities Act 2009 ("PPSA")

- 29.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 29.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA, and creates a security interest in:
- (a) all Goods being transported, carried or handled by MR, over which MR invokes a lien; and
 - (b) all Services that will be supplied in the future by MR to the Client; and
 - (c) all the Client's present and after acquired property being a charge, including anything in respect of which the Client has at any time a sufficient right, interest or power to grant a security interest in for the purposes of securing repayment of all monetary obligations of the Client to MR for Services – that have previously been provided and that will be provided in the future by MR to the Client.
- 29.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which MR may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 29.3(a)(i) or 29.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, MR for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MR;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Services in favour of a third party without the prior written consent of MR.
- 29.4 MR and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 29.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 29.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 29.7 Unless otherwise agreed to in writing by MR, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 29.8 The Client shall unconditionally ratify any actions taken by MR under clauses 29.3 to 29.5.
- 29.9 Subject to any express provisions to the contrary (including those contained in this clause 29), nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

30. Security and Charge

- 30.1 In consideration of MR agreeing to provide its Services, the Client grants MR a security interest by way of a floating charge (registerable by MR pursuant to the PPSA) over all of its present and after acquired rights, title and interest (whether joint or several) in all other assets that is now owned by the Client or owned by the Client in the future, to the extent necessary to secure the repayment of monies owed under this Contract for provision of the Services under this Contract and/or permit MR to appoint a receiver to the Client in accordance with the *Corporations Act 2001* (Cth).
- 30.2 The Client indemnifies MR from and against all MR's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising MR's rights under this clause.
- 30.3 In the event that the Client defaults or breaches any term of this Contract and as a result, the security provided in clauses 29.2 and 30.1 as applicable, is deemed insufficient by MR to secure the repayment of monies owed by the Client to MR, the Client hereby grants MR a security interest as at the date of the default, by way of a charge, that enables the right and entitlement to lodge a caveat over any real property and or land owned by the Client now, or owned by the Client in the future, to secure the performance of the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

31. Privacy Policy

- 31.1 All emails, documents, images or other recorded information held or used by MR is Personal Information, as defined and referred to in clause 31.3, and therefore considered Confidential Information. MR acknowledges its obligation in relation to the handling, use, disclosure and processing of Personal Information pursuant to the Privacy Act 1988 ("the Act") including the Part IIIC of the Act being Privacy Amendment (Notifiable Data Breaches) Act 2017 (NDB) and any statutory requirements, where relevant in a European Economic Area ("EEA"), under the EU Data Privacy Laws (including the General Data Protection Regulation "GDPR") (collectively, "EU Data Privacy Laws"). MR acknowledges that in the event it becomes aware of any data breaches and/or disclosure of the Client's Personal Information, held by MR that may result in serious harm to the Client, MR will notify the Client in accordance with the Act and/or the GDPR. Any release of such Personal Information must be in accordance with the Act and the GDPR (where relevant) and must be approved by the Client by written consent, unless subject to an operation of law.
- 31.2 Notwithstanding clause 31.1, privacy limitations will extend to MR in respect of Cookies where the Client utilises MR's website to make enquiries. MR agrees to display reference to such Cookies and/or similar tracking technologies, such as pixels and web beacons (if applicable), such technology allows the collection of Personal Information such as the Client's:
- (a) IP address, browser, email client type and other similar details;
 - (b) tracking website usage and traffic; and
 - (c) reports are available to MR when MR sends an email to the Client, so MR may collect and review that information ("collectively Personal Information")

If the Client consents to MR's use of Cookies on MR's website and later wishes to withdraw that consent, the Client may manage and control MR's privacy controls via the Client's web browser, including removing Cookies by deleting them from the browser history when exiting the site.

- 31.3 The Client agrees for MR to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, driver's license details, electronic contact (email, Facebook or Twitter details), medical insurance details or next of kin and other contact information (where applicable), previous credit applications, credit history) about the Client in relation to credit provided by MR.
- 31.4 The Client agrees that MR may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
 - (b) to notify other credit providers of a default by the Client; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two years.
- 31.5 The Client consents to MR being given a consumer credit report to collect personal credit information relating to any overdue payment on commercial credit.
- 31.6 The Client agrees that personal credit information provided may be used and retained by MR for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
 - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 31.7 MR may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 31.8 The information given to the CRB may include:
- (a) Personal Information as outlined in 31.3 above;
 - (b) name of the credit provider and that MR is a current credit provider to the Client;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults (provided MR is a member of an approved OAIC External Disputes Resolution Scheme), overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and MR has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
 - (g) information that, in the opinion of MR, the Client has committed a serious credit infringement;
 - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 31.9 The Client shall have the right to request (by e-mail) from MR:
- (a) a copy of the Personal Information about the Client retained by MR and the right to request that MR correct any incorrect Personal Information; and
 - (b) that MR does not disclose any Personal Information about the Client for the purpose of direct marketing.
- 31.10 MR will destroy Personal Information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this Contract or is required to be maintained and/or stored in accordance with the law.
- 31.11 The Client can make a privacy complaint by contacting MR via e-mail. MR will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Client is not satisfied with the resolution provided, the Client can make a complaint to the Information Commissioner at www.oaic.gov.au.

32. Cancellation

- 32.1 Without prejudice to any other remedies the parties may have, if at any time either party is in breach of any obligation (including those relating to payment) under these terms and conditions ("the Breaching Party") the other party may suspend or terminate the supply of the Services to the other party, with immediate effect, by providing the Breaching Party with written notice. Neither party will be liable for any loss or damage the other party suffers because one of the parties has exercised its rights under this clause.
- 32.2 If MR, due to reasons beyond MR's reasonable control, is unable to deliver any Services to the Client, MR may cancel any Contract to which these terms and conditions apply or cancel delivery of the Services at any time before the Services are delivered by giving written notice to the Client. On giving such notice MR shall repay to the Client any money paid by the Client for the Services. MR shall not be liable for any loss or damage whatsoever arising from such cancellation.
- 32.3 The Client may cancel Delivery of the Services by written notice served within forty-eight (48) hours of placement of the order. If the Client cancels delivery in accordance with this clause 32.3, the Client will not be liable for the payment of any costs of MR, except where a deposit is payable in accordance with clause 7.6. Failure by the Client to otherwise accept Delivery of the Services shall place the Client in breach of this Contract.

33. Service of Notices

- 33.1 Any written notice given under this Contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
 - (b) by leaving it at the address of the other party as stated in this Contract;
 - (c) by sending it by registered post to the address of the other party as stated in this Contract;
 - (d) if sent by facsimile transmission to the fax number of the other party as stated in this Contract (if any), on receipt of confirmation of the transmission;

- (e) if sent by email to the other party's last known email address.
- 33.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.
- 34. Trusts**
- 34.1 If the Client at any time upon or subsequent to entering in to the Contract is acting in the capacity of trustee of any trust or as an agent for a trust ("Trust") then whether or not MR may have notice of the Trust, the Client covenants with MR as follows:
- (a) the Contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust, the trustees and the trust fund;
 - (b) the Client has full and complete power and authority under the Trust or from the Trustees of the Trust as the case may be to enter into the Contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust, the trustees and the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity;
 - (c) the Client will not during the term of the Contract without consent in writing of MR (MR will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events:
 - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust fund or trust property.
- 35. General**
- 35.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable, that provision shall be severed from this Contract, and the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 35.2 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales, the state in which MR has its principal place of business and are subject to the jurisdiction of the courts in that state.
- 35.3 MR may licence and/or assign all or any part of its rights and/or obligations under this Contract without the Client's consent provided the assignment does not cause detriment to the Client.
- 35.4 The Client cannot licence or assign without the written approval of MR.
- 35.5 MR may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this Contract by so doing. Furthermore, the Client agrees and understands that they have no authority to give any instruction to any of MR's Sub-Contractors without the authority of MR.
- 35.6 The Client agrees that MR may amend their general terms and conditions for subsequent future contracts with the Client by disclosing such to the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for MR to provide Goods to the Client.
- 35.7 Where MR is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of MR, including but not limited to, any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, national or global pandemics and/or the implementation of regulation, directions, rules or measures being enforced by Governments including but not limited to, any Government imposed border lockdowns (including, worldwide destination ports), etc. ("Force Majeure") to carry out any obligation under this Contract and MR gives the Client prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of MR. This clause does not apply to a failure by the Client to make a payment to MR, once the parties agree that the Force Majeure event has ceased.
- 35.8 In the event that either party shall be rendered totally, or partially, unable to carry out their obligations under this Contract by reasons or causes beyond their reasonable control, that party shall be excused from performing their obligations during the continuance of any disability so caused, provided that the party concerned advises the other party in writing of its inability within seven (7) days after becoming aware of its inability to perform its obligations by reason of such cause.
- 35.9 Both parties warrant that they have the power to enter into this Contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this Contract creates binding and valid legal obligations on them.
- 35.10 The rights and obligations of the parties will not merge on completion of any transaction under this Contract, and they will survive the execution and delivery of any assignment or other document entered, for the purpose of, implementing any transaction under this Contract.
- 35.11 If part or all of any term of this Contract is or becomes invalid, illegal or unenforceable, it shall be severed from this Contract and shall not affect the validity and enforceability of the remaining terms of this Contract.