

RHINLAND COLD STORAGE – General Terms and Conditions of Cartage

These conditions apply to all cartage dealings between **4 Seasons Cold Storage Pty Ltd t/as Rhinland Cold Storage (“RCS”)** and the Client unless RCS otherwise agrees in writing.

1. Common Carriers

- 1.1 RCS and the RCS Group are not Common Carriers and accept no liability as such.
- 1.2 Notwithstanding any other provision of this agreement, the parties agree that RCS is not and will not be considered to be a bailee of the Goods or any other assets of the Client.

2. Quotes and pricing

- 2.1 All quotations issued by RCS are subject to these terms and conditions. RCS reserves the right to vary or rescind quotations at any time prior to the Client placing an order the subject of any such quotation unless RCS agrees to lock the quotation in for a period of time.
- 2.2 Unless expressly stated otherwise prices are exclusive of GST. If GST is payable in respect of any supply, RCS may increase the price for the supply (“original amount”) by an amount sufficient so that the total amount payable in respect of the supply, after discounting for the amount of any GST payable in respect of the supply, is equal to the original amount.
- 2.3 RCS may charge by weight, measurement or value and may at any time reweigh, remeasure or revalue the Goods or require that the Goods be reweighed, remeasured or revalue. In the event of there being an increase in the weight, value or measurement of any of the Goods, then RCS may claim an additional charge in order to be compensated for the inaccuracy in accordance with industry practice.
- 2.4 Unless a binding quote or supply contract provides otherwise, RCS reserves to right to review its Goods handling fees and charges at its discretion including handling, processing orders, freezing, picking, packing and unpacking, pallet and Container handling, labour and supply chain logistics and shall provide one months’ notice of any material increases to the Client.
- 2.5 RCS reserves the right to refuse to quote for the carriage or storage of Goods for any particular person and for the carriage or storage of any Goods or classes of Goods, for example, but without limitation, hazardous materials or Goods requiring refrigeration at unusual temperatures, at its discretion.

3. RCS’ General Obligations

- 3.1 RCS will:
 - (a) provide the Services in accordance with good industry practice;
 - (b) hold and maintain all licences as may be required by Law in connection with the provision of the Services at its own expense unless otherwise expressly provided in a quote; and,

- (c) use reasonable endeavours to comply with the Client’s directions and requests including as to storage and delivery.
- 3.2 To the extent the Services comprise Storage, account for all Goods received and use modes of Storage appropriate to the nature of those Goods.

4. Client’s General Obligations

- 4.1 *Special requirements as to Goods.* The Client must provide RCS written particulars of:
 - (a) any special treatment, handling or storage requirements in respect of the Goods;
 - (b) any special requirements in regard to any required temperature settings and controls; and,
 - (c) particulars of the nature of the Goods including whether they are or may be classed as dangerous or Hazardous Goods.
- 4.2 The Client must ensure that there is a suitable and safe road and approach for RCS’s vehicles to the pick up location and to the Delivery location and to ensure that there are safe and adequate commercial loading/unloading facilities and equipment will be available at any place pickup location and Delivery location.
- 4.3 The Client must provide all documents, information and assistance necessary to allow RCS to comply with the requirements of any Relevant Authority.
- 4.4 RCS relies on the details of description, items, pallet space, quantity, weight, quality, temperature, value and measurements supplied by the Client but does not admit their accuracy.

5. Packing, Pick Up and Loading

- 5.1 Unless expressly agreed otherwise, the Client:
 - (a) must notify RCS by 11 am on the Business Day prior to the required Business Day for Goods to be picked up by the RCS;
 - (b) must deliver any Goods required to be dispatched by RCS on a Business Day to RCS by 11 am prior to the business day for delivery; and,
 - (c) accepts that pickups after 11 am will default to the following day.
- 5.2 Unless expressly agreed otherwise in a quotation and scope of works, the Client is responsible for ensuring that the Goods:
 - (a) are in a proper state and condition to allow the Services to be properly performed;
 - (b) are packed in a manner adequate to withstand the ordinary risks associated with the Services in accordance with good industry practice;
 - (c) within any Container are properly restrained in accordance with the Load Restraint Guide published by the National Transport Commission;
 - (e) will be clearly labelled on the outside at the point of entry of any lifting device, with labels of a material and a form that is appropriate to temperature of the

Goods and their storage and handling requirements; and,

- (f) if not evenly distributed within a Container, then the Client will provide a load plan of the contents of the Container before requesting RCS to provide Services.

5.3 Loading and unloading.

- (a) To the extent permitted by law RCS and RCS Associates shall not be held liable to any person or party for damage or destruction of Goods during the loading or unloading process. For the avoidance of doubt the loading and unloading process includes when the Goods are awaiting loading or unloading, as the case may be.
- (b) The Client shall ensure that the loading of the Goods onto RCS' vehicle will not cause the vehicle to exceed dimension or mass limits under Chain of Responsibility Law.
- (c) The Client will not consign a load of Goods in excess of the lawful carrying capacity of RCS's vehicle.
- (d) The Client indemnifies and keeps indemnified RCS and the Protected Parties from and against all and any loss, damage, action, suits, claims, demands, costs, charges, expenses of any kind whatsoever which the Client may suffer or incur in the course of loading or unloading the Goods including its packaging, removal, assembly, disassembly, erection, placement or installation.

6. Special Goods

6.1 Refrigerated Goods. The Client must:

- (a) provide at pickup any chilled or refrigerated Goods at the temperature set out on the consignment note or shipping requirements; and,
- (b) where Goods are to be transported or stored in a temperature-controlled Container: the Container has been properly pre-cooled or pre-heated, to the temperature set out on the Consignment Note; and the Goods have been properly stuffed/packed in the Container;

6.2 Hazardous Goods. If RCS agrees to provide Services with respect to Hazardous Goods:

- (a) such Goods must be accompanied by a written declaration disclosing the nature of such Goods;
- (b) the Client must comply with all Law with respect to Hazardous Goods;
- (c) the Client accepts that the transport of such Goods may be delayed due to difficulties in their compatibility for transporting with other Goods; and,
- (d) the Client accepts that if RCS thinks that the Goods are or may become dangerous or offensive including to people or property, RCS may acting reasonably do anything it considers appropriate to avoid or minimise any loss, danger, damage or offence. This includes destroying, disposing of, abandoning or rendering harmless the Goods. RCS may take such actions without compensation to the Client and without prejudicing RCS' right to charge for Services provided.

7. Delivery

7.1 Mode of Carriage. RCS is entitled to carry the Goods

by any reasonable route having regard to all circumstances including the nature and destination of any Goods being carried on the vehicle and by any reasonable means. RCS may acting reasonably but at RCS' discretion, depart from specific instructions including deviating from a usual route or changing a place of storage or mode of carriage however RCS will endeavour to give priority to that method.

7.2 Subject to compliance with all Law, including Chain of Responsibility Law, RCS shall use reasonable endeavours to deliver the Goods to the Delivery location nominated by the Client and to effect delivery at the date and time requested.

7.3 RCS shall deliver the Goods to the Delivery location. Client or its representative. If RCS cannot deliver the Goods, as instructed, for any reason, including but not limited to the Client or its representative being absent or the Delivery location unattended; or RCS cannot gain access to the delivery location; or for any other reason beyond RCS' control, RCS will endeavour to contact the Client to ascertain whether the Client has alternative delivery instructions. If RCS is unable to contact the Client, RCS may unload the Goods into a warehouse or yard of its choosing and RCS may charge an additional amount for storage and for the subsequent re-delivery of the Goods, which the Client shall pay.

7.4 If the Client asks RCS to on forward the Goods, then RCS is taken to have delivered them when RCS gives them to the on forwarding agent.

7.5 A receipt from a person at the destination is proof of delivery but shall not be taken to be the only way to establish delivery.

8. Subcontractors

8.1 RCS may use a Subcontractor(s) to undertake the whole or any part of the Services and if RCS does so, RCS will continue to be responsible to the Client for the performance of the Services.

8.2 Protected Parties.

(a) Any provisions in these conditions which limits RCS' liability also apply to RCS' Subcontractors and Protected Parties. For the purpose of this sub-clause, RCS is or shall be deemed to be acting as an agent or trustee on behalf of each of the Protected Parties, and each of them shall to that extent be deemed to be parties to this agreement.

(b) This agreement will inure to the benefit of these Protected Parties, notwithstanding that they are not signatories to this instrument; and may be pleaded by such a protected party as an absolute bar to litigation. RCS holds the benefit of this agreement as bare trustee and agent for all Protected Parties.

8.3 RCS' Associates.

(a) The Client acknowledges and agrees that RCS enters into any agreement incorporating these conditions for the benefit of itself and for any of RCS' Associates and that each of RCS' Associates is entitled to all rights and privileges under these conditions as if each reference to RCS were to the relevant RCS Associate.

- (b) The Client acknowledges and agrees that: RCS holds the rights and privileges under these conditions on trust for its own benefit and for the benefit of each RCS Associate, and RCS may enforce these conditions on behalf of any RCS Associate; and, any breach of these conditions, or any negligence or other actionable acts or omissions by the Client may result in RCS' Associates suffering loss or damage.
- (c) RCS is entitled to recover from the Client any loss or damage suffered or incurred by RCS' Associates in connection with the provision of Services by RCS or any RCS' Associate to the same extent that the Associate would have been entitled to, if the Associate had been a signatory to any agreement incorporating these conditions and all indemnities in these conditions will apply for the benefit of each RCS Associate.

9. Inspection

- 9.1 RCS may, at its discretion, inspect the Goods to determine the nature, condition, destination or ownership of the Goods or for any other purpose which RCS considers reasonably necessary.
- 9.2 In order to conduct the inspection RCS is entitled to open anything in which the Goods are placed. For the purposes of these provisions open includes opening shipping containers, unwrapping security wrapping and deconsolidating pallets. If a shipping container is sealed, RCS may only break the seal if required to do so by Law, or where the Client has given its consent.
- 9.3 If, under Law, a Container must be opened, RCS will not be liable for any loss, Damage or delay incurred as a result of any opening, unpacking, inspection or repacking and the Client agrees to pay RCS' charge for any such opening, unpacking, inspection or repacking.

10. Containers, Pallets and Packaging

- 10.1 The Client agrees that RCS will have no liability or responsibility in relation to any hire charge or demurrage charge associated with any Container.
- 10.2 The Client must ensure that any pallets are transferred to and from any relevant hire accounts and that any necessary documentation is provided to relevant pallet hire businesses for a 45 day delayed transfer unless otherwise agreed; and unless RCS has agreed in writing to accept liability for pallet transfer, RCS has no liability or responsibility for any hire charges associated with pallets.

11. Storage

- 11.1 Where Goods are stored by RCS at the request of the Client, the Client will provide:
 - (a) an address to which notices will be sent which shall include a physical address and an email address; and,
 - (b) an inventory of the Goods to be stored.
- 11.2 RCS may remove the Goods from a place of storage to another place of storage at its discretion.
- 11.3 Goods in a Container may be stored outside and not under cover.

- 11.4 The Client accepts that while the Goods are awaiting further transport, transhipment or consolidation, RCS may allow Goods to remain in a vehicle or trailer.
- 11.5 Storage charges do not include removing, packing, unpacking, inspecting, stocktaking, stowing, picking or delivering which shall attract additional fees and charges.
- 11.6 Where RCS stores Goods for the Client, the Client must:
 - (a) pay RCS's expenses and charges to comply with any Law;
 - (b) supply or pay for labour or equipment, freezing services, loading, unloading and handling generally; and
 - (c) if the Goods are at any time requantified, reweighed or remeasured, pay any proportional additional charges.
- 11.7 The Client must notify RCS at latest 11am the day prior to the business day of intention to remove Goods from storage.
- 11.8 RCS will not be obliged to allow an inspection of the Goods or to deliver up any Goods in storage:
 - (a) to any person other than the Client or its expressly authorised representative ; or,
 - (b) in circumstances where the Client's account with RCS is in arrears. .
- 11.9 The Client will remove its Goods from storage within 7 days of receipt of written notice from RCS.

12. Charges and Payment

- 12.1 The Client has no right to credit or a credit facility from RCS. Prior to commencing the Services, RCS may request a deposit of up to the amount of the quotation or estimated fee. If RCS has not agreed to any credit terms, the charges are payable in advance.
- 12.2 RCS's charges will be deemed fully earned on receipt of the Goods by RCS and are non-refundable in any event.
- 12.3 *Late payment.* RCS's charges are due within the credit terms agreed in writing between the Client and RCS. If the Client defaults in making any payment in accordance with these conditions, then:
 - (a) all amounts owed to RCS will immediately become due and payable;
 - (b) Interest at the Interest rate shall accrue from the due date for payment until RCS is paid in full; and,
 - (c) the Client shall be responsible for RCS' costs of the default including full legal costs on an indemnity basis.
- 12.4 *Additional charges.* In addition to any other charges contemplated under these conditions, the Client is liable to pay:
 - (a) all storage, handling, stocktaking and reporting charges and any charges associated with packing, loading or unloading Goods;
 - (b) any hand unloading/tail-lift charges that are required because the Goods cannot be safely unloaded or loaded using mechanical means;
 - (c) any fuel levy imposed, which may be adjusted by RCS at any time on reasonable grounds to reflect fuel price movements; and

- (d) all charges imposed by Law including quarantine, bonding, customs charges and excises and associated fines and penalties.

12.5 Variation of Work Required and Delay.

(a) *Variations.* If the work or Services required of RCS varies from the work from which a quotation or estimate has been given, or if RCS is prevented from or delayed in undertaking the Service or any part thereof, (except where that prevention or delay resulted from a factor within RCS control), RCS will charge additional fees for such a variation in accordance with RCS schedule of rates and if there is no item on the schedule then at market rates. The Client agrees to pay any charges RCS may have incurred from a third party (other than a Subcontractor) to obtain or effect delivery of the Goods. The delay period starts when RCS presents or makes itself available for loading or unloading.

(b) *Delays.* Delays due to traffic conditions or road repairs, selection of route and the like and vehicle break down are inherent in the transport industry. RCS will not be liable for any loss or damage or consequential loss as a result of RCS transit or being delayed for any reason other than factors within RCS control.

(c) *Alteration of dates.* If a date for performance by RCS of any Services is agreed upon, and the Client requires that date to be altered, or the Goods are not available on that date, RCS will charge an additional amount for any loss or additional expense occasioned by such alteration or unavailability.

12.6 No set off. All sums due to RCS are without any deduction, counterclaim or set-off and RCS may bank any part payments of invoices, without prejudice to RCS' rights to recover the outstanding balance of any invoice, irrespective of the Client's stated intention when making that payment. The Client agrees to pay.

12.7 Client as representative. If the Client instructs RCS that RCS's charges will be paid by the consignee or any other 3rd party and the consignee or 3rd party does not pay RCS' charges within 7 days of the date of delivery or attempted delivery of the Goods, the Client must pay such charges.

13. Insurance and Indemnity

13.1 Insurance. RCS accepts no obligation to place insurances other than in respect of RCS' own vehicles, employees and subcontractors. Should the Client wish to ensure any aspect of the Services including transit or storage, RCS recommends the Client contacts an experienced insurance broker. The Client is encouraged to seek advice from an experienced insurance broker and to place its own insurances in respect of the Goods.

13.2 Indemnity. The Client indemnifies and will indemnify RCS:

- (a) in respect of any liability in respect of the Goods owed to any person who has or may claim to have an interest in the Goods or any part thereof. other than the Client who claims to have, who has, or who

in the future may have any interest in the Goods or any part of the Goods; and,

- (b) against all loss, cost, damage, expense, claim, fine, duty, tax, demand, action, proceeding or any other liability suffered or incurred by, or made or commenced against, RCS as a result of the Client's breach of it's obligations or the Client's negligence, wilful misconduct or recklessness .

14. Liability, limitations and exclusions

14.1 The Goods are at the Client's risk. Neither RCS nor its Protected Parties under any circumstances, be under any liability for any: loss of or damage to the Goods; or, misdelivery or nondelivery, whether in the course of Services or otherwise, unless the Client proves that such loss, Damage, misdelivery or nondelivery was caused by RCS' gross negligence or wilful default or to the extent liability is legislated and cannot be contracted out of.

14.2 RCS liability will be reduced proportionately by the extent to which the loss, cost or damage was not caused by RCS or a Protected Party.

14.3 Notwithstanding any other provision of these conditions, RCS will not be liable for any loss of or Damage to Goods caused by:

Force Majeure Event; the negligent setting or management of the temperature of any refrigerated Container or at any storage facility by RCS or by any other person; mechanical failure of a refrigerated Container or refrigeration system; RCS following the Client's directions; Goods becoming infected or contaminated (including by deterioration); transport or road conditions and their effects including vibration; a decline in value, or loss of value as a result of the Goods becoming close to, or past their 'use by' or expiry date. RCS is not responsible for loss of or damage to Goods due to or comprising electrical or mechanical derangement, shrinkage or ordinary wear and tear.

14.4 Except where the matter was the subject of a specialist quotation and subject to clause 14.1, RCS is not liable for: inherent defects in the Goods or inherent fragility or condition the handling of which making it difficult to load, unload or transport the Goods without damage; insufficiency or unsuitability of packing or preparation of the Goods to withstand the ordinary risks associated with the Services. Notwithstanding the foregoing, some Goods are inherently susceptible to suffer damage or disorder being moved no matter how carefully they are handled. RCS will not be liable in respect of these items.

14.5 RCS is not liable for any loss of or Damage to Goods where the loss of or Damage to the Goods occurs during Storage unless liable pursuant to clause 14.1.

14.6 Notwithstanding any other provision of these conditions, RCS will not be liable, under any circumstances, for Consequential Loss.

14.7 Notwithstanding any other provision of these conditions, RCS's liability under this agreement and in the course of provision of the Services shall be limited, at RCS' option to: resupply the Services;

or repayment of fees and charges paid by the Client to RCS in respect of the Services.

Goods when the Goods are accepted by RCS and the provisions of clause 19 shall apply.

15. Claims and required notifications

15.1 *Claims Notice.* Notwithstanding any other provision of these conditions (other than legislation which cannot be contracted out of), RCS will, in any event, be discharged, released and held harmless from all liability whatsoever in respect of the Goods and the provision of the Services unless RCS is served with a claim's notice which shall include particulars of the circumstances on which the claim is based and the Client's desired remedy or outcome together with such photographic evidence as may be able to be procured ("**Claims Notice**").

15.2 The Claims Notice must be served:

- (a) in the case of Goods allegedly lost or Damaged in the course of loading, unloading or transit, within 24 hours from the delivery of the Goods or from the date on which in the ordinary course of business, delivery would have been effected; or
- (b) in the case of Goods allegedly lost or Damaged during Storage, within 24 hours of the removal or attempted removal of the Goods from Storage.

15.3 RCS will, in any event, be discharged and released from all liability whatsoever in respect of the Goods and the provision of the Services unless legal proceedings are commenced:

- (a) in the case of Goods allegedly lost or damaged in the course of loading, transit or unloading, within 12 months of their delivery or of the date on which, in the ordinary course of business, they should have been delivered; or
- (b) in the case of Goods allegedly lost or Damaged during Storage, within 12 months of the date of removal or attempted removal of the Goods from Storage.

15.4 The Client acknowledges that the time limits set out in this clause 15 are necessary in order to allow RCS to inspect the Goods and properly investigate the surrounding circumstances with respect to any loss, damage or claim.

16. Lien

16.1 All Goods being moved or stored shall be subject to a general lien for any outstanding monies owed by the Client. Should circumstances arise that make it reasonable to conclude that the Client unwilling or unable to pay any due charges in the required form or at a required place or time, RCS reserves the right to retain or refuse delivery of any Goods or to re-enter premises or the place of storage and seize some or all of the Goods delivered. When payment is not received within 14 days, RCS reserves the right to dispose of the Goods in lieu of payment whether by auction, online sale or otherwise and offset the proceeds against money owed to RCS. This shall not affect any rights RCS may have.

16.2 A determination by a professional auctioneer or valuer of goods shall be determinative.

16.3 If the lien is or is deemed to be a Security Interest for the purposes of PPS Law then it attaches to the

17. Termination and default

17.1 Where the agreement is for a fixed term and that term has expired in the absence of a provision to the contrary these conditions shall apply in a holding over period which either party may terminate on 14 days notice.

17.2 *Termination for breach.* If the Client is found to be in breach of any term condition or warranty herein or has made any misrepresentation to RCS; or if RCS considers on reasonable grounds that the conduct of the Client is likely to prejudicially affect RCS' interests then RCS may determine this agreement and without notice and all monies previously paid by the Client shall be forfeited to RCS but without prejudice to any claims or rights of RCS in respect of any arrears of any monies due to RCS.

17.3 *Events of default.* If the Client makes default in punctual payment of sums due to RCS pursuant to the provision of the Services, or fails to observe and perform the provisions of this agreement, or if the Client suffers any distress or execution to be levied against it, or makes any arrangement with its creditors or being a company goes into liquidation administration or the Client becomes insolvent or does or causes to be done or permitted to suffer any act or thing whereby RCS' rights to payment or indemnity under this agreement may be prejudiced or put into jeopardy.

18. Security

18.1 In consideration of this agreement, in addition to any other rights and remedies of RCS hereunder, the Client hereby agrees to indemnify and keep indemnified RCS from and against any loss, damage, costs, expense or claim which RCS may incur in connection with, or as a consequence of, any breach or default by the Client of or under any of the covenants, agreements or obligations on its part contained in this agreement. This includes interest and legal costs on a solicitor and own client basis (the "Money Hereby Secured").

18.2 The Client hereby charges the Client's property as security for payment and the Money Hereby Secured. RCS has the express right to lodge caveats or register securities on the PPSR giving notification of this charge.

18.3 Neither the security in subclause 18.2 above, nor anything herein contained shall affect or become merged with any other security which RCS now holds or may hereafter hold in respect of the Money Hereby Secured or any claim or demand which RCS now has or may hereafter have against any other person or surety or otherwise. This security shall be a continuing security until a final discharge has been given to the Client. RCS shall hold any judgment which RCS may obtain against the Client in respect of the Money Hereby Secured collaterally for the due payment of the Money Hereby Secured. This security will not merge with such judgment.

18.4 Immediately on default in payment of the Money Hereby Secured or in the observance or performance of any of the Client's Covenants or at any time thereafter all RCS' powers may be exercised by RCS without any proof of such default or its continuance or any notice being required.

18.5 RCS is irrevocably authorised by the Client to enter, at any time, onto any premises or site that the Client has possession of or is entitled to grant access to, for the purpose of: reclaiming possession of any Goods or property supplied by RCS; and/or, at RCS' discretion; and, temporarily or permanently decommissioning the Container or Storage facility where Services or monies have not been paid in accordance with this agreement.

18.6 Any costs incurred by RCS in reclaiming or decommissioning Goods, Containers or facilities, including the costs of making good any damage to 3rd party property in reclaiming the goods, are to be costs indemnified to RCS by the Client and are recoverable as allowed for in these terms and conditions.

19. PPS Law

19.1 RCS (as grantee) may as security for the obligations, representations, warranties and/or indemnities owing to it by the Client (as grantor) by registering one or more charges or Security Interests pursuant to the PPS Law against the Goods or against any deposit, promise to pay, card authority and all present and after acquired property of the Client and any Guarantor or other security granted pursuant to this agreement. The Client and Guarantor (if there is a guarantor) and each of them hereby charge and grant a Security Interest in favour of RCS all their present and after acquired property and do such things at their own cost and may be required to perfect and maintain such Security Interest and its priority.

19.2 To the extent permitted by law, the following sections in the PPS Law will not apply to this agreement and the Client as grantor hereby waives all rights arising under those sections: s92 (secured party must not damage goods when removing accession); s93 (reimbursement for damage); s94 (refusal of permission to remove accession); s95 (notice of removal of accession - to the extent that it requires the grantee to give a notice to the grantor); s97 (court order about removal of accession); s118 (enforcing security interests in accordance with land law decisions); s121 (enforcement of liquid assets); s130 (notice of disposal to the extent that it requires the grantee to give a notice to the grantor); s132(3)(d) and (4); s134(1); s135 (notice of retention); s137; s140; s142 (redemption of collateral).

19.3 The grantor hereby agrees, at the grantor's cost to do everything which the grantee reasonably requires to be done, for the purpose of ensuring that in relation to each and every Security Interest granted by it to the grantee: any such Security Interest is enforceable, perfected and effective and continues to be so; the grantee may apply for any registration or give any

notification which the grantee may deem necessary to ensure that the Security Interest has priority as a first priority interest, or with such other priority as the grantee agrees in writing; the grantee is able to exercise all of its rights in relation to the Security Interest; promptly sign any further documents and provide any further information (such information to be complete, accurate and up to date in all respects) that the grantee may reasonably require to register a Financing Statement, Financing Change Statement or any other document required under the PPSA; indemnify and upon demand reimburse the grantee for all expenses incurred in registering a Financing Statement, Financing Change Statement or any other document required under the PPS Law or for the purposes of releasing any charged property; give the grantee at least 14 days prior written notice of any proposed change in the grantor's name or any other change in the grantor's details; immediately advise the grantee of any material change in its business practices of selling goods that would result in a change in the nature of proceeds derived from such sales.

19.4 The grantor hereby waives its right to receive a Verification Statement in accordance with s157 PPSA.

19.5 The grantor will not disclose any information of the kind described in s275(1) PPSA without the prior written consent of the grantee.

20. Compliance with Law and in the Client must help bit?

20.1 Notwithstanding anything contained in these conditions, RCS will continue to be subject to any implied terms, conditions, guarantees or warranties imposed by the *Competition and Consumer Act 2010* (Cth) or any other Commonwealth or state legislation but only in so far as such legislation applies and prevents the exclusion or modification of any such term, condition, guarantee or warranty.

20.2 RCS, the Client and consignee must comply with all Law, including Chain of Responsibility Law to take reasonable steps to manage road safety risks and ensure road safety is not compromised.

20.3 The Client must not impose any requirement on RCS that would directly or indirectly encourage or require RCS or any person on behalf of RCS to speed, drive while fatigued or otherwise perform the Services in an unsafe manner or in breach of Law.

21. Force Majeure

21.1 If, as a result of a Force Majeure Event, a party becomes delayed or unable, wholly or in part, to perform any of the Services or its obligations under this transport contract:

- (a)** that party is to give the other party prompt notice (verbally and in writing) of the relevant Force Majeure Event with reasonably full particulars and, in so far as known to it, the probable extent to which it will be unable to perform, or be delayed in performing, the relevant obligations;
- (b)** the relevant obligations are suspended but only so far as, and for so long as, each party is affected by the relevant Force Majeure Event; and,

(c) that party is to use its best endeavours to overcome or remove the relevant Force Majeure Event as quickly as possible.

Paragraph (c) immediately above, does not require the affected party to: settle any dispute on terms contrary to its wishes; or, contest the validity or enforceability of any Law, regulation or legally enforceable order by way of legal proceedings.

21.2 Resumption. The obligation of the affected party to perform its obligations resumes as soon as it is no longer affected by the relevant Force Majeure Event.

21.3 Right to terminate. If clause 21.1 applies and the Force Majeure Event continues for a period of 45 days or more, either party may (without affecting the accrued rights and obligations of the parties as at the date of termination) terminate this Agreement by giving one month's written notice to the other party.

22. Miscellaneous

22.1 Choice of Law. This agreement is governed by the laws of the State of Western Australia.

22.2 Read Down. If any provision of this agreement or part of a provision of this agreement is or becomes legally ineffective, under the general law or by force of legislation, but would not have such effect if it were read down and, if it is capable of being read down, such provision or part of a provision shall be read down accordingly.

22.3 Severance. If notwithstanding the foregoing a provision or part of a provision of this agreement still is or becomes legally ineffective: If the provision would not have such an effect if a word or words were omitted, that word or those words are hereby severed; and, in any other case, the whole provision is hereby severed; and the remainder of this agreement shall be of full force and effect.

22.4 Indemnity. The Client indemnifies RCS for any loss or damage which RCS may suffer as a result of any breach by of these terms and conditions by the Client or its employees, servants, agents, contractors or invitees.

22.5 Trade practices law. The promise to repair (or compensate) damaged Goods is in addition to any rights that the Client may have arising from the *Competition and Consumer Act 2010* or similar legislation. Any rights the Client may have under that legislation are excluded to the extent permitted by law. All other rights are varied by these terms and conditions.

22.6 Warranty of Authority. Any person who signs or accepts this agreement on behalf of the Client warrants that for all purposes of the agreement that the person is the duly authorised agent of the Client. If such person is not the duly authorised agent of the Client, then in consideration of RCS accepting the order the person shall be deemed to be the Client and agrees to be bound by all the terms and conditions of this agreement. Further, the person warrants that it is authorised by all persons owning or having any interest in the Goods including the consignee to accept these conditions on their behalf.

22.7 3rd Party. Where a Client purchases any goods or services for the benefit of a 3rd party, whether as agent or in any other capacity, until that 3rd party has paid for the goods or service in full, the Client will remain liable as the primary debtor for those goods or Services.

22.8 Entire Agreement. The starting point of interpretation is that the entire agreement between the parties as to the terms on which Services will be provided is contained in these conditions incorporating RCS quotation and issued pricing schedules and any departures or variations must be documented and agreed in accordance with the Amendments provisions.

22.9 No waiver. No waiver of the Client's obligations owed to RCS will be effective unless it is in writing and signed as accepted by our properly authorised officer such as a director or senior manager of RCS.

22.10 Amendments. Any amendments to this agreement must be evidenced in writing and signed as accepted by our properly authorised officer such as a director or senior manager.

22.11 Counterparts. This agreement may consist of a number of copies (including facsimile or electronic copies), each signed by one or more parties to the agreement. If there are a number of signed copies, they are treated as making up the one document and the date on which the last counterpart is executed will be the date of the agreement. This agreement is binding on the parties on the exchange of counterparts. A copy of a counterpart sent by facsimile or by electronic mail: must be treated as an original counterpart; is sufficient evidence of the execution of the original; and, may be produced in evidence for all purposes in place of the original.

22.12 Unitized freight. RCS reserves the right to unpack any unitized freight and shall not be liable for any loss or damage to the Goods caused by or arising directly or indirectly as a result of such unpacking.

22.13 Insolvency. RCS reserves the right to suspend or cancel the Services if RCS believes the Client is or is likely to be unable to pay its debts as and when they fall due.

22.14 Quarantine. The Client shall be responsible for complying with any quarantine requirements of a Relevant Authority.

23. Definitions and Interpretation

23.1 In these conditions unless otherwise required by the context:

Chain of Responsibility Law means the *Road Traffic (Administration) Act 2008* (WA), the *Road Traffic (Vehicles) Act 2012* (WA) and the Heavy Vehicle National Law as enacted in any Australian state and any other Commonwealth, state or territory Law dealing with the obligations of parties involved in the transport of goods by road.

Client means the person engaging RCS to provide the Services and will usually be the consignor.

Consequential Loss means any indirect or consequential loss; loss of use; loss of product or

production; delayed, postponed, interrupted or deferred production; inability to produce, deliver or process; loss of profit, revenue or anticipated revenue; loss of bargain, contract, expectation or opportunity; liquidated damages; punitive or exemplary damages; in each case arising from or in connection with the performance of Services and whether or not foreseeable at the time of entering into any agreement incorporating these conditions.

Container includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Goods for storage, handling or transport.

Damage means physical damage including by deterioration, oxidisation, liquids, evaporation or contamination.

Delivery location means the location nominated by the Client for the Goods to be delivered in the agreed manner which may include a storage.

Force Majeure Event means and includes: acts of God; inclement weather and its consequences; explosions; fires and natural disasters; acts of war; terrorism, civil unrest; malicious damage;; nuclear accidents, epidemics or pandemics; cyber attacks and crime; labour disputes and other industrial disturbances; border or road or rail closures; or congestion of roads; any quarantine or customs restrictions; any interruption of power supply or scarcity of fuel or any accident; collision or breakdown of a vehicle machinery or equipment.

Goods means the property accepted by RCS from, or at the request of, the Client for the provision of Services and includes any Container or packaging supplied by or on behalf of the Client.

Hazardous Goods means Goods that are or may become noxious, dangerous, explosive, flammable, radioactive, corrosive, poisonous, infectious, hazardous or damaging or that may harbour or encourage vermin or other pests, or that are or may become liable to harm any property.

Interest means an amount calculated on any Outstanding Amount at the rate of 1.0% per calendar month, compounded annually.

Law includes all applicable statutes, regulations, proclamations, orders, bylaws, requirements and approvals.

Outstanding Amount means any amount which remains unpaid upon the expiry of the credit terms extended by RCS or for which the Client is otherwise liable, pursuant to these conditions, to RCS.

PPS Law means the *Personal Property Securities Act 2009* (Cth) and the regulations and complementary legislation such as provisions of the Corporations Law.

PPSR means the register established and maintained under the PPS Law.

Protected Party and **Protected Parties** means RCS and the officers, employees, agents and contractors and without limitation the driver of the transport vehicle of RCS, the RCS Group and their Subcontractors.

Relevant Authority means any government or any governmental, semi governmental, administrative, fiscal or judicial body, registry, department, commission, authority, tribunal, agency, or entity and where a quasi government or private organisation is responsible for

managing an area, issuing permits, tickets or fines (e.g. to use private roads or a mine site) then that organisation.

RCS Group means RCS and each of its members which is are an associated entity in accordance with the meaning given to that term in s9 *Corporations Act 2001* (Cth).

Service Provider means RCS notwithstanding that RCS may engage Subcontractors.

Services means any operations or services undertaken by or on behalf of RCS, in any way connected with Goods including loading, unloading, packing, unpacking, handling, weighing, transporting and Storage, completing documents and the provision of any advice.

Storage means receiving Goods into a storage location operated by or on behalf of RCS including any confirmation of quantities and batch numbers, storing Goods and handling inbound and outbound Goods at the storage location.

Subcontractor means any person other than one of RCS employees who, under any agreement or arrangement with RCS (whether directly or indirectly) performs or agrees to perform the whole or any part of the Services .

23.2 Interpretation

- (a) Words in the singular include the plural, and words in one or more gender include all genders.
- (b) Headings are inserted for convenience and do not affect the interpretation of these terms and conditions.
- (c) Where two or more persons constitute or a deemed to constitute the Client or consignee the covenants and agreements on the part of those persons herein contained will bind them and any two or more of them jointly and each of them severally.
- (d) Reference to any statute or act includes all statutes and acts (State or Federal) for the time being enacted amending or modifying any statutes and all regulations, by-laws, requisitions or orders made under any statute from time to time by any statutory public or other Relevant Authority and any statutes or acts enacted in substitution for any such statute or act.
- (e) The Client's representative means without limitation a person whom has the Client's authority to make decisions and give instructions on the Client's behalf. Authority may be implied by conduct such as the person being sent by the Client to meet with RCS or to be onsite