

**1. Definitions**

- 1.1 "G.S.L." shall mean GS Logistics Pty Ltd, and its successors and assigns or any person acting on behalf of and with the authority of GS Logistics 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 G.S.L. 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 clauses 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 G.S.L's Services.
- 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 G.S.L's Services, or for storage by G.S.L.
- 1.7 "Services" shall mean all services supplied by G.S.L 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 G.S.L to the Client and includes any advice or recommendations.
- 1.8 "Price" shall mean the cost of the Services as agreed between G.S.L and the Client subject to clause 3 of this contract.

**2. The Commonwealth Competition and Consumer Act 2010 and Fair Trading Acts**

- 2.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts 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.

**3. Acceptance**

- 3.1 Any instructions received by G.S.L from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 3.2 Upon acceptance of these terms and conditions by the Client the terms and conditions are irrevocable and can only be rescinded in accordance with these terms and conditions or with the written consent of the manager of G.S.L.
- 3.3 These terms and conditions are to be read in conjunction with G.S.L's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by G.S.L to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 3.4 The Client shall give G.S.L 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 G.S.L as a result of the Client's failure to comply with this clause.

**4. Price And Payment**

- 4.1 At G.S.L's sole discretion the Price shall be either;
  - (a) as indicated on invoices provided by G.S.L to the Client in respect of Services supplied; or
  - (b) G.S.L's quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon G.S.L provided that the Client shall accept in writing G.S.L's quotation within fourteen (14) days.
- 4.2 G.S.L may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to G.S.L beyond the reasonable control of G.S.L (including, without limitation, foreign exchange fluctuations, or increases in taxes, insurance premiums, warehousing costs, customs duties, and/or fines or penalties that G.S.L becomes liable to pay for any reason whatsoever in respect to the Goods and any documentation relating to the Goods pursuant to any applicable laws or regulations shall be borne by the Client.
- 4.3 The Carrier 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.
- 4.4 At G.S.L's sole discretion a deposit may be required.
- 4.5 At G.S.L's sole discretion;
  - (a) payment shall be due on delivery of the Goods, or
  - (b) payment shall be due before delivery of the Goods, or
  - (c) payment for approved Client's shall be due fourteen (14) days following the date of the invoice.
- 4.6 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due seven (7) days following the date of the invoice.
- 4.7 Payment will be made by cash, or by cheque, or by bank cheque, or by direct credit, or by any other method as agreed to between the Client and G.S.L.
- 4.8 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.

**5. G.S.L Not Common Carrier**

- 5.1 G.S.L 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 G.S.L subject only to these conditions and G.S.L 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. Client-Packed Containers**

- 6.1 If a container has not been stowed by or on behalf of G.S.L, G.S.L 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.

**7. Nomination Of Sub-Contractor**

- 7.1 The Client hereby authorises G.S.L (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 G.S.L. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled G.S.L shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

**8. G.S.L's Servants or Agents**

- 8.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of G.S.L 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 G.S.L and any such servant or agent against all consequences thereof.

**9. Method Of Transport**

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

**10. Route Deviation**

- 10.1 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 G.S.L be deemed reasonable or necessary in the circumstances.

**11. Charges Earned**

- 11.1 G.S.L'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.

**12. Demurrage**

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

**13. Dangerous Goods**

- 13.1 Unless otherwise agreed in advance in writing with a full description disclosing the nature of the dangerous Goods to G.S.L the Client or his authorised agent shall not tender for carriage or for storage any explosive, inflammable (including radioactive materials) or otherwise dangerous Goods.
- 13.2 If, in the opinion of G.S.L, the Goods are or are liable to become of a dangerous, inflammable, explosive, volatile, offensive or a damaging nature, they may at any time be destroyed, disposed of or abandoned or rendered harmless by G.S.L without compensation to and at the cost of the Client.

**14. Consignment Note**

- 14.1 It is agreed that the person delivering any Goods to G.S.L for carriage or forwarding is authorised to sign the consignment note for the Client.

**15. Client's Responsibility**

- 15.1 The Client expressly warrants to G.S.L that 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.

**16. Delivery**

- 16.1 G.S.L is authorised to deliver the Goods at the address given to G.S.L by the Client for that purpose and it is expressly agreed that G.S.L shall be taken to have delivered the Goods in accordance with this contract if at that address G.S.L obtains from any person a receipt or a signed delivery docket for the Goods.
- 16.2 G.S.L 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.

- 16.3 Delivery of the Goods to a third party nominated by the Client is deemed to be delivery for the purposes of this agreement.
- 16.4 It is the Client's sole responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery.
- 16.5 The failure of G.S.L to deliver shall not entitle either party to treat this contract as repudiated.

## 17. Loss Or Damage

- 17.1 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) G.S.L shall not be under any liability for any damage to, loss, deterioration, mis-delivery, delay in delivery or non-delivery of the Goods (whether the Goods are or have been in the possession of G.S.L 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 G.S.L 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 G.S.L in connection with the Goods.

## 18. Limitation of Liability

- 18.1 Except as required by law, the Company shall not be responsible in negligence or contract or otherwise for loss, damage, costs, fines or penalties incurred by the Customer or any other person resulting from or arising out of or in connection with any quotation, advice, statement, representation or information given or made by or on behalf of the Company to the Customer or others as to the classification of or any matter material to the valuation of or the liability for or the amount, scale or rate of customs and/or excise duty or other impost, tax or rate charged in respect of the Goods or any cargo whatsoever. In giving or making any such quotation, advice, statement, representation or information the Company relies solely on the particulars provided by the Customer which warrants that those particulars accurately and completely describe all aspects of the Goods or cargo and the transaction(s) relating to the Goods or cargo.
- 18.2 Liability of G.S.L 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 Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by G.S.L:
  - (a) Australian \$100.00 or the value of the Goods, the subject of the contract at the time the Goods were received by G.S.L;
  - (b) the supplying of the Services again; or
  - (c) the payment of the cost of having the Services supplied again; or
  - (d) where the Client is a consumer as defined in the Competition and Consumer Act 2010 then the Client may also be entitled to a refund.
- 18.3 In any event G.S.L shall be discharged from all liability whatsoever in connection with the provision of the Services and/or the Goods unless suit is brought and notice given within nine (9) months of the provision of the Services or delivery of the Goods or when the Services should have been provided or the Goods should have been delivered.
- 18.4 Where any handling, installation, removal, assembly or erection of any kind whatsoever is required to be undertaken by the Company, the Company shall not be liable for any death, injury, loss or damage which may result from or arise out of what the Company undertakes. Further the Customer shall indemnify the Company in respect of any such liability whether or not that liability arises from negligence or breach of contract or wilful act or default of the Company or the Company's servants, agents or Subcontractors.

## 19. Insurance

- 19.1 The Client acknowledges that:
  - (a) the Goods are carried and stored at the Client's sole risk and not at the risk of G.S.L; and
  - (b) G.S.L 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, unless expressly requested by the Client in writing. In the event that G.S.L does arranging such insurance on behalf of the Client, then the Client agrees to indemnify G.S.L with all associated costs incurred; and
  - (c) under no circumstances will G.S.L be under any liability with respect to the arranging of any such insurance and no claim will be made against G.S.L for failure to arrange or ensure that the Goods are insured adequately or at all.

## 20. Default & 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 G.S.L's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 20.2 If the Client owes G.S.L any money the Client shall indemnify G.S.L from and against all costs and disbursements incurred by G.S.L in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, G.S.L's collection agency costs, and bank dishonour fees).
- 20.3 Without prejudice to any other remedies G.S.L may have, if at any time the Client is in breach of any obligation (including those relating to payment) G.S.L may suspend or terminate the supply of Services to the Client and any of its other obligations under the terms and conditions. G.S.L will not be liable to the Client for any loss or damage the Client suffers because G.S.L exercised its rights under this clause.
- 20.4 Without prejudice to G.S.L's other remedies at law G.S.L 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 G.S.L shall, whether or not due for payment, become immediately payable in the event that:

- (a) any money payable to G.S.L becomes overdue, or in G.S.L'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. Unpaid G.S.L's Rights to Dispose of Goods**

- 21.1 G.S.L shall have a lien on any Goods owned by the Client and in the possession or control of G.S.L (and any documents relating to those Goods) for all sums payable by the Client to G.S.L, and G.S.L shall have the right to sell such Goods, such sale to be undertaken in accordance with any legislation applicable to the sale or disposal of uncollected goods. G.S.L 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.

## **22. Personal Property Securities Act 2009 ("PPSA")**

- 22.1 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 G.S.L by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 22.2 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 all Goods being transported by G.S.L.
- 22.3 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 G.S.L 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 22.3(a)(i) or 22.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, G.S.L 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 G.S.L;
  - (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 G.S.L.
- 22.4 G.S.L 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.
- 22.5 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.
- 22.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 22.7 Unless otherwise agreed to in writing by G.S.L, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 22.8 The Client shall unconditionally ratify any actions taken by G.S.L under clauses 22.3 to 22.5.

## **23. Security And Charge**

- 23.1 Despite anything to the contrary contained herein or any other rights which G.S.L 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 G.S.L or G.S.L'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 G.S.L (or G.S.L'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 G.S.L elect to proceed in any manner in accordance with this clause and/or its sub-clauses, the Client and/or Guarantor shall indemnify G.S.L from and against all G.S.L'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 G.S.L or G.S.L'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 23.1.

## **24. Privacy Act 1988**

- 24.1 The Client and/or the Guarantor/s (herein referred to as the Client) agree for G.S.L to obtain from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by G.S.L.
- 24.2 The Client agrees that G.S.L 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.

- 24.3 The Client consents to G.S.L being given a consumer credit report to collect overdue payment on commercial credit (Section 18K(1)(h) Privacy Act 1988).
- 24.4 The Client agrees that personal credit information provided may be used and retained by G.S.L for the following purposes (and for other purposes as shall be agreed between the Client and G.S.L or required by law from time to time):
  - (a) the provision of Services; and/or
  - (b) the marketing of Services by G.S.L, 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.
- 24.5 G.S.L 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.
- 24.6 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 G.S.L 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 G.S.L, 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 G.S.L has been paid or otherwise discharged.

## 25. Cancellation

- 25.1 G.S.L 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 G.S.L shall repay to the Client any sums paid in respect of the Price. G.S.L shall not be liable for any loss or damage whatever arising from such cancellation.
- 25.2 In the event that the Client cancels delivery of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by G.S.L as a direct result of the cancellation (including, but not limited to, any loss of profits).

## 26. General

- 26.1 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.
- 26.2 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 26.3 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 in New South Wales.
- 26.4 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 G.S.L.
- 26.5 G.S.L 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 G.S.L notifies the Client of such change. Except where G.S.L supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 26.6 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.
- 26.7 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.
- 26.8 The failure by G.S.L to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect G.S.L's right to subsequently enforce that provision.