

**1 Definitions**

- 1.1 "BWW" shall mean Master Freight Pty Ltd and its successors and assigns or any person acting on behalf of and with the authority of Master Freight Pty Ltd.
- 1.2 "Sub-Contractor" shall mean and include:
- (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 BWW 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 clause 1.2(a) and 1.2(b).
- 1.3 "Client" shall mean the Client or any person or persons acting on behalf of and with the authority of the Client. Where more than one Client has entered into this agreement, the Clients shall be jointly and severally liable for all payments of the Price.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of BWW's Services; and in some instances, may also be the same individual/entity as the aforementioned Client.
- 1.5 "Guarantor" means that person (or persons) who agrees herein to be liable for the debts of the Client on a principal debtor basis.
- 1.6 "Goods" shall mean cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of BWW's Services, or for storage by BWW.
- 1.7 "Services" shall mean all services supplied by BWW to the Client and are as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by BWW to the Client and includes any advice or recommendations.
- 1.8 "Price" shall mean the cost of the Services as agreed between BWW and the Client subject to clause 4 of this contract.

**2 Acceptance**

- 2.1 Any instructions received by BWW from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 2.2 Any variation, cancellation or waiver of these terms and conditions (or any of them) must be in writing signed by a Director of BWW. No other person has or will be given any authority whatsoever to agree to any variation, cancellation or waiver of these terms and conditions.
- 2.3 These terms and conditions are to be read in conjunction with BWW's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by BWW to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The Client shall give BWW not less than fourteen (14) days prior written notice of any proposed change of ownership of the Client or any change in the Client's name and/or any other change in the Client's details (including but not limited to, changes in the Client's address, facsimile number, or business practice). The Client shall be liable for any loss incurred by BWW as a result of the Client's failure to comply with this clause.
- 2.5 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client or any other person having an interest in the Goods and purporting to have a contractual effect.

**3 Freight Forwarding**

- 3.1 The Client hereby appoints BWW the agent of the Client for the purpose of performing any of the following activities in order to provide the Services to the Client:
- (a) complete any documents, amend product service coded, and pay any duties or taxes required under applicable laws and regulations; and
  - (b) enter into contracts on behalf of and as agent for the Client and without notice to the Client, for the carriage of the Goods by any route, means and carrier, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at any place and for any length of time, and for such other matters as in the opinion of BWW may be necessary or desirable; and
  - (c) act as the Client's forwarding agent for customs and export control purposes and as receiver solely for the purpose of designating a customs broker to perform customs clearance and entry; and
  - (d) redirect the Goods to the receiver's import broker or other address upon request by any person who BWW believes in its reasonable opinion to be authorised.
- 3.2 The Client shall be bound by the terms of any consignment note, air waybill or other contractual document which BWW may receive for the Goods or for any package, unit or container in which the Goods may be packed, whether by the Client, BWW, or any other person.

**4 Price and Payment**

- 4.1 At BWW's sole discretion the Price shall be either:
- (a) as indicated on invoices provided by BWW to the Client in respect of Services supplied; or
  - (b) BWW's quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon BWW provided that the Client shall accept in writing BWW's quotation within seven (7) days.
- 4.2 BWW may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to BWW beyond the reasonable control of BWW (including, without limitation, foreign exchange and petrol cost fluctuations, or increases in taxes or customs duties or insurance premiums or warehousing costs).
- 4.3 Freight charges are calculated according to (the higher of) actual or volumetric weight. Goods may be re-weighed and re-measured by BWW to confirm this calculation, and charge proportional additional freight accordingly.
- 4.4 At BWW's sole discretion;
- (a) a deposit may be required; and/or
  - (b) payment shall be due on delivery of the Goods, or
  - (c) payment shall be due before delivery of the Goods, or
- 4.5 The Client shall pay to BWW all sums immediately when due without deduction or deferment on account of any claim, counterclaim or set-off. Unless otherwise stated in writing payment shall be due fourteen (14) days following the date of the invoice
- 4.6 Payment will be made by cash, cheque, bank cheque, credit card (plus a surcharge of up to one and a half percent (1.5%) of the Price), direct credit, or by any other method as agreed to between the Client and BWW.

- 4.7 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.
- 4.8 When BWW is instructed to collect freight, duties, charges or other expenses from any third party, the Client:
- (a) shall remain responsible for these amounts; and
  - (b) shall pay these amounts to BWW on demand where these amounts have become due and have not been paid by the third party.
- 5 **BWW Not Common Carrier**
- 5.1 BWW is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other services are performed by BWW subject only to these conditions and BWW reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.
- 6 **Obligations of Client**
- 6.1 The Client warrants that:
- (a) it is either the owner or the authorized agent of the owner of the Goods and that it is authorised to accept and accepts these terms and conditions, not only for itself, but also as agent for and on behalf of the owner;
  - (b) the description and particulars of the Goods are complete and correct;
  - (c) the Goods are properly packed and labelled, except where BWW has accepted instructions in respect of packaging and/or labelling.
- 6.2 It is the Client's sole responsibility to address adequately each consignment and to provide sufficient and executable instructions.
- 6.3 The Client shall be liable for and pay to BWW any additional costs or expenses BWW may incur and for any loss or damage occasioned either directly or indirectly to BWW as a result of BWW relying upon the description and particulars provided by the Client or by reason of any illegal, incorrect or insufficient marking, numbering or addressing of the Goods.
- 7 **Containers**
- 7.1 If a Container has not been packed or stuffed by BWW, BWW shall not be liable for loss of or damage to the contents if caused by:
- (a) the manner in which the Container has been packed or stuffed,
  - (b) the unsuitability of the contents for carriage in Containers, unless BWW has approved the suitability,
  - (c) the unsuitability or defective condition of the Container, provided that where the Container has been supplied by or on behalf of BWW this paragraph (c) shall only apply if the unsuitability or defective condition arose:
    - (i) without any negligence on the part of BWW; or
    - (ii) would have been apparent upon reasonable inspection by the Client or person acting on behalf of either of them.
  - (d) the fact that the Container is not sealed at the commencement of the Carriage, except where BWW has agreed to seal the Container.
- 7.2 The Client shall defend, indemnify and hold harmless BWW against all liability, loss, damage, costs and expenses arising from one or more of the matters referred to in clause 7.1, except for cause 7.1(c)(i).
- 8 **Nomination of Sub-Contractor**
- 8.1 The Client hereby authorises BWW (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 BWW. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled BWW shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.
- 9 **BWW's Servants or Agents**
- 9.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of BWW 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 BWW and any such servant or agent against all consequences thereof.
- 10 **Liberties and Rights of BWW**
- 10.1 BWW shall be entitled (without incurring any additional liability), but shall be under no obligation, to depart from the Client's instructions in any respect if BWW considers there is good reason to do so in the Client's interest (including, but not limited to, any deviation from the usual route or manner of carriage of Goods).
- 10.2 BWW shall be entitled (but under no obligation) at any time and from time to time to inspect the Goods and for this purpose to open or remove any containers, without prior notice to the Client.
- 11 **Dangerous Goods**
- 11.1 Unless agreed in writing, the Client shall not deliver to BWW, or cause BWW to deal with or handle, Dangerous Goods. The Goods shall be deemed as unacceptable for transportation if:
- (a) classified as hazardous dangerous, explosive, inflammable, or prohibited;
  - (b) restricted articles by IATA (International Air Transport Association), ICAO (International Civil Aviation Organisation), or any applicable government department or other relevant organisation;
  - (c) BWW decides it cannot transport an item safely or legally (such items include, but are not limited to: animals, currency, bearer form negotiable instruments, precious metals and stones, firearms, parts thereof and ammunition, human remains, pornography and illegal narcotics/drugs).
- 11.2 If the Client is in breach of clause 11.1:
- (a) the Client shall be liable for all loss or damage whatsoever caused by or to or in connection with the Goods howsoever arising;
  - (b) the Client shall defend, indemnify and hold harmless BWW against all penalties, claims, damages, costs and expenses whatsoever arising in connection therewith; and
  - (c) BWW (or any other person in whose custody the Goods may be in at the relevant time) may, at BWW's sole discretion, have the Goods destroyed or otherwise dealt with. For the purposes of this sub-clause, notice is not required to be given to any person of the intention to

destroy or otherwise deal with the Goods.

## 12 Delivery

- 12.1 Goods cannot be delivered to PO boxes or postal codes.
- 12.2 Goods are delivered to the Consignee address given by the Client (which in the case of mail services shall be deemed to be the first receiving the postal service) but not necessarily to the named Consignee personally.
- 12.3 Goods sent to addresses with a central receiving area will be delivered to that area if:
- (a) the Consignee refuses delivery or to pay for delivery; or
  - (b) the Goods are deemed to be unacceptable; or
  - (c) the Goods had been undervalued for customs purposes; or
  - (d) the Consignee cannot be reasonably identified or located,
- then BWW shall use reasonable efforts to return the Goods to the Client at the Client's cost, failing which the Goods may be released, disposed of or sold by BWW without incurring any liability whatsoever to the Client or anyone else, with the proceeds applied against service charges and related administrative costs and the balance of the proceeds of a sale to be returned to the Client.
- 12.4 Unless agreed in writing that the Goods shall depart by or arrive by a particular date, BWW accepts no responsibility for departure or arrival dates of Goods. Nor shall BWW be responsible for any charges arising out of any delay, including but not limited to, any delay due to the provision of incorrect documentation.
- 12.5 Where BWW (or any person whose Services BWW makes use of) is entitled to call upon the Client to take delivery of the Goods at a designated time and place and delivery of the Goods, or any part thereof, is not taken by the Consignee at the designated time and place BWW (or such other person) shall be entitled to store the Goods in the open or under cover at the sole risk and expense of the Client.
- 12.6 Notwithstanding clause 12.4, BWW shall be entitled (but under no obligation) without any responsibility or liability to the Client, to sell or dispose of
- (a) all Goods which BWW considers cannot be delivered as instructed, but only upon giving twenty-one (21) days notice in writing to the Client, and
  - (b) without notice, Goods which have perished, deteriorated or altered, or are in immediate prospect of doing so in a manner which has caused (or may be reasonably expected to cause) loss or damage to any person or property or to contravene applicable regulations.
- 12.7 Where BWW sells or disposes of Goods pursuant to clause 12.6 the Client shall be responsible for any costs and expenses of the sale or disposal.

## 13 Air Carriage

- 13.1 Notwithstanding any other provision of these Conditions, where BWW acts as a principal in respect of a carriage of Goods by air, BWW's liability in respect of loss of or damage to such Goods shall be determined in accordance with the Montreal Convention.

## 14 General Indemnities and Liabilities of the Client

- 14.1 The Client shall defend, indemnify and hold harmless BWW against all liability, loss, damage, costs and expenses howsoever arising:
- (a) from the nature of the Goods, other than to the extent caused by BWW's negligence, or
  - (b) out of BWW acting in accordance with the Client's instructions, or
  - (c) from a breach of warranty or obligation by the Client or arising from the negligence of the Client or Consignee.
- 14.2 Except to the extent caused by BWW's negligence, the Client shall be liable for and shall defend, indemnify and hold harmless BWW in respect of all duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any Authority and for all payments, fines, costs, expenses, loss and damage whatsoever incurred or sustained by BWW in connection therewith.

## 15 Insurance

- 15.1 BWW can arrange insurance for the Client covering the actual cash value in respect of loss of, or physical damage to the Goods, provided the Client completes the insurance section on the front of the waybill or requests it via BWW's automated systems and pays the applicable premium. Shipment Insurance does not cover indirect loss or damage, or loss or damage caused by delays.

## 16 General Liability of BWW

- 16.1 Except where otherwise provided in these terms and conditions, BWW shall not be liable for any loss or damage whatsoever arising from circumstances beyond BWW's control including (but not limited to):
- (a) Any defect or characteristic related to the nature of the Goods (even if known to BWW);
  - (b) the act or omission of the Client or any person acting on their behalf, or any person not employed or contracted by BWW (including but not limited to, Client, Consignee, third party, customs or other government official, industrial action, electrical or magnetic damage to or erasure of electronic or photographic images, data or recordings);
  - (c) compliance with the instructions given to BWW by the Client or any other person entitled to give them;
  - (d) insufficiency of the packing or labelling of the Goods, except where such service has been provided by BWW;
  - (e) handling, loading, stowage or unloading of the Goods by the Client or any person acting on their behalf;
  - (f) inherent vice of the Goods;
  - (g) any act of God such as an earthquake, cyclone, storm, flood, fog, fire, explosion;
  - (h) theft, riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause, war, plane crash or embargo;
  - (i) any cause which BWW could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 16.2 Subject to clause 12.4, BWW shall not be liable for loss or damage howsoever caused (whether or not indirect or consequential) to property other than the Goods themselves and shall not be liable for any pure economic loss or loss of profit, delay or deviation howsoever arising.

## 17 Amount of Compensation

- 17.1 BWW contracts with the Client on the basis that BWW's liability is strictly limited to direct loss only and to the per kilo/lb limits in referred to in clause (b) and (c). All other types of loss or damage are excluded (including but not limited to lost profits, income, interest, future business),

whether such loss or damage is special or indirect, and even if the risk of such loss or damage was brought to BWW's attention before or after acceptance of the Goods since special risks can be insured by the Client. If Goods to be delivered combines carriage by air, road or other mode of transport, it shall be presumed that any loss or damage occurred during the air period of such carriage unless proven otherwise. BWW's liability in respect of any Goods transported, is limited to its actual cash value and shall not exceed the greater of:

(a) \$US 100 or:

(b) \$US 20.00/kilogram or \$US 9.07/lb for Goods transported by air or other non-road mode of transportation; or

(c) \$US 10.00/kilogram or \$US 4.54/lb for Goods transported by road (not applicable to the US).

17.2 Claims are limited to one claim per Goods, settlement of which will be full and final settlement for all loss or damage in connection there-with. If the Client regards these limits as insufficient it must make a special declaration of value and request insurance as described in Clause 15 (Shipment Insurance) or make its own insurance arrangements, failing which the Client assumes all risks of loss or damage.

17.3 If agreed in writing prior to receipt of the Goods, BWW may accept liability in excess of the limits set out in these terms and conditions upon the Client agreeing to pay BWW's additional charges for accepting such increased liability. Details of BWW's additional charges will be provided upon request.

17.4 If there be no invoice value for the Goods, the compensation shall be calculated by reference to the value of such Goods at the place and time when they were delivered to the Client or should have been so delivered. The value of the Goods shall be fixed according to the current market price, or, if there be no commodity exchange price or current market price, by reference to the normal value of goods of the same kind and quality.

17.5 Unless agreed in writing prior to receipt, BWW will not accept or deal with bullion, coin, precious stone, jewellery, antiques, and works of art or other valuable Goods. Should any Client nevertheless deliver any such Goods to BWW or cause BWW to handle or deal with any such Goods other than in accordance with prior written agreement, BWW shall be under no liability whatsoever for or in connection with such Goods howsoever arising.

## 18 Notice of Loss, Time bar

18.1 BWW shall be discharged of all liability unless notice of any claim is received by BWW or its agent in writing within thirty (30) days after the date that BWW accepted the Services.

## 19 Conditions of Storage

19.1 BWW 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 BWW, 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 BWW will be entitled to make a reasonable additional charge.

19.2 BWW is authorised to remove the goods from one warehouse to another without cost to the Client. BWW 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).

19.3 The Client is entitled upon giving BWW reasonable notice to inspect the Goods in store but a reasonable charge may be made by BWW for this service.

19.4 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 BWW not less than five (5) working days notice. If the Client gives BWW less than the required notice BWW will still use their best endeavours to meet the Clients requirements, but shall be entitled to make a reasonable additional charge for the short notice.

19.5 The Client agrees to remove the goods from storage within twenty-eight (28) days of a written notice of requirement from BWW to do so. In default, BWW 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 BWW.

## 20 Default and Consequences of Default

20.1 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 BWW's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

20.2 In the event that the Client's payment is dishonoured for any reason the Client shall be liable for any dishonour fees incurred by BWW.

20.3 If the Client defaults in payment of any invoice when due, the Client shall indemnify BWW from and against all costs and disbursements incurred by BWW in pursuing the debt including legal costs on a solicitor and own client basis and BWW's collection agency costs.

20.4 Without prejudice to any other remedies BWW may have, if at any time the Client is in breach of any obligation (including those relating to payment), BWW may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. BWW will not be liable to the Client for any loss or damage the Client suffers because BWW exercised its rights under this clause.

20.5 If any account remains overdue after thirty (30) days then an amount of the greater of \$20.00 or 10.00% of the amount overdue (up to a maximum of \$200) shall be levied for administration fees which sum shall become immediately due and payable.

20.6 Without prejudice to BWW's other remedies at law BWW 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 BWW shall, whether or not due for payment, become immediately payable in the event that:

(a) any money payable to BWW becomes overdue, or in BWW's opinion the Client will be unable to meet its payments as they fall due; or

(b) 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

(c) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

## 21 Personal Property Securities Act 2009 ("PPSA")

21.1 In this clause:

- (a) financing statement has the meaning given to it by the PPSA;
  - (b) financing change statement has the meaning given to it by the PPSA;
  - (c) security agreement means the security agreement under the PPSA created between the Client and BWW by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 21.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
  - (b) create a security interest in:
    - (i) all Goods previously supplied by BWW to the Client (if any);
    - (ii) all Goods that will be supplied in the future by BWW to the Client.
- 21.3 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 BWW 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 21.3(a)(i) or 21.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, BWW 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 Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of BWW;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of BWW.
- 21.4 BWW 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.
- 21.5 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.
- 21.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 21.7 Unless otherwise agreed to in writing by BWW, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 21.8 The Client shall unconditionally ratify any actions taken by BWW under clauses 21.3 to 21.5.

## 22 Security and Charge

- 22.1 Despite anything to the contrary contained herein or any other rights which BWW may have howsoever:
- (a) where the Client and/or the Guarantor (if any) is the owner of land, realty or any other asset capable of being charged, both the Client and/or the Guarantor agree to mortgage and/or charge all of their joint and/or several interest in the said land, realty or any other asset to BWW or BWW's nominee to secure all amounts and other monetary obligations payable under the terms and conditions. The Client and/or the Guarantor acknowledge and agree that BWW (or BWW'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.
  - (b) should BWW elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify BWW from and against all BWW's costs and disbursements including legal costs on a solicitor and own client basis.
  - (c) the Client and/or the Guarantor (if any) agree to irrevocably nominate constitute and appoint BWW or BWW's nominee as the Client's and/or Guarantor's true and lawful attorney to perform all necessary acts to give effect to the provisions of this clause 22.1.

## 23 Privacy Act 1988

- 23.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for BWW to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by BWW.
- 23.2 The Client agrees that BWW may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency 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.
- The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are allowed to exchange under the Privacy Act 1988.
- 23.3 The Client consents to BWW being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 23.4 The Client agrees that personal credit information provided may be used and retained by BWW for the following purposes (and for other purposes as shall be agreed between the Client and BWW or required by law from time to time):
- (a) the provision of Services; and/or
  - (b) the marketing of Services by BWW, its agents or distributors; and/or
  - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
  - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 23.5 BWW may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
  - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.

- 23.6 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number;
  - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
  - (c) advice that BWW is a current credit provider to the Client;
  - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
  - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
  - (f) information that, in the opinion of BWW, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
  - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;
  - (h) that credit provided to the Client by BWW has been paid or otherwise discharged.

#### 24 Cancellation

- 24.1 BWW may cancel any contract to which these terms and conditions apply or cancel the Services at any time before the Services are completed by giving written notice to the Client. On giving such notice BWW shall repay to the Client any sums paid in respect of the Price. BWW shall not be liable for any loss or damage whatever arising from such cancellation.
- 24.2 In the event that the Client cancels the Services, then the Client shall be liable for any loss incurred by BWW (including, but not limited to, any loss of profits) up to the time of cancellation.

#### 25 General

- 25.1 If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 25.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 25.3 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 BWW to be the address of the recipient of the notice.
- 25.4 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Sydney, New South Wales.
- 25.5 Notwithstanding anything herein contained, BWW shall continue to be subject to any implied warranty provided by the Competition and Consumer Act 2010 (as amended) of the Commonwealth of Australia or any other Commonwealth or State legislation, if and to the extent that the said Act is applicable to the contract evidenced by these Conditions and prevents the exclusion, restriction or modification of such warranty.
- 25.6 Notwithstanding clause 25.4, where any claim or dispute arising out of or in connection with the Services of BWW arises in New Zealand, such claim or dispute shall be determined at BWW's option in accordance with New Zealand law and by New Zealand Courts of competent jurisdiction.
- 25.7 If any claim or dispute is to be determined in accordance with New Zealand law, clause 25.4 shall be deemed to be varied so as to apply on like terms any compulsorily applicable provisions of the Fair Trading Act 1986 (as amended) of New Zealand in place of the legislation referred to in clause 25.4.
- 25.8 When New Zealand law has application to these Conditions, all Services provided by BWW as a carrier (within the meaning of the Carriage of Goods Act 1979 (as amended)) of New Zealand are provided at limited carrier's risk in accordance with these Conditions and (other than when clause 17.4 applies) the provisions of that Act shall prevail over any inconsistency in these terms and conditions to the extent of such inconsistency but no further.
- 25.9 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 BWW.
- 25.10 BWW reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which BWW notifies the Client of such change. Except where BWW supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 25.11 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 25.12 The terms and conditions set out herein shall prevail over the terms and conditions set out in any document used by the Client, the owner or any other person having an interest in the Goods and purporting to have a contractual effect.
- 25.13 The failure by BWW to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect BWW's right to subsequently enforce that provision.