

# LIFESTYLE LOGISTICS SERVICES – TRADING TERMS

## 1 INTERPRETATION

- (a) **"Container"** means any container, flexitank, trailer, transportable tank, flat, pallet or any article of transport used to carry or consolidate the Goods and any equipment, packaging or other material connected to it.
- (b) **"Dangerous Goods"** means (i) Goods which are or may become dangerous including compressed gas, flammable solids, liquids or gasses, oxidising material, corrosives, firearms, ammunition, weapons, explosives, magnetised material, noxious substances, radioactive material or other thing of a dangerous or destructive nature that because of its nature or condition may endanger the safety of a vehicle, a person in, on or in the vicinity of the vehicle or (ii) Goods likely to harbour or encourage vermin or other pests, or (iii) Goods including poisons, drugs, medicines and hormones or (iv) other Goods prescribed as Dangerous Goods pursuant to law.
- (c) **"Prohibited or Restricted Goods"** includes Goods such as Dangerous Goods as well as asbestos, human, plant or animal remains, ivory, fur, live animals, plants or living organisms, biological substances, counterfeit material, cultural and heritage goods, currency, embryo clones, knives or daggers, jewellery, perfume, precious metals, pornography, weapons or other Goods prescribed as Prohibited or Restricted Goods pursuant to law.
- (d) **"Fees"** includes the amount agreed to be paid to LLS by you for the performance of the Services, providing Goods and any freight fees, disbursements and final fees.
- (e) **"Force Majeure"** means riots, strike, lockouts, stoppage, restraint of labour, explosion, industrial dispute, raw material shortage, supplier issue, natural disaster, contamination or radiation, crime, civil unrest, act of terrorism, embargo, government sanction or war and any other event outside the control of LLS.
- (f) **"Goods"** means the cargo or goods accepted by LLS on your behalf including articles, goods, materials, merchandise, wares, equipment, livestock, bunkers, spare parts, mail, or stores together with any container or packaging supplied by you and any personnel where applicable.
- (g) **"LLS"** means the freight forwarding business Lifestyle Logistics Services which is owned and operated by Lifestyle Logistics Services Pty Ltd (ACN 151 176 055) as trustee for 'The Passamenia Family Trust'.
- (h) **"Services"** means the freight forwarding services provided by LLS in respect of the Goods and all matters necessary to or ancillary to the proper provision of the Services including transportation, logistics and administration as undertaken by LLS.
- (i) **"Subcontractor"** means any person including any company whom LLS arranges to perform part or all of the Services; including any employee, servant, agent or independent contractor of either LLS or any of its Subcontractors.
- (j) **"Trading Terms"** means the terms and conditions set out in this document.
- (k) **"You"** means the company, entity or other person or persons on whose behalf LLS accepts the Goods from including any director, employee, servant, agent, contractor, subcontractor, assignee, successor or heir as applicable in the circumstances.

## 2 RELATIONSHIP OF THE PARTIES

- 2.1 All of the Services provided by LLS are provided as your agent. LLS does not act as principal unless:
- (a) LLS expressly agrees or acknowledges in writing that it will act as principal in the provision of all or part of the Services; and
- (b) LLS performs carriage, handling or storage services itself as part of the Services; and
- (c) the Goods are in the actual custody and control of LLS.
- 2.2 You expressly authorise LLS to act as your agent in relation to the Goods.
- 2.3 You authorise LLS to act on your behalf for the purpose of any services in relation to your Goods including acting as the Customs Broker as defined in the *Customs Act 1901* (Cth).
- 2.4 Where LLS acts as your agent:
- (a) the Services provided by LLS do not include the carriage, storage or handling of the Goods or any other physical service in relation to the Goods. You acknowledge that the Services to be provided by LLS extend only to securing contracts with third parties for the carriage, storage and handling of the Goods;
- (b) LLS is not liable for the acts or omissions of any third party;
- (c) LLS has your express authority to enter into contracts on your behalf with third parties, such contracts being binding on you and the third party; and
- (d) You will indemnify LLS in respect of all liability, loss, damage, costs or expenses arising out of any contracts entered into by you or by LLS on your behalf with any third party.
- 2.5 You acknowledge that LLS is not a common or private carrier and accepts no liability as such.
- 2.6 LLS gives no warranty condition or representation express or implied as to the capacity or fitness of the Services for any particular purpose, unless that particular purpose was specified to you at the time of quotation by LLS.
- 2.7 LLS reserves the right to amend rates and/or terms and conditions from time to time without prior notice to you.

## 3 ACCEPTANCE OF QUOTATION

- 3.1 You acknowledge that neither the quotation nor this agreement requires a signature for you to be bound by the requirements of either.
- 3.2 You acknowledge that acceptance of your quotation and this agreement may occur by performance including by instructing LLS to proceed with preparations for transportation of your Goods or by delivery of your Goods to LLS.
- 3.3 Quotations are provided by LLS for a period of thirty (30) days. If the quotation is accepted after that thirty (30) day period it is at the discretion of LLS whether the agreement can be entered into or whether must be accepted within that period unless a different period for acceptance appears on the face of the quotation.
- 3.4 LLS reserves the right to withdraw any quotation at any time.
- 3.5 All quotations are subject to changes that may occur in freight insurance premiums, warehousing fees, statutory fees and charges and any other charges that may apply to the Goods.

## 4 PROVISION OF SERVICES

- 4.1 LLS reserves the right to decide the manner and procedure in which it carries out the Services.
- 4.2 LLS is entitled to enter into contracts on your behalf without notice to you for:
- (a) the carriage of the Goods by any route, means or person;
- (b) the carriage of the Goods whether containerised or not, on or under the deck of any vessel;
- (c) the storage, packing, transshipment, loading, unloading or handling of the Goods by any person at any place and for any reasonable length of time;
- (d) the carriage or storage of the Goods in containers with other goods or whatever nature;
- (e) the performance of LLS's own obligations, and to do all acts as are reasonably necessary or incidental to the performance of the Services by LLS.
- 4.3 You agree to provide LLS with clear instructions and documentation in relation to the Goods.

- 4.4 You agree that LLS will not be responsible for any loss, damage, delay or reduction in the value of the Goods caused by your failure to provide proper and clear instructions and documentation to LLS in relation to the Goods.
- 4.5 While LLS intends to endeavour to follow your instructions at all times in the performance of the Services, you acknowledge that LLS may depart from your instructions where LLS considers that:
- (a) there is good reason to do so to act in your best interests; or
- (b) where an order or recommendation of any competent authority requires LLS to do so; or
- (c) you have not provided sufficient time for LLS to reasonably carry out your instructions.
- 4.6 LLS may inspect the Goods, including by removing or opening any containers, whenever LLS deems it reasonably necessary.
- 4.7 If at any time LLS or a competent authority reasonably considers or deems that the carriage of the Goods should not be undertaken or continued, LLS is entitled to:
- (a) abandon the carriage of the Goods; or
- (b) attend to all incidental matters reasonably necessary to enable the carriage of the Goods to continue; and
- (c) be reimbursed by you for the cost of any incidental requirements carried out by LLS to enable the carriage of the Goods to continue or be abandoned.
- 4.8 If at any time LLS reasonably considers that the performance of the Services is likely to be subject to a significant hindrance, risk, delay or difficulty which cannot be avoided through LLS's reasonable endeavours, LLS may:
- (a) provide you with written notice that it is terminating the Services (where reasonably possible to do so); and
- (b) at your expense, place or procure that the Goods are placed at your disposal in an environment which LLS deems at its sole discretion is safe and convenient.
- 4.9 Where LLS exercises its rights under clause 4.7 and 4.8, all of LLS's responsibility and liability in the Goods cease immediately.
- 4.10 You agree that LLS is entitled to retain all allowances, brokerages and commission paid by shipping and forwarding agents, insurance brokers, airlines and any other person LLS deals with in the provision of the Services.
- 4.11 If the Goods have a value exceeding two hundred dollars, (\$200), LLS will not insert or declare the value on a Bill of Lading for the purposes of extending the shipowner's liability under Article (iv) Rule 5 of the *Sea-Carriage of Goods Act 1924* except on express written instruction by you to do so.
- 4.12 If the Goods are to be partially of wholly carried by air freight, no option of declaration of value to increase the air carriers liability under Article 22(2) of the *First Schedule of the Civil Aviation (Carrier's Liability) Act 1959* will be made except upon express written instruction by you to do so.
- 4.13 In all other cases where there is a choice of tariff rates according to the extent of liability assumed by the carriers, warehousemen or other parties, no optional declaration of value will be made for the purpose of extending liability. The Goods will be forwarded or otherwise dealt with at your risk for minimum charges, unless express written instructions to the contrary are given to LLS by you.
- 4.14 LLS is under no obligation to make any declaration to, or seek any special protection or cover from the Department of Railways or Railway Authority in any state of Australia, or any airline or road transport authority if the Goods fall within that authority's definition of:
- (a) Dangerous or hazardous goods; or
- (b) Goods liable to be stored in the open;
- unless express written instructions to the contrary are given to LLS by you.

## 5 SUBCONTRACTING

- 5.1 You authorise LLS to contract either in its own name or your name with any Subcontractor for the performance of the Services.
- 5.2 You authorise LLS to delegate its authority under these Trading Terms to its Subcontractors.
- 5.3 All Subcontractors engaged by LLS will have the benefit of these Trading Terms as if the Trading Terms were expressly for their benefit.
- 5.4 You undertake that no claim will be made against any Subcontractor of LLS which imposes any liability upon them in relation to the Goods. If any claim is made against a Subcontractor, you indemnify LLS against all consequences of any such claim.
- 5.5 No Subcontractor of LLS has LLS's authority to vary, alter or amend these Trading Terms.

## 6 WARRANTIES

- 6.1 You warrant that you:
- (a) are either the legal owner of the Goods or the authorised agent of the legal owner of the Goods;
- (b) are authorised to accept these Trading Terms;
- (c) have reasonable knowledge of the terms of sale and purchase of the Goods;
- (d) have reasonable knowledge of the Goods in order to describe the Goods adequately;
- (e) have made reasonable inquiries with the relevant authorities as to whether the Goods are Prohibited or Restricted Goods or whether there are relevant United Nations Security Council sanctions over the Goods and have complied with all legal requirements in every relevant jurisdiction;
- (f) will give LLS clear and reasonable instructions at all times and that such instructions will not be in breach of any law;
- (g) have provided a clear, accurate and complete description of the Goods to LLS;
- (h) have complied with all laws and regulations relating to the nature, condition, packaging, handling, storage, carriage, customs clearance and delivery of the Goods;
- (i) have provided to LLS all information, documentation and assistance that may be necessary to allow LLS to comply with all such laws and regulations;
- (j) have relied on your own enquiries only in connection with the Services and these Trading Terms and not on any representation or warranty by LLS or any person acting or seeming to act on LLS's behalf.
- 6.2 You warrant that the person delivering the Goods to LLS is authorised to sign your letter of instruction or waybill and is authorised to accept these Trading Terms.
- 6.3 You warrant the accuracy of all marking, brandings, descriptions, values and all other particulars of the Goods that you provide to LLS.
- 6.4 You agree to indemnify LLS for all liability and costs incurred as a result of or arising out of a breach of these warranties.

## 7 DANGEROUS GOODS

- 7.1 You warrant that the Goods are not Dangerous Goods and acknowledge that LLS shall not accept Dangerous Goods or Restricted or Prohibited Goods unless agreed to in writing by LLS.
- 7.2 If you deliver any Dangerous Goods or Restricted or Prohibited Goods to LLS or cause LLS to handle or deal with Dangerous Goods or Restricted or Prohibited Goods where it has not been agreed in writing, or where the description of the Dangerous Goods or

# LIFESTYLE LOGISTICS SERVICES – TRADING TERMS

- Restricted or Prohibited Goods is inadequate, inaccurate or incomplete you will be liable for all loss or damage whether direct, indirect or consequential.
- 7.3 You agree to indemnify LLS from and against all penalties, taxes, duties, claims, demands, damages, costs and expenses arising in connection with any Dangerous Goods or Restricted or Prohibited Goods.
- 7.4 Dangerous Goods or Restricted or Prohibited Goods may be destroyed, damaged, decontaminated, stored, buried, or otherwise dealt with by LLS at its sole and absolute discretion or at the sole discretion of any other person in whose custody the Dangerous Goods or Restricted or Prohibited Goods may be at the relevant time.
- 7.5 If LLS agrees in writing to provide Services in relation to Dangerous Goods or Restricted or Prohibited Goods, LLS reserves the right to destroy or deal with those Goods if LLS at its sole and absolute discretion deems it necessary. In the event that the Goods are damaged, destroyed or otherwise dealt with by LLS, LLS will bear no liability for it and you indemnify LLS from and against all costs and expenses in relation to the dealing with or destruction of the Dangerous Goods or Restricted or Prohibited Goods.
- 7.6 You undertake that any Dangerous Goods or Restricted or Prohibited Goods will be distinctly marked (including their covering, packaging, containers and other devices they are carried in) having regard to their dangerous nature, the legal requirements for transporting Goods of that nature and any Australian Standards relevant to the labelling requirements of the Goods.
- 7.7 You further undertake that the Goods will be packed in a manner adequate to withstand ordinary risks:  
(a) having regard to their dangerous or restricted or prohibited nature; and  
(b) in compliance with all laws, regulations and Australian Standards which may be applicable with respect to the carriage, handling, storage and/or warehousing of Dangerous Goods or Restricted or Prohibited Goods.
- 7.8 You indemnify LLS against all claims, losses, damages or expenses arising in consequence of any breach of this clause or otherwise in relation to the transportation of any Dangerous Goods or Restricted or Prohibited Goods.
- 8 INSURANCE**
- 8.1 You will be responsible for arranging all necessary insurances in relation to the carriage, handling and storage of the Goods unless you have given express written instructions to LLS to act as your agent to effect insurance on your behalf.
- 8.2 If LLS effects insurance for the carriage, handling or storage of the Goods on your behalf:  
(a) the insurance is subject to all terms and conditions set down by the relevant insurance company or underwriters of the insurance policy;  
(b) LLS is not obliged to effect a separate insurance policy on each consignment of Goods and may choose to declare it on an open or general policy;  
(c) you agree that you are solely responsible for the payment of all insurance policies effected on your behalf;  
(d) you understand and agree that the premium named on the insurance policy may not be the same amount charged to you by LLS or paid to LLS by you in relation to the policy;  
(e) LLS under no circumstances will be regarded as an insurer of the Goods and is expressly excluded from liability through loss, damage, delay or non-delivery;  
(f) in the event that an insurer dispute its liability or refuses to pay out on the insurance policy for any reason, you agree that you will have no recourse against LLS and LLS will have no responsibility or liability in respect of any insurance claim.
- 9 RISK IN THE GOODS**
- 9.1 You acknowledge that the Goods remain at your risk at all times.
- 9.2 You indemnify LLS in relation to any loss, damage to, oxidation, perishing or deterioration of the Goods both during and after LLS provides the Services in relation to the Goods.
- 10 PAYMENT OF DUTIES, LEVIES AND CHARGES**
- 10.1 You agree and acknowledge that you are responsible for paying for:  
(a) any duty, tax, impost or penalty of whatever nature levied by the authorities at any port or place for or in connection with the Goods;  
(b) all disbursements, freight fees, charges, and other costs incidental to the transportation of the Goods;  
(c) all customs, excise duties, quarantine fees, costs, fines or penalties which LLS becomes liable to pay on your behalf for any reason in respect of the Goods;  
(d) any payment, fine, expense, loss or damage made, incurred or sustained by LLS due to any inaccuracy or omission of any description, value or other particular that may result in a payment, fine, expense, loss or damage occurring. You agree to indemnify LLS against any such loss, damage, expense or fine arising from any such inaccuracy or omission.
- 10.2 You acknowledge that LLS has the right to hold you and the legal owner of the Goods jointly and severally liable for all sums payable under these Trading Terms and to recover from you all sums which have not been paid within fourteen days by way of written demand by LLS to you.
- 10.3 You indemnify LLS against all liability in relation to any information and/or advice LLS or its Subcontractors supply to you in relation to the classification of, liability for, amount, scale or rate of customs duty, excise duty or any other impost or tax relating to the carriage of the Goods.
- 10.4 You will be liable to pay any additional costs or expenses incurred by LLS as a result of LLS relying on the description and particulars of the Goods as supplied by you to LLS or by reason of any illegal, incorrect or insufficient marking, labelling, numbering or addressing of the Goods.
- 11 PAYMENT OF FEES TO LLS**
- 11.1 You must pay to LLS in cash or as otherwise agreed:  
(a) the Fees agreed to be paid for the Goods or Services,  
(b) the amount outlined in the quotation agreed to, and  
(c) all sums payable to LLS under this clause, without set off or delay, in Australian Dollars or at the LLS's option, in the currency of the place of delivery at the Telegraphic Transfer (TT) selling rate in effect on the date of payment. If the date falls on a day which relevant banks are closed for business, the rate ruling on the next succeeding business day shall govern.
- 11.2 You agree that delivery or collection of the Goods must not occur until the Fees and any other amounts payable to LLS under this agreement are paid in full.
- 11.3 You agree that all Fees and charges including freight fees and disbursements are deemed to be fully earned on receipt of the Goods by LLS and are payable and non-refundable in any event, including in the event of Force Majeure or whether some or all of the Goods are lost, abandoned, damaged or destroyed.
- 11.4 If you instruct LLS to collect payment on delivery or collection of the Goods by a third party:  
(a) If LLS accepts the instructions, it on the understanding that LLS is liable for the exercise of due care and diligence only; and  
(b) You accept that LLS may require you to provide an additional fee, security or deposit to LLS for the Services prior to receipt of the Goods by LLS over and above the usual Terms of Trading were payment to be received prior to delivery or collection of the Goods.
- 11.5 If you instruct LLS to collect the Fees or any sum payable to LLS from a third party, you agree that you:  
(a) remain responsible and liable for payment of these amounts; and  
(b) guarantee the payment of the Fees and other amounts due and payable to LLS.
- 11.6 If any amount under this clause is overdue to LLS, LLS is entitled to 2.5% per month of the overdue amount in damages per annum to be calculated daily pursuant to this Agreement. This amount in damages is to be charged in addition to any interest charged if the debt is recovered by a claim.
- 11.7 LLS is not liable for any loss you incur as a direct, indirect or consequential result, failure or inability of LLS to collect the Fees from a third party elected by you to pay the Fees to LLS.
- 12 ACCOUNT PAYMENT TERMS**
- 12.1 LLS may at its sole discretion offer you an account or payment terms for the payment of the Fees.
- 12.2 If LLS offers you credit account facilities or payment terms:  
(a) you acknowledge that you have received this agreement and agree to be bound by the terms and conditions contained in this agreement;  
(b) you warrant that:  
i. you are not aware of any information, notice or court proceedings that may lead to bankruptcy, appointment of an administrator, controller or managing controller, receiver or receiver manager or liquidator.  
ii. you do not intend to enter into any scheme or arrangement with creditors either formally through a court or otherwise.  
iii. none of the directors, partners or sole trader has been a director of a Company which was placed in liquidation or has been declared bankrupt or has entered into an arrangement under the *Bankruptcy Act 1966* (as amended).  
(c) you authorise LLS to obtain from a credit reporting agency details of your personal and commercial credit information if required LLS for the purpose of assessing your application for an account.  
(d) you acknowledge and agree that information about transactions under these Trading Terms may be used by LLS or any subsidiary or related body corporate or related entity of LLS as those terms are defined in the Corporations Act 2001 for marketing purposes.  
(e) You acknowledge that the submission to LLS of an application for an account will not automatically result in LLS granting you an account.
- 12.3 As an organisation providing account facilities, LLS is subject to certain legislative and regulatory requirements which necessitate it obtaining and holding detailed information which personally identifies you and/or contains information or an opinion about you ("personal information"). LLS abides by the National Privacy Principles established under the Privacy Amendment (Private Sector) Act 2001. A copy of the National Privacy Principles and LLS's Privacy Policy is available by contacting LLS's office.
- 12.4 If you provide LLS with information to apply for an account, you acknowledge that you are supplying that information to LLS for the purpose of assessing your financial standing and credit worthiness, and:  
(a) authorise LLS to make any enquiries and obtain any information from bankers and business referees mentioned in any account application or from anybody else that LLS may reasonably consider necessary;  
(b) have been informed by LLS in accordance with Section 18E(8)(c) of the Privacy Act 1988 that certain items of personal information about you (including an opinion) might be disclosed to credit reporting agencies;  
(c) in accordance with Sections 18H and/or 18K and/or 18L(4) of the Privacy Act 1988:-  
i. agree to reports being given to LLS for the purpose of assessing an account application;  
ii. agree that LLS may use, for the purposes of assessing an account application and any accompanying guarantee, any information concerning your commercial activities or commercial credit worthiness obtained from a person or body carrying on any business involving the provision of information about the commercial credit worthiness of persons;  
iii. authorise LLS to exercise your rights of access to your credit information files and credit reports;  
(d) agree that LLS may disclose and/or receive from any credit providers and/or credit reporting agency any report or record or information that may have any bearing on your credit worthiness, credit standing, credit history or credit capacity for any of the following purposes:  
i. the assessment of any application by you for a credit account or commercial credit;  
ii. to notify other credit providers of a default by you;  
iii. to exchange information with other credit providers as to the status of your account when you are in default with LLS or with another credit provider;  
iv. to assess your credit worthiness or commercial credit worthiness at any time;  
v. to assess whether to accept you as a customer or to continue to supply credit to you.  
(e) agree that LLS may disclose certain aspects of personal information to third parties for the purposes of debt recovery, commencement or continuance of proceedings brought under these Trading Terms data analysis or as outlined in LLS's Privacy Policy  
(f) You acknowledge that LLS may at any time without notice, terminate or suspend your right to receive Goods from LLS on credit and is not liable for any damages, costs, penalties or charges incurred by the Customer as a result of the non-supply of Goods by the Company.
- 13 LIEN OVER GOODS AND DOCUMENTS**
- 13.1 Until such time as:  
(a) All amounts payable to LLS by you pursuant to this agreement are paid in full; and  
(b) You have taken delivery of the Goods  
LLS will have a lien over the Goods and any documents relating to the Goods.
- 13.2 If any amount due to be paid by you to LLS remains unpaid for 30 days after LLS has given you written notice that the amount is due and payable, LLS is entitled to:  
(a) sell or dispose of the Goods by either auction or private treaty at your risk and expense, and to apply the sale proceeds towards payment of any amount that is due and payable to LLS by you; and  
(b) charge with the due payment of all outstanding amounts all of your interest as an individual, director of a company or trustee of a trust in real property and personal property wherever located both present and future and you consent to LLS lodging a caveat or caveats over such property to protect its interest;

# LIFESTYLE LOGISTICS SERVICES – TRADING TERMS

- 13.3 You authorise LLS to execute a mortgage or other instrument in terms satisfactory to LLS to further secure your indebtedness to LLS.
- 13.4 You irrevocably authorise, permit and consent to LLS entering any premises to retrieve and recover possession of any Goods which LLS may have provided to you or any other such items to which LLS has the title of the right to exclusive or sole possession. This irrevocable authority allows LLS to use such force as is reasonably required to open doors or any other entrances even if the use of such force would damage the door or entrance. You agree that the presence of LLS or its agents or servants at the premises and the use of such force and the occasioning of damages will not vest you with any cause of action against LLS and LLS may refer to this clause should any right or entitlement of LLS be called into question.
- ## 14 INFORMATION
- 14.1 You authorise LLS to obtain any information about you or your property on your behalf including private and confidential information from the Personal Property Security Register ("PPSR"), ASIC, CITEC Confirm, the Department of Transport, the Department of Environment and Resource Management, and any other relevant Local, State or Federal government department in or outside Australia including any authority or agency for the purpose of debt recovery or legal proceedings and you agree to pay for the costs of and incidental to the collection of this information including any professional fees incurred.
- 14.2 You authorise LLS to provide information to third parties about you including your Australian Company Number or Australian Business Number and any other information including private information as required for the purpose of the transportation of your Goods or as otherwise required by law.
- ## 15 DELIVERY
- 15.1 Unless agreed in writing, LLS accepts no responsibility for the arrival or departure dates of the Goods.
- 15.2 You must provide clear written instructions to LLS regarding the delivery of the Goods. LLS will not be responsible for the non-delivery or mis-delivery of the Goods where you either fail to provide written instructions or your written instructions are incorrect or misleading.
- 15.3 You are responsible for the costs of loading and unloading of the Goods on and off relevant transport vehicles. Unless LLS has agreed in writing to arrange the loading and unloading of the Goods on your behalf as part of the Services, you are responsible for arranging the loading and unloading of the Goods.
- 15.4 If you are unable to take delivery of the Goods as reasonable required by LLS, or if LLS withholds delivery of the Goods due to non-payment of any sum owed to LLS by you under these Trading Terms, LLS is entitled to store the Goods either in the open or under cover, at your sole risk and expense.
- 15.5 All Goods will be considered to be delivered as described unless notice or loss or damage to the Goods is given to LLS at the time that you or your representative takes delivery of the goods.
- ## 16 WAREHOUSING OR STORAGE
- 16.1 If at any time LLS or its Subcontractors decide at their sole discretion that the Goods need to be warehoused or stored, you agree that any such warehousing or storage is at your risk and expense.
- 16.2 If the Goods are perishable Goods, you authorise LLS to store the Goods in an optimal environment for temperature, pressure and humidity at your risk and expense.
- 16.3 If the Goods are Dangerous Goods, Restricted or Prohibited Goods or perishable Goods and the Goods are unable to be stored in an optimal environment you agree to indemnify LLS for any loss or damage caused directly, indirectly or as a consequence of the oxidation, damage, destruction, explosion, perishing or other chemical or physical change in the Goods.
- ## 17 LIMITATION AND EXCLUSION FROM LIABILITY
- 17.1 Except where provided for in these Trading Terms, you hold LLS free from all liability for any loss or damage however arising from:
- any act or omission by you and the legal owner of the Goods;
  - LLS complying with your instructions or anyone authorised to give instructions in relation to the Goods;
  - the insufficient or incorrect labelling or packaging of the Goods;
  - the handling, loading and unloading, or storage of the Goods by you;
  - any Force Majeure event;
  - fire, flood, storm, explosion or theft;
  - the nature of the Goods;
  - your breach of warranty or obligation or negligence on your behalf;
  - any duties, taxes, imposts, levies, deposits and outlays imposed by any competent authority and for all payments, fines, costs, expenses loss and damage incurred by LLS as a result;
  - any delay caused by any government authority;
  - any delay caused due to treatment of the Goods by any government authority;
  - any delay caused by any third party, including carriers of the Goods.
- 17.2 You acknowledge that any information and advice provided to you by LLS is provided for your sole use. You agree to indemnify LLS for any liability, loss, damage and costs arising out of any other person relying on advice or information given to you by LLS.
- 17.3 If any Container in relation to the Goods has not been packed by LLS, LLS will not be liable for loss or damage to the Goods caused by:
- the manner in which the Container has been packed;
  - the unsuitability of the Goods for carriage in the Container; or
  - the unsuitability or defective nature of the Container.
- 17.4 Where LLS provides or procures for the provision of the Container as part of the Services, LLS will only be held liable for the unsuitability or defective nature of the Container if:
- LLS was negligent; or
  - it would have been apparent upon reasonable inspection of the Container that it was unsuitable or defective.
- 17.5 Where you instruct LLS to provide a Container, unless otherwise requested in writing, LLS is not under any obligation to provide a Container of any particular type or quality.
- 17.6 Where you have not instructed LLS to provide a Container, you shall be responsible for the timely return of any Container to the person who owns or has a right to possession of the Container in a clean and undamaged condition. You agree to indemnify LLS against any claim, liability or expense, including detention or demurrage charges, which arise as a result of:
- a failure to return the Container, or
  - a delay in the return of the Container beyond the customary period allowed for Container returns, or
  - any damage to the Container, or
  - the Container being returned in a dirty or contaminated condition, regardless of who failed or delayed in the return of the Container or where or by whom the Container was damaged, made dirty or contaminated.
- 17.7 Where the Services provided by LLS include airfreight, roll on/roll off carriage, or water to water carriage LLS will not be liable for any loss or damage to the Goods caused by:
- the manner in which the carriage is undertaken;
  - the unsuitability of the Goods for carriage in any of the above manners; or
  - the unsuitability or defective nature of any equipment used in the carriage.
- 17.8 You agree to hold LLS free from all liability at all times in the event that the Goods are damaged during transit or are delivered in a damaged state. You acknowledge that LLS is not a carrier and that the carriage, handling, storage and warehousing of the Goods is not done under the direct or indirect supervision of LLS and LLS can take no responsibility for the manner of carriage, handling, storage or warehousing of the Goods.
- 17.9 You agree that LLS is not responsible for inspecting or examining the Goods upon delivery. In the event that you provide a written request for LLS to inspect or examine the Goods upon delivery, LLS is not bound to do so unless LLS agrees in writing to do so. If LLS carries out an inspection or examination of the Goods upon your written request, you agree to hold LLS free from all liability in relation to the condition of the Goods both before and after the inspection or examination.
- 17.10 Where LLS's liability is not excluded or limited by these Trading Terms, any legislation or convention, LLS's liability is limited to the lesser amount of AUD\$100.00 or the market value of the Goods.
- 17.11 In all cases where liability is not excluded or limited by these Trading Terms, any legislation or convention, LLS's liability is limited to any one or more of the following, determined by LLS at their sole discretion:
- repair of the Goods;
  - payment of the cost of having the Goods repaired;
  - replacement of the Goods or the supply of equivalent Goods;
  - payment of the cost of replacement of the Goods or the supply of equivalent Goods subject to this agreement.
- 17.12 LLS will be discharged of all liability in relation to any claim under this clause unless you bring a claim within 14 days of:
- In the case of loss or damage to the Goods, the date upon which you take delivery of the Goods;
  - In the case of delay or non-delivery of the Goods, the date upon which the Goods should have been delivered (as set out in writing and agreed by both you and LLS);
  - in any other case, the event giving rise to the claim.
- 17.13 Without prejudice to any other terms in this document, LLS shall have the right to enforce any liability you have under these Trading Terms or to recover any sums to be paid by you under these Trading Terms not only against or from you but also if it thinks fit against or from the sender and/or owners and/or consignees of the Goods.
- 17.14 You acknowledge that all rights, immunities and exemptions from liability in these Trading Terms continue to have their full force even if other terms in these Trading Terms have been breached by either you or LLS.
- ## 18 FORCE MAJEURE
- 18.1 LLS will not be liable for any delay, or cancellation in performing or failing to perform any of the Services if such delay or cancellation is due in full or in part to Force Majeure. Such delay or failure will not constitute a breach of these Trading Terms and LLS will be entitled at its option to either extend the time for delivery or performance of the Services for a reasonable period or to terminate the Services without any recourse by you to any claim for damages.
- 18.2 In the event of Force Majeure, LLS is not liable for any repair, replacement or delivery costs incurred as a direct, indirect or consequential result of the Force Majeure and you agree that the costs incurred as a result of Force Majeure remain your risk.
- ## 19 SECURITY INTEREST AND CHARGE
- 19.1 References to PPS Law in this Agreement means the *Personal Property Securities Act 2009* (Cth) ("PPSA"), and any subordinated legislation relating to the PPSA, and includes references to amended, replacement and successor provisions of such law.
- Creation of a security interest and charge*
- 19.2 To secure payment of invoices that are due and payable under this Agreement, you:
- grant a security interest in all of its present and after-acquired personal property ("the Security Interest"); and
  - to the extent permitted by law, also charge to LLS all of its present and future property, assets and undertaking wherever situated.
- 19.3 The charge created under clause 19.2(b) of this Agreement is a fixed charge over your property. However, if that charge is not legally and fully effective as a fixed charge then, for so long as and to the extent it may not be so legally and fully effective, that charge is a floating charge until such time as it becomes a fixed charge by virtue of clause 19.4 of this Agreement.
- 19.4 Any floating charge created under this Agreement will become a fixed charge automatically without the need for any notice or action by LLS immediately prior to or, if that would not result in the fixed charge being legally and fully effective, contemporaneously with, the occurrence of any Default.
- 19.5 The Security Interest created under this Agreement is in addition to and enforceable independently of any other security interest, guarantee or security, including the charge or charges created by clauses 19.2(b), 19.3 and/or 19.4 of this Agreement.
- 19.6 The Security Interest granted under this Agreement is a continuing security until LLS releases all property the subject of the Security Interest, despite any intermediate payment, discharge, settlement or other matter. Your obligations under this Agreement continue despite any full or partial release of the property the subject of the Security Interest and no full or partial release of such property will release the Renter from personal liability under this Agreement until all money has in fact been received by LLS.
- Registration of security interest*
- 19.7 LLS is at liberty to register its security interest, as a purchase money security interest ("PMSI") or otherwise, under the PPS Law. You must do anything (such as obtaining consents and signing documents) which LLS requires for the purposes of:
- ensuring that LLS's security interest is enforceable, perfected and otherwise effective under the PPS Law;
  - enabling LLS to gain first priority (or any other priority agreed to by LLS in writing) for its security interest; and
  - enabling LLS to exercise rights in connection with the security interest.
- 19.8 My recover from you the cost of doing anything under these terms and conditions, including but not limited to registration fees.
- Priority of security interest*
- 19.9 LLS and you intend that the security interest created under this Agreement takes priority over all other security interests and other interests in the property the subject of the security interest at any time other than security interests that are specifically agreed in writing between LLS and you or as mandatorily preferred by law.

# LIFESTYLE LOGISTICS SERVICES – TRADING TERMS

19.10 Nothing in this Agreement restricts LLS from claiming that the security interest created under this Agreement is a purchase money security interest in respect of all or part of the property the subject of the Security Interest.

19.11 You may require LLS to release the property the subject of the Security Interest if LLS is satisfied that:

- (a) all payments owing under this Agreement have been irrevocably paid in full;
- (b) You have complied with all of its obligations under this Agreement;
- (c) if a Default has occurred, LLS has not sold or agreed to sell any property the subject of the Security Interest and is not deemed to have taken any property in satisfaction of any payments owing under this Agreement or pursuant to the Security Interest or the PPS Law.

19.12 The rights of LLS under this Agreement are in addition to, and not in substitution for, LLS's rights under any other law (including PPS Law) and LLS may choose whether to exercise rights under the PPS Law, enforce the terms of these terms and conditions, and/or under other law, as it sees fit.

## *Consequences of default, powers and rights*

19.13 If a Default occurs:

- (a) LLS may by notice to you declare that all or any part of the payments due and payable under any invoice or invoices are immediately due and payable and, upon receiving such a notice, you must immediately pay the amount claimed to be due and payable in that notice to LLS;
- (b) the Security Interest created under this Agreement will become immediately enforceable; and
- (c) any floating charge created under this Agreement will become a fixed charge in accordance with clause 19.4 of this Agreement.

19.14 While a Default subsists, regardless of whether LLS has appointed a Receiver, LLS may, without demand or notice to anyone (unless notice is required by any law), do all things that a secured party with a security interest in, or a mortgagee or an absolute owner of, the property the subject of the Security Interest can do, and exercise all rights, powers and remedies of a secured party with a security interest in, or a mortgagee or an absolute owner of, the property the subject of the Security Interest.

19.15 Without limiting any other clause in this Agreement or the provisions of the PPS Law, You agrees that, by force of this Agreement and at any time while a Default subsists, LLS may:

- (a) seize any personal property the subject of the Security Interest;
- (b) dispose of any property the subject of the Security Interest in such manner and generally on such terms and conditions as LLS thinks desirable, including by private or public sale, lease or license; and
- (c) otherwise do anything that You could do in relation to the Personal Property.

19.16 Without limiting the rights conferred on LLS by the PPS Law, LLS and You acknowledge that the following provisions of the PPSA confer specific rights on LLS:

- (a) section 123 (seizing collateral);
- (b) section 126 (apparent possession);
- (c) section 128 (secured party may dispose of collateral);
- (d) section 129 (disposal by purchase); and
- (e) section 134(1) (retention of collateral).

## *Contracting-out and waiver*

19.17 To the extent that Chapter 4 of the PPS applies to the Security Interest, the following provisions of the PPS Law do not apply and, for the purposes of section 115 of the PPSA, are "contracted out" of this Agreement in respect of all personal property to which that section can be applied:

- (a) section 95 (notice of removal of accession to the extent it requires LLS to give notice to the Renter);
- (b) section 96 (retention of accession);
- (c) section 121(4) (notice to grantor);
- (d) section 125 (obligations to dispose of or retain collateral);
- (e) section 130 (notice of disposal to the extent it requires LLS to give notice to the Renter);
- (f) section 129(2) and 129(3);
- (g) section 132(3)(d) (contents of statement of account after disposal);
- (h) section 132(4) (statement of account if no disposal);
- (i) section 135 (notice of retention);
- (j) section 142 (redemption of collateral); and
- (k) section 143 (reinstatement of security agreement).

19.18 You waive your rights to receive a verification statement in relation to registration events in respect of commercial property under section 157 of the PPS Law.

## *Confidentiality*

19.19 LLS and You agree not to disclose information of the kind that can be requested under section 275(1) of the PPS Law. You must do everything necessary on your part to ensure that section 275(6)(a) of the PPS Law continues to apply to you. The Agreement in this clause is made solely for the purposes of allowing LLS the benefit of section 275(6)(a) and LLS shall not be liable to pay damages or any other compensation or be subject to injunction if LLS breaches this clause.

## *Security interests*

19.20 You must not create, purport to create or permit to be created any 'security interest' (as defined in PPS Law) in the Goods other than with the express written consent of LLS.

19.21 You must take all steps including registration under PPS Law as may be required to:

- (a) ensure that any security interest arising under or in respect of the sub-hire is enforceable, perfected and otherwise effective under the PPS Law;
- (b) enabling You to gain (subject always to the rights of LLS) first priority (or any other priority agreed to by LLS in writing) for the security interest; and
- (c) enabling LLS and Customer to exercise their respective rights in connection with the security interest.

19.22 LLS may recover from You the cost of doing anything under this clause, including registration fees.

## **20 INSPECTION AND ACCEPTANCE**

20.1 You may inspect the Goods on delivery or receipt and must provide notice to LLS within forty-eight (48) hours of delivery if you allege any complaint.

20.2 The return of any Goods must be at the expense of you and will only be accepted by LLS if LLS accepts the return of the Goods in writing and the Goods are in a saleable

condition. LLS reserves the right to charge a handling fee of 10% of the purchase price for any Goods returned to LLS for its sale or disposal of the Goods.

## **21 GENERAL**

21.1 This contract is deemed to have been entered into in the State of Queensland. Any legal action arising out of, or in respect of the contract must be brought only in the State of Queensland. LLS and you further agree to issue any proceedings in the Brisbane registry of the appropriate Court having monetary jurisdiction over the matter.

21.2 If any part or provision of these Trading Terms is invalid, illegal or unenforceable, this will not affect any other part or provision.

21.3 A provision of or a right under these Trading Terms may not be waived or varied except in writing signed by whoever is to be bound.

21.4 If LLS elects to delay or not to exercise some or all of its rights under these Trading Terms, it will not constitute a waiver of LLS's rights.

21.5 Expiry or termination of the Services by LLS does not affect any rights in connection with a breach of these Trading Terms before then.

## **22 DEFAULT**

22.1 You must pay all invoices due and owing to LLS on or before 30 days from the date of invoice unless a prior written agreement has been made with LLS. Failing to pay an invoice within 30 days of the date of invoice constitutes an event of default by you ('Default').

22.2 Payment must be made by you to LLS without any set off or deduction against any other amount whatsoever.

22.3 All outstanding invoices become immediately due and payable in the event of Default on payment by LLS of any invoice or account, regardless of whether or not some invoices may not otherwise have become due for payment.

22.4 Any amount that remains unpaid for 60 days from the date of invoice incurs interest at the rate of 2.5% per month or part thereof as an administration charge. You agree that this is a fair and reasonable charge and is directly relevant to the likely damage that LLS might suffer as a result of non-payment by you. Interest will be calculated on all outstanding amounts from the date of issue of the invoice.

22.5 Any unpaid amounts that may from time to time be overdue to LLS and any interest charged is recoverable by LLS from you as either a liquidated or unliquidated debt.

22.6 In the event of default on payment by you, you will be liable for all losses, liabilities, costs and expenses (including but not limited to debt recovery and legal expenses, including commission charged by debt recovery agents and solicitor's fees, disbursements and other costs) on a full indemnity basis or on a solicitor and own client basis whichever is the higher, incurred by LLS seeking to recover the default amount.

22.7 You hereby charge your interest in any and all land registered in your name as security for payment of monies you owe LLS.

22.8 You indemnify LLS against any claim arising against it in relation to the monies owed pursuant to the quotation or in relation to the transportation or storage of the Goods.

## **23 CREDIT**

23.1 LLS may at any time without notice, terminate or suspend your right to receive Goods from LLS on credit and LLS is not liable for any damages, costs, penalties or charges incurred by you as a result of the non-supply of Goods by LLS.

## **24 JURISDICTION**

24.1 This contract is deemed to have been entered into in the State of Queensland. Any legal action arising out of, or in respect of the contract and/or its interpretation must be brought only in the State of Queensland or another jurisdiction if it is deemed appropriate by LLS. The parties further agree to issue any proceedings in the Brisbane registry of the appropriate Court having monetary jurisdiction over the matter or another jurisdiction if it is deemed appropriate by LLS.

## **25 CANCELLATION**

25.1 You do not have a right to cancellation unless agreed in writing between LLS and you. If agreed in writing, you must exercise your right to cancellation not later than seven (7) days prior to the estimated date of provision of Goods to you. On cancellation, any deposit paid by you to LLS is forfeited by you to LLS.

25.2 If any Goods have already been purchased, prepared or provided by LLS to you at the time you have made a cancellation, you are liable for the full cost of the Goods already incurred by LLS at the time of cancellation.

25.3 Where you have caused any delay or cancellation, you agree that any deposit paid by you to the Company is not to be refunded to you.