

## GENERAL PROVISIONS

### 1. Applicability and Acceptance

- (a) By entering into this Agreement and using Services provided by Palm Trans, the Customer accepts and agrees to be bound by these Terms and Conditions.
- (b) Palm Trans may make changes to these Terms and Conditions from time to time to accommodate changes in law, business practice or the introduction of new Services without notice to the Customer or by general notice on the Website.

## PRICES AND CHARGES

### 2. Supply of Goods and/or Services

- (a) The supply of Goods and/or Services is contingent upon the Customer complying with this Agreement.
- (b) Palm Trans agree, having regard to the nature of the Services being provided, to perform the Services in a proper and professional manner and in accordance with industry practice.
- (c) The Parties may, at any time, agree in writing for Palm Trans to provide additional services for the remainder of the term of this Agreement. The additional services will be provided to the Customer pursuant to this Agreement.
- (d) Any order cancellation must be in writing and is subject to Palm Trans' approval.

### 3. Prices

- (a) Unless otherwise stated, all Prices quoted are exclusive of settlement discount, GST, duty, taxes and/or any other statutory charge or fee payable in connection with the Services to the Customer by Palm Trans.
- (b) Any Price List attached to this Agreement supersedes all other previous Price Lists provided by Palm Trans.
- (c) Possession of the Price List does not constitute acceptance to provide Services by Palm Trans.
- (d) Palm Trans reserves the right to amend rates and/or Prices and/or the Price List from time to time without prior notice to the Customer.

### 4. Freight

- (a) Freight shall be calculated and charged, at Palm Trans option, on any one or more of gross weight, measurement, value or quality of the Goods and Containers in which it is carried in accordance with Palm Trans's standard freight rate and charges operative to the commencement of the Services. Such freight rates and charges are recorded in Palm Trans' freight schedules and is

amended from time to time. If a special rates or price has been agreed to by Palm Trans in respect of the Services, freight shall be calculated and charged as aforesaid in accordance with such specially arranged rate of price. For the purposes of this clause the weight, measurement, value or quantity of the Goods shall be deemed to be specified to Palm Trans in writing provided that Palm Trans shall be entitled to check such particulars at any time and if the same are incorrect, the freight shall be adjusted accordingly, and the amount of all expenses incurred by Palm Trans in connection with such checking shall be charged payable by the Customer under this Agreement.

- (b) Clause 4(a) is subject to the following:

- (i) any requested change to the standard freight arrangements will be at the Customer's expense; and
- (ii) delivery of Goods to remote or rural areas will have the appropriate freight charged.

### 5. Risk

- (a) At all times before, during and after the Services and under all circumstances, the Goods shall be and remain for all purposes and in all respect at the sole risk of the Customer.
- (b) The Customer acknowledges that it is the Customer's responsibility to ensure that all Goods are insured in respect of the Services and possible storage of the Goods by Palm Trans.
- (c) The Customer acknowledges that it is the Customer's responsibility to ensure that all Goods comply with the applicable various state regulations.

## ROUTES AND PROCEDURES

### 6. Routes

If Palm Trans is instructed by the Customer and agrees to use a particular method or type of routes or Services, Palm Trans shall give due consideration to the method or type designated but shall at all times have the right to choose or vary such method or type of Services or routes and procedures adopted in respect of the Services performed.

## GOODS

### 7. Valuables, Dangerous Goods, Perishable Goods

- (a) Except as agreed in writing, Palm Trans will not accept Valuables, Dangerous Goods, Perishable Goods, livestock or plants for Services. Should the Customer nevertheless deliver any such goods to Palm Trans or cause Palm Trans to handle or deal with any such goods otherwise than as agreed in writing, the Customer shall be liable for any loss, damage or cost thereto or consequent thereon whether direct, indirect or consequential and howsoever cause and the Customer

shall indemnify Palm Trans from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection therewith.

- (b) Goods transported that are or may be Dangerous Goods, Perishable Goods or plants may be destroyed in the sole and absolute discretion of Palm Trans or its Indemnified Officer in whose custody the Goods may be at the relevant time. In the event the Goods are destroyed or otherwise dealt with as aforesaid, Palm Trans shall bear no liability and the Customer shall indemnify Palm Trans and its Indemnified Officer from and against all cost and expenses with respect thereto.

- (c) The Customer undertakes that any of the Goods referred to in this clause 7 (a) (including the container) shall be distinctly marked having regard to their nature. The Customer further undertakes that the Goods are packed in a matter adequate to withstand the ordinary risks of any Service having regard to their nature and in compliance with all laws and regulations which may be applicable with respect to any Service. The Customer shall indemnify Palm Trans against all claims, losses, damages or expenses arising in consequence of any breach of this provision.

- (d) The Customer acknowledges that if any Goods is to be transported or stored in a temperature controlled environment, temperature variations can occur. Palm Trans will endeavour to ensure that transport or storage occurs at a temperature within accepted tolerance levels. Any temperature record maintained by Palm Trans will be conclusive of the temperature at which the Goods was transported or stored.

- (e) The Customer warrants to Palm Trans that any Goods which is Dangerous Goods is stated to Palm Trans in writing and to include the nature and description of those Goods.

- (f) Palm Trans may charge an additional fee for transporting Valuables, Dangerous Goods and/or Perishable Goods.

### 8. Collection

- (a) If the Goods are not made promptly available to Palm Trans, at the time arranged between the Customer and Palm Trans, or if the Goods are not claimed and delivered thereof accepted immediately on its arrival at the Place of Delivery or so soon thereafter as Palm Trans requires, the amount of all additional cost resulting therefrom, as determined by Palm Trans, shall be an additional charge payable under this Agreement.

### 9. Delivery/Completion

- (a) Palm Trans is authorised to deliver the Goods to the Customer or its

Indemnified Officer at the address nominated to be the Place of Delivery by the Customer. It is expressly agreed that Palm Trans shall be deemed to have delivered the Goods in accordance with this Agreement if the Customer or a person at the Place of Delivery signs for the Goods.

- (b) If the Place of Delivery is unattended or if delivery cannot otherwise be effected, Palm Trans, in its sole discretion, may, at its option, either deposit the Goods at the Place of Delivery or store the Goods at a warehouse nominated by Palm Trans at the risk and expense of the Customer, both of which will be deemed to be delivery of the Goods under this Agreement.
- (c) Palm Trans and its Indemnified Officer may, at any time, inspect the Goods and for its purpose, open or remove any Containers.

#### **10. Sale and Disposal of Goods**

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- (a) Palm Trans shall be entitled, at the cost and expense of the Customer, subject to any compliance with the applicable law, sell or dispose of:
  - (i) Goods which in the opinion of Palm Trans cannot be delivered by reason of the Goods being insufficiently or incorrectly addressed or by reason of the Goods not being collected or accepted by the Customer for any other reason; and/or
  - (ii) Any Perishable Goods which in the opinion of Palm Trans appear to be deteriorating, if the Customer fails to adequately instruct Palm Trans with respect thereto or fails to pay any costs and expenses necessary to implement the Customer's instructions.

#### **11. Regulation Compliance**

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- (a) The Customer shall exercise all reasonable care and comply with all applicable laws, government regulations/directions and industry standards including those relating to the packing, carriage, storage, customs clearance, delivery, inspection or other Services in respect of the Goods, and shall provide such information and documents as may be necessary to exercise such care and comply with such laws, regulations and standards.

#### **CREDIT ACCOUNT**

#### **12. Credit Terms**

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- (a) Payment of all credit accounts shall be made on or before seven (7) days from the date of the invoice.
- (b) When making a payment:
  - (i) the Customer must forward their remittance advice to Palm Trans to ensure payment is allocated to the Customer's account in the correct manner;
  - (ii) if the Customer's payment does not reflect the statement amount, a brief note must be included regarding any variations; and
  - (iii) opening orders for all new accounts must be paid in full at the time of order.

This condition may only be varied at the discretion of Palm Trans.

- (c) Palm Trans may, at any time, without notice, terminate or suspend the Customer's right to engage Services from Palm Trans on credit and shall not be liable for any damages, costs, penalties or charges incurred by the Customer as a result of the non-supply of the Services by Palm Trans.
- (d) Palm Trans reserves its rights to suspend (automatically and without notice to the Customer), all accounts unpaid at fourteen (14) days from date of invoice, and no further orders will be shipped.
- (e) Suspended accounts may attract a default account keeping fee of two percent (2%) per month until the account is returned to the agreed trading terms. The Customer agrees that that this is a fair and reasonable charge and is directly relevant to the likely damage that Palm Trans might suffer as a result of non-payment by the Customer. Interest will be calculated on all outstanding amounts from the date of issue of the outstanding invoice.
- (f) All invoices shall immediately become due and payable in the event of default on payment by the Customer of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.
- (g) Account payments made by Visa / Master Credit Card will be charged a processing fee of 2%.

#### **13. Credit History**

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- (a) The Customer hereby gives Palm Trans authority to make enquiries as to the credit and financial responsibilities of the Customer and/or the Customer's Directors and/or Shareholders in order to suitably qualify the Customer's capacity to incur debt and repay any amounts to Palm Trans. These enquiries shall include but not be limited to obtaining reports from credit reporting agencies and references from current and/or past providers of credit to the Customer.
- (b) In accordance with section 18E(8)(c) of the *Privacy Act 1988* (Cth), the Customer acknowledges that Palm Trans has informed the Customer that certain items of personal information about the Customer contained in/or relating to the Customer's Application for Credit, and permitted to be kept on a credit information file, might be disclosed to a credit reporting agency. Furthermore, the Customer agrees, in accordance with s18H(3), s18K(1)(b), s.18K(1)(c), s18K(1)(h) and s18N(1)(b) of the *Privacy Act 1988* that use by Palm Trans of the relevant information referred to in those sections may occur for the purpose of assessing the Customer's credit application.

#### **SECURITIES AND CHARGES**

#### **14. Lien**

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Palm Trans reserves the following rights in relation to the Goods until all amounts owed

by the Customer to the Palm Trans are fully paid:

- (a) Palm Trans has a general lien over the Goods for all amount payable to it by the Customer including all freight and charges payable under this Agreement or on any other account and may refuse delivery of Goods until all such amounts have been paid in full. If any such amount remains unpaid for more than 14 days after becoming due and owing, Palm Trans may at its discretion and without notice to the Customer sell the Goods by public auction or private treaty deducting all expenses of detaining and selling the same, and apply the net balance of the sale proceeds towards amounts payable to Palm Trans as aforesaid. Any surplus sale proceeds and any Goods remaining unsold after all such amounts have been paid in full shall be payable or deliverable to the Customer. Neither such lien nor any such sale shall prejudice or affect the right of Palm Trans at any time to recover from any person liable thereof any such amount which at that time remains unpaid.
- (b) Palm Trans may, at its discretion, retain and decline to deliver the Goods until all freight and charges are paid and until the identity of whom the Goods are to be delivered to is established and satisfactory to Palm Trans.
- (c) The Customer authorise Palm Trans to keep or resell any Goods repossessed pursuant to Clause 14 of this Agreement.
- (d) If the Goods are resold by the Customer, the Customer shall hold such part of the proceeds of any such sale as represents the invoice Price of the Goods sold in a separate identifiable account as the beneficial property of Palm Trans and shall pay such amount to Palm Trans upon demand.
- (e) Notwithstanding the above, Palm Trans shall be entitled to maintain an action against the Customer for the invoice Price of the Goods.
- (f) In connection with the Goods, while they remain the property of Palm Trans, the Customer agrees that:
  - (i) the Customer cannot claim any lien over the Goods;
  - (ii) the Customer warrants and undertakes that it will not create any absolute or defensible interest in the Goods in relation to any third party except as may be authorized by the Palm Trans in writing.
  - (g) pending payment in full for the Goods, the Customer:
    - (i) must not allow any person to have or acquire any security interest in the Goods;
    - (ii) must insure the Goods for their full insurable or replacement value (whichever is higher) with an insurer licensed or authorized to conduct the business of insurance in the place where the Customer carries on business.

## **15. Charge**

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- (a) As security for payment to Palm Trans of all moneys payable by the Customer and for the Customer's obligations generally under this Agreement, the Customer charges in favour of Palm Trans the whole of the Customer's undertaking, property and assets (including without limitation all of the Customer interests, both legal and beneficial, in freehold and leasehold land) both current and later acquired.
- (b) The Customer irrevocably appoints Palm Trans as its attorney to do all things necessary to create and register each such charge.
- (c) Upon demand by Palm Trans, the Customer agrees to immediately execute a mortgage or other instrument in terms satisfactory to Palm Trans to further secure payments of the money payable by the Customer.
- (d) If the Customer fails within a reasonable time of such demand to execute such mortgage or other instrument, then the Customer acknowledge that Palm Trans may execute such mortgage or other instrument as the Customer's attorney pursuant to the appointment of Palm Trans as the Customer's attorney set out in this Agreement.

### **WARRANTY**

## **16. Warranty & Replacement**

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- (a) The Customer warrants:
  - (i) It is the owner of the Goods or otherwise has the authority of the owner or person having interest in the Goods or any part thereof to enter into this Agreement. Without prejudice to the foregoing warranty, the Customer undertakes to indemnify Palm Trans in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may acquire an interest in the Goods or any part thereof.
  - (ii) The person releasing or delivering the Goods to Palm Trans is authorised to do so and to accept these conditions on the Customer's behalf.
  - (iii) The adequacy of packing and suitability of the Goods for the Services contracted and accuracy of all markings and branding of the Goods, descriptions, values and other particulars furnished to Palm Trans for the carriage, customs, consular and any other purposes and undertakes to indemnify Palm Trans against all loss, damage, expenses and fines arising from any inadequacy, unsuitability, inaccuracy or omission in this respect.
  - (iv) It has fully and adequately described the Goods, its nature, weight and measurements and complied with all applicable laws and regulations (including the Australian Code for the Transport of Dangerous Goods by Road and Rail) about the notification, classification, description, labelling, transport and packaging of the Goods and that, given the nature of the Goods, the Goods are packaged in the property

way to withstand the ordinary risks of the Services.

- (v) Neither the Customer nor any other person will make an allegation or claim against Palm Trans or its Indemnified Officers about the Services, and the Customer indemnifies Palm Trans from any loss, damage, expense, penalty, fine or liability arising from a breach of these warranties,
- (vi) Notwithstanding anything in clause 16, marks, weight, measure, contents, quality, value, numbers, quantity and condition (including packaging) of the Goods are unknown to Palm Trans. The Customer is liable for any loss, damage, cost or expense which Palm Trans may suffer by reason of the condition or packaging of the Goods or occasioned either directly or indirectly to Palm Trans by reason of Palm Trans relying upon weight incorrectly specified in such description or particulars or any other error thereon or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of Goods. The amount of all such cost, expense, loss and damage shall be a charge payable under this Agreement.

## **17. Limitation of Liability and Indemnity**

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### **17.1 Release and Indemnity**

- (a) The Customer agrees to release and hold harmless, indemnify and defend Palm Trans and its Indemnified Officers against any Claim or Liability from or in relation to:
  - (i) the misuse of any Goods by the Customer or anyone whom the Customer allowed to access the Goods, whether deliberately or otherwise;
  - (ii) the Customer's breach of any law or infringement of any third party rights;
  - (iii) the Customer's action, inaction, delay or breach of its obligations under this Agreement or the Customer's breach of any warranties under this Agreement.
- (b) The Customer agrees to release and hold harmless Palm Trans and its Indemnified Officers against any Claim or Liability arising from or in relation to:
  - (i) any Consequential Loss of any kind;
  - (ii) third parties;
  - (iii) Palm Trans's reasonable actions in cancelling or delaying any transaction for any reason;
  - (iv) actions taken in relation to this Agreement in accordance with Palm Trans obligations at law or any order issued by a court of law or relevant government authority, whether directly or indirectly arising in connection with the Goods or Services, even if Palm Trans knew or should have known about the possibility of such Claim or Liability.
- (c) the Customer indemnify Palm Trans for any reasonable legal expenses Palm Trans incurs as a result of the Customer's breach of this Agreement, including expenses for enforcing

payment, on a solicitor and own-client basis.

- (d) Neither Palm Trans or its Indemnified Officers shall be under any duty or liability whatsoever, and the Customer undertakes that no claim shall be made or brought by them or any other person against Palm Trans or its Indemnified Officers for or in respect of any loss or damage to or deterioration, contamination, evaporation, wrongful delivery, mis-delivery, delay in delivery (however extended) or non-delivery of the Goods whenever, wherever and however occurring or any damage, injury or loss of any nature whatsoever sustained or arising in consequence thereof, or otherwise howsoever for or in respect of anything done, purported to be done or omitted to be done by Palm Trans or its Indemnified Officers, or any other matter or thing occurring or arising during or in connection with the Services or otherwise in relation to the Goods. The exclusions, release and indemnities in this clause extends to loss of profits, business or anticipated savings or any other indirect or consequential damage and to economic loss and even if Palm Trans knows they are possible or otherwise foreseeable.

### **17.2 Limitation of liability**

- (a) To the fullest extent allowable at law:
  - (i) Palm Trans is not liable for any contingent, direct/indirect or punitive damages or loss arising or any Consequential Loss, in relation to the Services of the Goods, whatsoever. The Customer acknowledge this express limit or liability and agrees to limit any claim accordingly;
  - (ii) Palm Trans will not be held liable for any loss or damage incurred due to a Force Majeure, which means any cause outside the parties' reasonable control, including but not limited to an act of God, government or quasi government, act or regulation, riot, act of terrorism, war, flood, fire, industrial disputes and epidemics or any risks to health or safety;
- (b) Despite any other provision to the contrary, the Customer agrees that Palm Trans total liability and the total liability of its Indemnified Officers in connection with this Agreement whether under contract or tort, will not in any circumstances exceed a sum equal to the greater of:
  - (i) \$100; or
  - (ii) the price of the Goods in dispute.

## **18. Warehousing**

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The Goods may, at any time, be held and removed from a warehouse at Palm Trans discretion. Placing the Goods in the warehouse will be at the Customer's risk and expense and the Customer will be charged for the warehouse costs unless Palm Trans agrees in writing not to impose the charge.

MISCELLANEOUS

19. Default

The Customer must pay Palm Trans any costs, charges and expenses (including legal fees and costs on a full indemnity basis as a liquidated debt) incurred by Palm Trans in connection with the entry into this Agreement, the exercise or attempted exercise of any power, right or remedy under these Terms and Conditions and/or the failure of the Customer to comply with these Terms and Conditions.

20. Jurisdiction

- (a) This Agreement is deemed to have been entered into in the State of Victoria, Australia. Any legal action arising out of, or in respect of this Agreement and/or its interpretation must be brought only in the State of Victoria or another jurisdiction if it is deemed appropriate by Palm Trans.
(b) The Parties further agree to issue any proceedings in the Melbourne registry of the appropriate court having monetary jurisdiction over the matter or another jurisdiction if it is deemed appropriate by Palm Trans.

21. Amendment

The terms contained in these Terms and Conditions are binding, and cannot be altered except by clear, written acceptance of the alteration by Palm Trans and the Customer.

22. Severability

If any provision of this Agreement is ruled by a court to be invalid or unenforceable, it will not affect the validity or enforceability of any other provision or part provision of this Agreement.

23. Waiver

Any delay or failure to enforce any rights in relation to a breach of this Agreement by the other party will not be construed as a waiver of those rights.

24. Definitions

24.1 Definitions

In this Agreement unless the context otherwise requires:

- (a) Agreement means this Agreement between the Parties, incorporating these Terms and Conditions and Palm Trans Internet Sales Policy.
(b) Claim means a claim notice, demand, action, proceeding, litigation, investigation, judgment, damage, loss, cost, expense or liability however arising, whether present, unascertained, immediate, future or contingent, whether based in contract, tort or statute and whether involving a party to this Agreement or third party.
(c) Consequential Loss includes, without limitation, data loss, loss of opportunity, loss of anticipated profits or savings, expenses incurred through default or breach, wasted overheads, loss of contract, loss of business, loss of

production, loss of use, loss of goodwill, and all other pure economic loss, and disappointment, distress, stress, and inconvenience.

- (d) Container means any container, crate, case, vehicle, tray, flat, pallet, receptacle and, but not limited to, packaging.
(e) Dangerous Goods means goods that are, or become, in fact or at law noxious, dangerous, hazardous, explosive, radioactive, inflammable or capable by their nature of causing damage or injury to other goods, persons, plants or animals or to any thing including that in which the Goods are carried, handled or stored.
(f) Goods means the chattels, articles or things tendered for by the Customer for the Services provided by Palm Trans.
(g) Indemnified Officers means, in relation to a party, its directors, employees, contractors, agents and representatives.
(h) Liability means any liability (whether actual or prospective), loss, damage, cost or expense of any description, including legal fees on a solicitor and own client basis.
(i) Palm Trans means Palm Trans Pty Ltd A.C.N. 007 268 948 and its subsidiaries as defined in the Corporations Act 2001 (Cth) and each of their servants or agents.
(j) Parties means Palm Trans and the Customer.
(k) Perishable Goods means Goods that shall be liable to deteriorate in quality and/or value and shall include, but not limited to, fruits, vegetables, dairy products and meat.
(l) Place of Acceptance means the place of acceptance of the Goods specified to Palm Trans by the Customer.
(m) Place of Delivery means the place of delivery of the Goods specified to Palm Trans by the Customer.
(n) Price or Prices means the Price and/or Prices for the Goods and Services as listed in the Price List issued from time to time in writing or by verbal advice from an authorised employee of Palm Trans. All Prices are in Australian Dollars.
(o) Price List means the Price List issued by Palm Trans from time to time listing the relevant Prices for Goods and/or Services.
(p) Secured Money means any monies secured by Palm Trans by way of a security interest.
(q) Services means the carriage, transport, movement, storage/warehousing, and /or any other service arranged or performed by Palm Trans, pursuant to, or ancillary to, this agreement with the Customer.
(r) Terms and Conditions means these Terms and Conditions.
(s) the Customer means any person, firm, corporation, government, semi-government or local government

department or authority, its successors, assignees, trustees, administrators or liquidators, to whom or to which Services are provided to by Palm Trans.

- (t) Valuables means bullion, coins, precious stones, jewellery, antiques and, but not limited to, works of art.
(u) Website means www.palmtrans.com.au.

25. Acknowledgement

- (a) The Customer acknowledges that it has carefully read, fully understood and agreed to be bound by all the provisions of this Agreement.
(b) Palm Trans will not be liable for any loss and/or damages suffered whatsoever, whether directly and/or indirectly, from the Customer's failure to obtain independent legal advice in relation to this Agreement.

The Customer the undersigned declare that all information provided to Palm Trans for the purposes of assessing the Customer's suitability for credit, purchase and rental is true and correct in every particular.

The Customer the undersigned further acknowledge that it has read understand and agree to the terms of this Agreement.

This Agreement may be executed in any number of counterparts. Each counterpart is an original but the counterparts together are one and the same Agreement. The Agreement may be entered into by and becomes binding on the parties named in the Agreement upon one party signing the Agreement that has been signed by the other (or a photocopy or facsimile copy of that Agreement) and transmitting a facsimile copy of it to the other party.

COMPANY NAME

TRADING NAME

PRINT NAME

TITLE

SIGNATURE

DATE