

1. Definitions

- 1.1 "MDGS" shall mean Marair Dangerous Goods Specialists Pty Ltd, and its successors and assigns or any person acting on behalf of and with the authority of Marair Dangerous Goods Specialists 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 MDGS 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 "Customer" means the person/s or any person acting on behalf of and with the authority of the Customer requesting MDGS to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
- (a) if there is more than one Customer, is a reference to each Customer jointly and severally; and
 - (b) if the Customer is a part of a Trust, shall be bound in their capacity as a trustee; and
 - (c) includes the Customer's executors, administrators, successors and permitted assigns.
- 1.4 "Consignee" shall mean the person to whom the Goods are to be delivered by way of MDGS' Services.
- 1.5 "Goods" shall mean Goods together with any container, packaging, or pallet(s) to be moved from one place to another by way of MDGS' Services, or for storage by MDGS.
- 1.6 "Services" shall mean all Services supplied by MDGS to the Customer (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, inspecting or otherwise handling the Goods, or anything else done in relation thereto including the offering of any advice, recommendations or consulting.
- 1.7 "Dangerous Goods" means Goods so classified in the Dangerous Goods Code or which are or may become noxious, dangerous, hazardous, inflammable, explosive or damaging (including waste, contaminated or radioactive material, or capable of causing death, injury, or damage to any person or property whatsoever, and include (for the purpose of this agreement) Goods likely to harbour or encourage vermin or other pests and all such Goods as fall within the definition of hazardous and dangerous Goods in the legislation governing cartage by road or rail in the States and Territories of Australia.
- 1.8 "Products" means all Products supplied by MDGS to the Customer at the Customer's request from time to time.
- 1.9 "Price" shall mean the cost (plus any GST where applicable) of the Services as agreed between MDGS and the Customer subject to clause 3 of this contract.
- 1.10 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

2. Acceptance

- 2.1 The Customer is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Customer places an order for or accepts delivery of the Goods/Products or the provision of Services.
- 2.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Customer and MDGS.
- 2.3 These terms and conditions are to be read in conjunction with MDGS' quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by MDGS to the Customer. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 2.4 The use of a Consignor's own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the contract so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 2.5 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions (Victoria) Act 2000 or any other applicable provisions of that Act or any Regulations referred to in that Act.
- 2.6 Any advice, recommendation, information, assistance or service provided by MDGS in relation to Products and Services provided is given in good faith, is based on MDGS own knowledge and experience and shall be accepted without liability on the part of MDGS and it shall be the responsibility of the Customer to confirm the accuracy and reliability of the same in light of the use to which the Customer makes or intends to make of the Products and Services.

3. Errors and Omissions

- 3.1 The Customer acknowledges and accepts that MDGS shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):
- (a) resulting from an inadvertent mistake made by MDGS in the formation and/or administration of this contract; and/or
 - (b) contained in/omitted from any literature (hard copy and/or electronic) supplied by MDGS in respect of the Services.
- 3.2 In the event such an error and/or omission occurs in accordance with clause 3.1, and is not attributable to the negligence and/or wilful misconduct of MDGS; the Customer shall not be entitled to treat this contract as repudiated nor render it invalid.

4. Change in Control

- 4.1 The Customer shall give MDGS not less than fourteen (14) days prior written notice of any proposed change of ownership of the Customer or any change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's address, facsimile number, change of trustees, or business practice). The Customer shall be liable for any loss incurred by MDGS as a result of the Customer's failure to comply with this clause.

5. Freight Forwarding

- 5.1 Except to the extent that any of the Services shall be actually performed by MDGS, MDGS shall act as a forwarding agent only. MDGS shall be entitled, to enter into contracts on behalf of and as agent for the Customer and without notice to the Customer, for the carriage of the Goods by any route, means and MDGS, for the storage, packing, trans-shipment, unloading, loading or handling of Goods by any person at

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any place and for any length of time, and for such other matters as in the opinion of MDGS may be necessary or desirable to the performance of the Services. The Customer hereby appoints MDGS the agent of the Customer for the purpose of entering into any contract, upon such terms and conditions, as MDGS may in its absolute discretion think fit. The Customer shall be bound by the terms of any consignment note, air waybill or other contractual document which MDGS may receive for the Goods, or for any package, unit or container in which the Goods may be packed, whether by the Customer, MDGS, or any other person.

- 5.2 The Customer and any Consignee shall be jointly and severally liable for any duty, tax, impost, excise, levy, penalty, deposit, or outlay of whatsoever nature levied by any government, or the authorities at any port or place in connection with the Goods, and for any payments, fines, expenses, loss or damage incurred or sustained by MDGS in connection therewith and shall indemnify MDGS, its servants and agents from all claims by third parties howsoever arising in connection with the Goods.
- 5.3 When the Goods are accepted or dealt with upon instructions to collect freight, duties, charges or other expenses from the Consignee or any other person the Customer shall remain responsible for those charges and expenses if they are not paid by the Consignee or other person.
- 5.4 MDGS' Price (including all charges) shall be deemed fully earned on delivery of the Goods (in accordance with Clause 17) and shall be paid in any event including, but not limited to, Goods lost, or a voyage or flights broken up or abandoned. If there is a forced interruption or abandonment of a voyage or flight at the port or airport of shipment or elsewhere, any forwarding of the Goods or any part thereof shall be at the risk and expense of the Customer and Consignee.
- 5.5 All unpaid charges shall be paid in full and without offset, counterclaim, or deduction, in the currency of the place of receipt of the Goods or at MDGS' sole discretion, in the currency of the place of delivery at the TT selling rate in effect on the day of payment. If the date falls on a day which banks are closed for business, the rate ruling on the next succeeding business day shall govern.

6. Price and Payment

- 6.1 At MDGS' sole discretion the Price shall be either;
- (a) as indicated on invoices provided by MDGS to the Customer in respect of Products/Services supplied; or
 - (b) MDGS' quoted Price (subject to clause 4.2 & 4.3) which shall be binding upon MDGS provided that the Customer shall accept in writing MDGS' quotation within thirty (30) days.
- 6.2 MDGS may by giving notice to the Customer increase the Price of the Services to reflect any increase in the cost to MDGS beyond the reasonable control of MDGS (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).
- 6.3 MDGS 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.
- 6.4 At MDGS' sole discretion a deposit may be required.
- 6.5 Time for payment for the Goods/Products/Services being of the essence, the Price will be payable by the Customer on the date/s determined by MDGS, which may be:
- (a) due on delivery of the Goods/Products, or
 - (b) before delivery of the Goods/Products, or
 - (c) for certain approved Customers shall be due:
 - (i) thirty (30) days following the end of the month in which a statement is sent to the Customer's email address/postal address for notices; or
 - (ii) by way of instalments/progress payments in accordance with MDGS' payment schedule, or
 - (d) the date specified on any invoice, consignment note, airway bills, manifests or any other forms or other form as being the date for payment; or
 - (e) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Customer by MDGS.
- 6.6 Instructions to collect payment from the Customer on delivery (COD) in cash or otherwise are accepted by MDGS upon the condition that MDGS in the matter of such collection will be liable for the exercise of reasonable diligence and care only.
- 6.7 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (a surcharge may apply per transaction), or by direct credit, or by any other method as agreed to between the Customer and MDGS.
- 6.8 The Customer shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Customer by MDGS nor to withhold payment of any invoice because part of that invoice is in dispute.
- 6.9 Unless otherwise stated the Price does not include GST. In addition to the Price the Customer must pay to MDGS an amount equal to any GST MDGS must pay for any supply by MDGS under this or any other contract for the sale of the Goods/Products or the provision of the Services. The Customer must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Customer pays the Price. In addition the Customer must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.
- 6.10 Receipt by MDGS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised, and until then MDGS' ownership or rights in respect of the Services, and this contract, shall continue.
- 6.11 Where the Customer requesting or organising MDGS to provide the Services is acting on behalf of any third party, and that third party is intended to be responsible for the payment of the Price, then in the event that the third party does not pay for the Services when due, the Customer acknowledges that they shall be liable for the payment of the Price as if they had contracted for the provision of the Services on their own behalf.

7. MDGS Is Not A Common Carrier

- 7.1 MDGS 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 MDGS subject only to these conditions and MDGS 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.

8. Customer-Packed Containers

- 8.1 If a container has not been stowed by or on behalf of MDGS, MDGS 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.

9. Nomination Of Sub-Contractor

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

10. MDGS' Servants or Agents

10.1 The Customer undertakes that no claim or allegation shall be made against any servant or agent of MDGS 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 MDGS and any such servant or agent against all consequences thereof.

11. Method Of Transport and Route Deviation

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

11.2 The Customer shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of MDGS be deemed reasonable or necessary in the circumstances.

12. Charges Earned and Demurrage

12.1 MDGS' charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Customer's premises.

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

13. Perishable Goods

13.1 Where the Goods are perishable and the Customer has, in the opinion of MDGS, failed to collect the Goods within a reasonable period having regard to the nature of the Goods, or is likely so to fail to collect the Goods or, in the opinion of MDGS, MDGS cannot properly or is unlikely to be able properly to deliver the Goods to the address nominated by the Customer for delivery, MDGS may sell the Goods in which event the proceeds of sale shall be used by MDGS to discharge its costs in respect of the Services together with all costs, expenses and charges (the Charges) incurred by MDGS in effecting such sale and the balance of the proceeds (if any) shall be paid by MDGS to the Customer. In the event of a shortfall, the Customer shall pay to MDGS the balance of the Charges then outstanding.

14. Non-Perishable Goods

14.1 Where the Goods are non-perishable and the Customer has, in the opinion of MDGS, failed to collect the Goods within a period of twenty-one (21) days from the date that written notice was sent to the address supplied by the Customer to MDGS at the time of quotation, or is likely to fail to collect the Goods or, in the opinion of MDGS, MDGS cannot properly or is unlikely to be able to properly deliver the Goods to the address nominated by the Customer for delivery, MDGS may, at its option, serve a notice on the Customer that it intends to sell the Goods on the date which is twenty-one (21) days from the date on which the Customer receives the notice.

14.2 In the event the Goods are sold pursuant to Clause 14.1, the proceeds of sale shall be used by MDGS to discharge its costs in respect of the Services together with all costs, expenses and charges (the Charges) incurred by MDGS in effecting such sale and the balance of the proceeds (if any) shall be paid by MDGS to the Customer. In the event of a shortfall, the Customer shall pay to MDGS the balance of the Charges then outstanding.

15. Prohibited and Dangerous Goods

15.1 MDGS or its authorised agent will not transport or store any:

(a) bullion, cash, coins, precious stones, jewellery, valuables, antiques, pictures, livestock or plants; or

(b) any materials that are prohibited under any Australian Border Force or Federal law (including, without limitation, prohibited weapons and certain types of fertiliser).

15.2 The Customer shall provide MDGS with all necessary information relating to the Goods in addition to any data requested by MDGS (including, but not limited to, technical specifications, data sheets, and safety information). The Customer shall be liable for and hereby indemnifies MDGS against all loss or damage whatsoever caused by the Customer supplying incorrect information (relating to the Goods) to MDGS.

15.3 Due to the dangerous nature of the Goods, the Goods may be destroyed or otherwise dealt with as determined by MDGS in its absolute discretion, or by any other person in whose custody they may be at the relevant time, and at the expense of the Customer, and neither MDGS nor any such other person shall incur any liability whatsoever to the Customer in relation to any action taken by them concerning the Goods.

16. Customer's Responsibility

16.1 The Customer expressly warrants to MDGS that:

(a) the Customer 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 carriage and/or storage and by entering into this contract the Customer accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Customer is acting;

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- (b) the Goods are fit for carriage, comply with any applicable legal requirements relating to the nature, condition and/or packaging of the Goods (and that the expenses of complying with such requirements or any other lawful requirements of any authority, other body or the company shall be at the Customer's cost);
 - (c) the person delivering any Goods to MDGS for carriage or forwarding is authorised to sign the consignment note for the Customer.
 - (d) it is solely the Customer's responsibility to address adequately each consignment and to provide written delivery instructions to enable effective delivery;
 - (e) any packaging, labelling and/or marking by the Customer accurately describes the Goods as to content, weight and method of handling or otherwise, complies with applicable dangerous goods codes, any other applicable laws and with any relevant Australian or international standards;
 - (f) at MDGS' discretion, where differences or omissions between address and/or contact information written on the consignment and/or other documentation or in any form of communication (including, but not limited to, email and telephone) provided by the Customer to MDGS, MDGS shall reserve the right to choose which delivery information is followed and shall not be held liable for any associated costs in relocation of the Goods if this address is the incorrect one.
- 16.2 The Customer shall indemnify MDGS against any loss (including any fine, levy, charge or other monetary imposition to which MDGS may become liable incidental to the carriage) damage, death or injury, including loss or damage to MDGS' containers and/or equipment arising out of:
- (a) the Customer's unreasonable detention of any vehicle container or other equipment of MDGS;
 - (b) any breach of the Customer's warranties under clause 16.1, including the failure to comply with clause 16.1(e).
- 16.3 MDGS may at any time request the Customer by notice in writing to remove the Goods within a specified time and if such notice is not complied with, may dispose of (including by way of sale), remove or destroy at the expense of the Customer any or all of the Goods which in the opinion of MDGS have become or are likely to become deleterious, deteriorated, objectionable, damaged or contaminated. If Goods is sold under this clause then such sale shall be made under the provisions contained in clause 24 below.
- 17. Insurance**
- 17.1 The Customer acknowledges that:
- (a) the Goods are carried and stored at the Customer's sole risk and not at the risk of MDGS; and
 - (b) MDGS is under no obligation to arrange insurance of the Goods and it remains the Customer's responsibility to ensure that the Goods are insured adequately or at all; and
 - (c) under no circumstances will MDGS be under any liability with respect to the arranging of any such insurance and no claim will be made against MDGS for failure to arrange or ensure that the Goods are insured adequately or at all.
- 18. Delivery and Collection of Goods**
- 18.1 MDGS is authorised to deliver the Goods at the address given to MDGS by the Customer for that purpose and it is expressly agreed that MDGS shall be taken to have delivered the Goods in accordance with this contract if at that address MDGS obtains from any person a receipt or a signed delivery docket for the Goods.
- 18.2 MDGS 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.
- 18.3 It is the Customer's sole responsibility to provide unobstructed access to the nominated address to enable effective delivery, including ensuring that trees are trimmed or cut back along driveways, and/or (for self-load or self-unload) ensuring that foot or vehicular traffic is not impeded and that public safety is considered. If delivery cannot be effected by MDGS (whether due to obstructed access to the nominated address or otherwise) then MDGS at its sole discretion may:
- (a) deposit the Goods in the nearest and safest position to the address, and such action will be deemed to constitute valid delivery; or
 - (b) obtain the use of Hiab or other vehicle/equipment, and charge the Customer any costs incurred by MDGS in so doing; or
 - (c) refuse to effect delivery and instead store the Goods, in which case the Customer shall be liable for, and shall reimburse MDGS for all costs and expenses incurred in connection with such storage.
- 18.4 It is the responsibility of the Customer to ensure that access to the collection or delivery site is suitable to accept the weight of laden trucks. The Customer agrees to indemnify MDGS against all costs incurred by MDGS in recovering such vehicles in the event they become bogged or otherwise immovable.
- 18.5 The Customer shall comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable, including ensuring that the nominated address complies with any occupational health and safety laws and any other relevant safety standards or legislation.
- 18.6 In the event that MDGS stores the Goods under clause 18.3(c) then MDGS will re-deliver the Goods to the nominated address at a time mutually agreed between the parties. The Customer shall be liable for any costs incurred by MDGS in both the initial delivery and the re-delivery.
- 18.7 If the Customer requests MDGS upon delivery:
- (a) to make delivery of the Goods to a subsequent address, then MDGS may, at their sole discretion, charge the Customer the additional costs associated with doing so;
 - (b) to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts) then MDGS shall only do so at their sole discretion, and:
 - (i) MDGS may charge the Customer the additional costs associated with doing so;
 - (ii) the Customer acknowledges that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of MDGS in providing such assistance; and
 - (iii) notwithstanding that MDGS may refuse such assistance without any liability to the Customer whatsoever should they believe that the risk in providing such assistance is unacceptable.
- 18.8 Delivery of the Goods to a third party nominated by the Customer is deemed to be delivery for the purposes of this agreement.
- 18.9 Any time specified by MDGS for the delivery of Goods is an estimate only and MDGS will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that MDGS is unable to deliver the Goods as agreed

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solely due to any action or inaction of the Customer then MDGS shall be entitled to charge the Customer any additional costs incurred by MDGS as a direct consequence of any resultant delay or rescheduling of the delivery.

19. Loss Or Damage

- 19.1 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) MDGS 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 MDGS 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;
 - (b) the Customer will indemnify MDGS 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 MDGS in connection with the Goods;
 - (c) handling, loading, storage or unloading of the Goods by the Customer or Owner or any person acting on their behalf;
 - (d) inherent vice of the Goods;
 - (e) riots, civil commotions, strikes, lockouts, stoppage or restraint of labour from whatsoever cause;
 - (f) fire, flood, storm, explosion or theft; or
 - (g) any cause which MDGS could not avoid and the consequences whereof it could not prevent by the exercise of reasonable diligence.
- 19.2 Subject to Clause 27, MDGS 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.

20. Claims

- 20.1 Notwithstanding clauses 19 and 17 in the event that the Customer believes that they have any claim against MDGS then they must lodge any notice of claim for consideration and determination by MDGS within five (5) days of the date of delivery, or for non-delivery within five (5) days of the anticipated date of delivery or the removal or destruction of the Goods.
- 20.2 The failure to notify a claim within the time limits under clause 20.1 is evidence of satisfactory performance by MDGS of its obligations.

21. Default & Consequences Of Default

- 21.1 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 MDGS' sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Customer owes MDGS any money the Customer shall indemnify MDGS from and against all costs and disbursements incurred by MDGS in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, MDGS' contract default fees, and bank dishonour fees).
- 21.3 Further to any other rights or remedies MDGS may have under this contract, if a Customer has made payment to MDGS, and the transaction is subsequently reversed, the Customer shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by MDGS under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Consignor's obligations under this Contract.
- 21.4 Without prejudice to MDGS' other remedies at law MDGS shall be entitled to cancel all or any part of any order of the Customer which remains unperformed in addition to and without prejudice to any other remedies and all amounts owing to MDGS shall, whether or not due for payment, become immediately payable in the event that:
- (a) any money payable to MDGS becomes overdue, or in MDGS' opinion the Customer will be unable to meet its payments as they fall due; or
 - (b) the Customer has exceeded any applicable credit limit provided by MDGS;
 - (c) the Customer becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
 - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Customer or any asset of the Customer.

22. Cancellation

- 22.1 Without prejudice to any other remedies MDGS may have, if at any time the Customer is in breach of any obligation (including those relating to payment) MDGS may suspend or terminate the supply of Services to the Customer and any of its other obligations under the terms and conditions. MDGS will not be liable to the Customer for any loss or damage the Customer suffers because MDGS exercised its rights under this clause.
- 22.2 MDGS may cancel any contract to which these terms and conditions apply or cancel delivery of Goods/Products at any time before the Goods/Products are delivered by giving written notice to the Customer. On giving such notice the Customer shall repay to the Customer any sums paid in respect of the Price. MDGS shall not be liable for any loss or damage whatever arising from such cancellation.
- 22.3 In the event that the Customer cancels the delivery of Goods/Products or the provision of any Services then the Customer shall be liable for any loss incurred by MDGS (including, but not limited to, any loss of profits) up to the time of cancellation, or as a direct result of the cancellation.

23. Indemnities

- 23.1 The defences and exclusions of liability in these conditions general including clause 19 apply in any action (whether based on contract, tort, bailment or any other cause of action howsoever arising) against MDGS even if it is resulted from an act or omission of MDGS done wilfully or recklessly with knowledge that damage would or would probably result.
- 23.2 Nothing whatsoever done or omitted to be done or other conduct by MDGS in breach of these terms and conditions or otherwise howsoever lawfully or unlawfully shall under any circumstances constitute either a breach going to the root of this contract, or a deviation or departure therefrom or a repudiation thereof such as to have effect of disentitling MDGS from obtaining the benefit of and enforcing all rights, defences,

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- exceptions, immunities and limitations of liability and other protections herein which shall continue to have full force and effect in any event whatsoever.
- 23.3 Subject to clause 27, but without prejudice to any other provision hereof, this contract and any other contract MDGS makes under its authority and any contract made by any person whom MDGS has delegated such authority, shall be made by the Customer or be allowed or admitted further subject to all terms, conditions and requirements which may be imposed on or with respect to the Goods or the carriage thereof (including storage by any port, harbour, dock, railways, shipping, airways or other lawful authority or person into whose hands it may become necessary to entrust the Goods or to whose control the Goods become subject in transit). All further or additional charges which may become payable on the Goods or their carriage as a result shall be payable in the manner as provided by clause 6.
- 24. Lien**
- 24.1 In addition to its rights under the e Warehouseman's Liens Act 1958, MDGS shall have and retain a general lien on any Goods submitted by the Customer to MDGS for the provision of Services by MDGS (including where done so in the capacity of any sender, consignor, actual owner of the Goods, bailer, consignee/s or the Goods, as well as their agents), and in the possession or control of MDGS (and any documents relating to those Goods), for pecuniary obligations owing from time to time by the Customer on any account whatsoever to MDGS (including, but not limited, to payment of the Price), and MDGS shall have the right to sell such Goods or cargo by public auction or private treaty after giving seven (7) days' notice to the Customer. MDGS shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods, from the proceeds of sale and shall render any surplus to the entitled person. Any such sale shall not prejudice or affect MDGS' right to recover from the Customer any charges due or payable in respect of the carriage or such detention and sale.
- 25. Personal Property Securities Act 2009 ("PPSA")**
- 25.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 25.2 Upon assenting to these terms and conditions in writing the Customer acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in all:
- (i) Products that have previously been supplied and that will be supplied in the future by MDGS to the Customer; or
 - (ii) Goods that have previously been carried and any Goods that will be carried in the future by MDGS to the Customer; and/or
 - (iii) collateral (account), being a monetary obligation of the Customer to MDGS for Services that have previously been provided, and will be provided in the future by MDGS to the Customer.
- 25.3 The Customer 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 MDGS 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 25.3(a)(i) or 25.3(a)(ii);
 - (b) indemnify, and upon demand reimburse, MDGS for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of MDGS;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods/Products and/or collateral (account) in favour of a third party without the prior written consent of MDGS.
- 25.4 MDGS and the Customer agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 25.5 The Customer waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 25.6 The Customer waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 25.7 Unless otherwise agreed to in writing by MDGS, the Customer waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 25.8 The Customer must unconditionally ratify any actions taken by MDGS under clauses 25.3 to 25.5.
- 25.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 26. Security And Charge**
- 26.1 In consideration of MDGS agreeing to supply Services, the Customer charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Customer either now or in the future, to secure the performance by the Customer of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 26.2 The Customer indemnifies MDGS from and against all the Carrier's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising the Carrier's rights under this clause.
- 26.3 The Customer irrevocably appoints MDGS and each director of MDGS as the Consignor's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 26 including, but not limited to, signing any document on the Consignor's behalf.
- 27. Defects, Warranties and Returns, Competition and Consumer Act 2010 (CCA)**
- 27.1 The Customer must inspect the Products on delivery and must within seven (7) days of delivery notify MDGS in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Customer must notify any other alleged defect in the Products as soon as reasonably possible after any such defect becomes evident. Upon such notification the Customer must allow MDGS to inspect the Products.
- 27.2 Under applicable State, Territory and Commonwealth Law (including, without limitation the CCA), certain statutory implied guarantees and warranties (including, without limitation the statutory guarantees under the CCA) may be implied into these terms and conditions (**Non-Excluded Guarantees**).

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- 27.3 MDGS acknowledges that nothing in these terms and conditions purports to modify or exclude the Non-Excluded Guarantees.
- 27.4 Except as expressly set out in these terms and conditions or in respect of the Non-Excluded Guarantees, MDGS makes no warranties or other representations under these terms and conditions including but not limited to the quality or suitability of the Products. MDGS' liability in respect of these warranties is limited to the fullest extent permitted by law.
- 27.5 If the Customer is a consumer within the meaning of the CCA, MDGS' liability is limited to the extent permitted by section 64A of Schedule 2.
- 27.6 If MDGS is required to rectify, re-supply, or pay the cost of re-supplying the Products/Services under this clause or the CCA, but is unable to do so, then MDGS may refund any money the Customer has paid for the Products/Services but only to the extent that such refund shall take into account the value of Services and Products which have been provided to the Customer which were not defective.
- 27.7 If the Customer is not a consumer within the meaning of the CCA, MDGS' liability for any defect or damage in the Products is:
- (a) limited to the value of any express warranty or warranty card provided to the Customer by MDGS at MDGS' sole discretion;
 - (b) limited to any warranty to which MDGS is entitled, if MDGS did not manufacture the Products;
 - (c) otherwise negated absolutely.
- 27.8 Subject to this clause 27, returns will only be accepted provided that:
- (a) the Customer has complied with the provisions of clause 27.1; and
 - (b) MDGS has agreed that the Products are defective; and
 - (c) the Products are returned within a reasonable time at the Customer's cost (if that cost is not significant); and
 - (d) the Products are returned in as close a condition to that in which they were delivered as is possible.
- 27.9 Notwithstanding clauses 27.1 to 27.8 but subject to the CCA, MDGS shall not be liable for any defect or damage which may be caused or partly caused by or arise as a result of:
- (a) the Customer failing to properly maintain or store any Products;
 - (b) the Customer using the Products for any purpose other than that for which they were designed;
 - (c) the Customer continuing the use of any Products after any defect became apparent or should have become apparent to a reasonably prudent operator or user;
 - (d) the Customer failing to follow any instructions or guidelines provided by MDGS;
 - (e) fair wear and tear, any accident, or act of God.
- 27.10 Notwithstanding anything contained in this clause if MDGS is required by a law to accept a return then MDGS will only accept a return on the conditions imposed by that law.

28. Privacy Act 1988

- 28.1 The Customer agrees for MDGS to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Customer in relation to credit provided by MDGS.
- 28.2 The Customer agrees that MDGS may exchange information about the Customer with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Customer; and/or
 - (b) to notify other credit providers of a default by the Customer; and/or
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Customer is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Customer including the Customer's repayment history in the preceding two years.
- 28.3 The Customer consents to MDGS being given a consumer credit report to collect overdue payment on commercial credit.
- 28.4 The Customer agrees that personal credit information provided may be used and retained by MDGS for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Services; and/or
 - (b) analysing, verifying and/or checking the Customer's credit, payment and/or status in relation to the provision of Services; and/or
 - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Customer; and/or
 - (d) enabling the collection of amounts outstanding in relation to the Services.
- 28.5 MDGS may give information about the Customer to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
 - (b) allow the CRB to create or maintain a credit information file about the Customer including credit history.
- 28.6 The information given to the CRB may include:
- (a) personal information as outlined in 28.1 above;
 - (b) name of the credit provider and that MDGS is a current credit provider to the Customer;
 - (c) whether the credit provider is a licensee;
 - (d) type of consumer credit;
 - (e) details concerning the Customer's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
 - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Customer no longer has any overdue accounts and MDGS has been paid or otherwise discharged and all details surrounding that discharge(e.g. dates of payments);
 - (g) information that, in the opinion of MDGS, the Customer has committed a serious credit infringement;
 - (h) advice that the amount of the Customer's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 28.7 The Customer shall have the right to request (by e-mail) from MDGS:
- (a) a copy of the information about the Customer retained by MDGS and the right to request that MDGS correct any incorrect information; and
 - (b) that MDGS does not disclose any personal information about the Customer for the purpose of direct marketing.
- 28.8 MDGS will destroy personal information upon the Customer's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this agreement or is required to be maintained and/or stored in accordance with the law.

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28.9 The Customer can make a privacy complaint by contacting MDGS via e-mail. MDGS will respond to that complaint within seven (7) days of receipt and will take all reasonable steps to make a decision as to the complaint within thirty (30) days of receipt of the complaint. In the event that the Customer is not satisfied with the resolution provided, the Customer can make a complaint to the Information Commissioner at www.oaic.gov.au.

29. Confidential Information/Conflict of Interest

29.1 The Customer assumes liability for all loss or damage suffered by MDGS as a result of breach of confidentiality undertaken by itself, or its employees or agents.

29.2 The obligations of confidentiality shall survive the finalisation or discontinuance of any agreement between the Customer and MDGS.

29.3 Neither party will use the other party's confidential/personal Information without prior written consent (including manuals and other materials and aids), except strictly for the purposes contemplated by this contract, and a party may only disclose the other party's confidential/personal Information:

- (a) if required by law;
- (b) to exercise their rights under this contract;
- (c) if necessary to perform their obligations under this contract;
- (d) if the other party has provided their written consent to the disclosure;
- (e) if the confidential/personal Information is already in the public domain (otherwise than as a result of disclosure in breach of this contract).

29.4 MDGS is obliged to remain vigilant to, and to advise the Customer of, any conflict of interest that may potentially impact or harm the Customer. To avoid conflict of interest and commercial sensitivities, it is agreed by MDGS that any and all information regarding the Customer (and their business, commercial agenda and employees) shall remain confidential at all times and shall only be disclosed in the event of legal order or obligation.

29.5 The Customer agrees to indemnify MDGS on a continuing, full indemnity basis from and against any liability, loss, expense and demand for or arising from any false, misleading, non-descriptive representation or statement made by the Customer in respect of the Goods to any third party (including but not limited to, the Australian Border Force where Goods are subject to customs inspection). This indemnity survives termination of this contract.

30. Service of Notices

30.1 Any written notice given under this contract shall be deemed to have been given and received:

- (a) by handing the notice to the other party, in person;
- (b) by leaving it at the address of the other party as stated in this contract;
- (c) by sending it by registered post to the address of the other party as stated in this contract;
- (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
- (e) if sent by email to the other party's last known email address.

30.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

31. Trusts

31.1 If the Customer at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not MDGS may have notice of the Trust, the Customer covenants with MDGS as follows:

- (a) the contract extends to all rights of indemnity which the Customer now or subsequently may have against the Trust and the trust fund;
- (b) the Customer has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Customer against the Trust or the trust fund. The Customer will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
- (c) The Customer will not without consent in writing of MDGS (MDGS will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
 - (i) the removal, replacement or retirement of the Customer as trustee of the Trust;
 - (ii) any alteration to or variation of the terms of the Trust;
 - (iii) any advancement or distribution of capital of the Trust; or
 - (iv) any resettlement of the trust property.

32. General

32.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

32.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Victoria and are subject to the jurisdiction of the courts of Victoria.

32.3 The Customer agrees that MDGS may amend these terms and conditions by notifying the Customer in writing. These changes shall be deemed to take effect from the date on which the Customer accepts such changes, or otherwise at such time as the Customer makes a further request for MDGS to provide Services to the Customer.

32.4 Where MDGS is unable, wholly or in part, by reason of any fact, circumstance, matter or thing beyond the reasonable control of MDGS, including but not limited to any act of God, war, terrorism, strike, civil commotion, lock-out, general or partial stoppage, restraint of labour, industrial action, fire, flood, storm, etc. ("**Force Majeure**") to carry out any obligation under this contract and MDGS gives the Customer prompt notice of such Force Majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which it will be unable to perform or be delayed in performing that obligation and uses all reasonable diligence to negate or remove that Force Majeure as quickly as possible, that obligation is suspended, so far as it is affected by Force Majeure, during the continuance thereof. The requirement that any Force Majeure shall be negated or removed with all reasonable diligence shall not require the settlement of strikes, lockouts or other labour disputes, or claims or demands by any government on terms contrary to the wishes of MDGS.

- 32.5 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

ADDITIONAL TERMS AND CONDITIONS APPLICABLE FOR THE SUPPLY OF PRODUCTS

33. Price and Payment

- 33.1 MDGS reserves the right to change the Price if a variation to MDGS' quotation is requested. Any variation for the plan of scheduled Services and/or specifications of the Products which are beyond MDGS' control and will be charged for on the basis of MDGS' quotation, and will be detailed in writing, and shown as variations on MDGS' invoice. The Customer shall be required to respond to any variation submitted by MDGS within ten (10) working days. Failure to do so will entitle MDGS to add the cost of the variation to the Price. Payment for all variations must be made in full at the time of their completion.

34. Delivery of Products

- 34.1 Delivery ("**Delivery**") of the Products is taken to occur at the time that:
- (a) the Customer or the Customer's nominated carrier takes possession of the Products at MDGS' address; or
 - (b) MDGS (or MDGS' nominated carrier) delivers the Products to the Customer's nominated address even if the Customer is not present at the address.
- 34.2 At MDGS' sole discretion, the cost of delivery is either included in the Price or is in addition to the Price.
- 34.3 MDGS may deliver the Products in separate instalments. Each separate instalment shall be invoiced and paid in accordance with the provisions in these terms and conditions.
- 34.4 Any time specified by MDGS for delivery of the Products is an estimate only. The Customer must take delivery by receipt or collection of the Products whenever they are tendered for delivery. MDGS will not be liable for any loss or damage incurred by the Customer as a result of delivery being late. In the event that the Customer is unable to take delivery of the Products as arranged then MDGS shall be entitled to charge a reasonable fee for redelivery and/or storage.

35. Risk to Products

- 35.1 Risk of damage to or loss of the Products passes to the Customer on Delivery and the Customer must insure the Products on or before Delivery.
- 35.2 If any of the Products are damaged or destroyed following delivery but prior to ownership passing to the Customer, MDGS is entitled to receive all insurance proceeds payable for the Products. The production of these terms and conditions by MDGS is sufficient evidence of MDGS' rights to receive the insurance proceeds without the need for any person dealing with MDGS to make further enquiries.
- 35.3 If the Customer requests MDGS to leave Products outside MDGS' premises for collection or to deliver the Products to an unattended location, then such Products shall be left at the Customer's sole risk.

36. Title of Products

- 36.1 MDGS and the Customer agree that ownership of the Products shall not pass until:
- (a) the Customer has paid MDGS all amounts owing to MDGS; and
 - (b) the Customer has met all of its other obligations to MDGS.
- 36.2 Receipt by MDGS of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.
- 36.3 It is further agreed that, until ownership of the Products passes to the Customer in accordance with clause 36.1:
- (a) the Customer is only a bailee of the Products and must return the Products to MDGS on request.
 - (b) the Customer holds the benefit of the Customer's insurance of the Products on trust for MDGS and must pay to MDGS the proceeds of any insurance in the event of the Products being lost, damaged or destroyed.
 - (c) the Customer must not sell, dispose, or otherwise part with possession of the Products other than in the ordinary course of business and for market value. If the Customer sells, disposes or parts with possession of the Products then the Customer must hold the proceeds of any such act on trust for MDGS and must pay or deliver the proceeds to MDGS on demand.
 - (d) the Customer should not convert or process the Products or intermix them with other Products but if the Customer does so then the Customer holds the resulting product on trust for the benefit of MDGS and must sell, dispose of or return the resulting product to MDGS as it so directs.
 - (e) the Customer irrevocably authorises MDGS to enter any premises where MDGS believes the Products are kept and recover possession of the Products.
 - (f) MDGS may recover possession of any Products in transit whether or not delivery has occurred.
 - (g) the Customer shall not charge or grant an encumbrance over the Products nor grant nor otherwise give away any interest in the Products while they remain the property of MDGS.
 - (h) MDGS may commence proceedings to recover the Price of the Products sold notwithstanding that ownership of the Products has not passed to the Customer.