

Standard Terms and Trading Conditions

TL ENTERPRISES (WA) Pty Ltd (ACN 636 886 658)
(the **Company**)

[This *Standard Terms and Trading Conditions* shall be construed with and forms an integral part to the booking form or order from the Company to the Customer]

1. Agreement to buy and sell the Goods and provision of Services

- (a) This agreement commences on the date it is made and ends when terminated in accordance with any express right of termination set out in this agreement.
- (b) The Company carries on the business of importing industrial and commercial products and equipment from China into Australia.
- (c) In return for payment of the Price specified in relation to each of the Goods by the Company to the Customer, the Company sells, and the Customer buys the Goods on these Trading Conditions, together with the provision of the Services associated with the sale and supply of the Goods.
- (d) The sale of the Goods and the provision of the Services are arranged or performed by the Company subject only to these Trading Conditions which constitute the entire agreement between the Company and the Customer.
- (e) No person has the authority of the Company to waive or vary these Trading Conditions.
- (f) The sale of Goods and the provision of Services by the Company are governed solely by these Trading Conditions which, shall prevail over any terms and conditions of the Customer and any terms and conditions contained in any transport document including any bill of lading, waybill or consignment note except to the extent provided for in these Trading Conditions.
- (g) In respect of the Services, the Company acts as agent only for the Customer and the Customer employs and authorises the Company as its agent to contract either in the Company's own name as principal or as agent with any subcontractor for the performance of any of the Services, including for the carriage, movement, transport or storage of the Goods or for the performance of all or any part of the Services pursuant to or ancillary to these Trading Conditions.
- (h) Any such contract may be made upon any terms of contract whatsoever used by the subcontractor with whom the Company may contract for any of the Services and may be made upon any terms and subject to any conditions of any contract which the subcontractor may in a particular case require in the ordinary course of business in connection with the carriage, importation and warehousing of the Goods, including in every case terms which may limit or exclude liability and/or any term that the subcontractor may employ any other subcontractor for the performance of any of the Services.
- (i) The Customer expressly acknowledges and agrees that any subcontractor whose services have been subcontracted by the Company in respect of any of the Services may further subcontract any of the Services to any party or other subcontractor on the same terms as provided to the Company above. Whilst not in any way lessening the effect of these Trading Conditions, to the extent permissible at law, the Company shall not be liable for any loss or damage to the Goods whilst not in its possession.

2. Placement, acceptance, and delivery of orders

- (a) The Customer must order Goods from the Company in writing, based on the booking form as may be prescribed by the Company from time to time.
- (b) Each order must specify:
 - (i) the date of the placement of the order;
 - (ii) the quantity and description of the Goods ordered; and
 - (iii) a preferred delivery date for the Goods, subject to the Company's advise the Customer within the estimated number of days whether it is possible to deliver the Goods and the Customer expressly acknowledges that any

indication as to the delivery date remains only an estimation that may change from time to time during the term of the agreement and is not a definite date of arrival or delivery.

- (c) Where required by ABF, the Company reserves the right to open and weigh all packages and containers of the Goods and do any other thing necessary to inspect all Goods at its discretion and at the Customer's expense.
- (d) The Company may decline any order received from the Customer by written notice to the Customer within 7 business days of receipt of the order by the Company without assigning any reason.
- (e) Any order not declined under this clause binds the Company.
- (f) The Company must use its best endeavours, as the case may be agreed,
 - (i) to deliver each order to the location specified by the Customer, or
 - (ii) prepare each order for collection at the Company's nominated premises by an agent or courier of the Customer, between the normal business hours of the Company on any day Monday to Friday (other than public holidays)
- (g) If delivery is at the Company's nominated premises by an agent or courier of the Customer, the Company will as soon as each order is ready for collection notify the Customer in writing and the Customer must within 2 business days of receiving notification that an order is ready for collection remove the order from the Company's nominated premises, failing which:
 - (i) at the Company's discretion, the Goods would be warehoused or otherwise held at any place or at any time be removed from any place at which they may be warehoused or otherwise held to any other place to be warehoused or otherwise held, and in each and every case at the Customer's risk; and
 - (ii) the Company will be entitled to charge for that warehousing in addition to all applicable charges for the sale and the carriage of the Goods or the provision of any Service hereunder.

3. Payment of Price, Revision of Price, Brokerage and Duties

- (a) Unless stated otherwise, the Price is exclusive of GST. All amounts due to the Company in Australia are payable in Australian dollars. The Company is entitled to charge a currency conversion premium when converting receivables into Australian currency.
- (b) The Customer must pay the Price, plus the requisite GST, in relation to each order to the Company:
 - (i) in accordance with the terms required by the Company whether a deposit is required and if so, whether the deposit is and equals to a percentage of the Price to be paid upfront; and
 - (ii) in the manner required by the Company whether payment is to be made by direct debit into a bank account or by cheque or "Cash on Delivery".
- (c) The Customer must pay interest on any outstanding amount not paid by the stipulated due date for payment of the Price. Unless otherwise agreed, interest will be calculated on the basis of the Reserve Bank of Australia's cash rate as published from time to time plus a percentage of 2% per annum to be calculated on daily accrual basis from the due date until the outstanding amount is paid in full.
- (d) The Price for the Goods are subject to revision, if:
 - (i) any changes occur in the rates of freight, insurance premiums, warehousing, statutory fees or any other charges applicable to the supply

- and delivery of the Goods or the provision of the Services; or
- (ii) a change in law, regulation, statutory instrument, or Government Ruling or of any requirement of a Government Authority causes an increase in the costs associated with supply and delivery of the Goods and the provision of the Service by the Company, including without limitation, through the introduction of fees, levies, charges, duties or tax,
- in which case, the Customer expressly acknowledges and agrees that the Company is entitled to recover such additional costs incurred by it and the fees with notice or, if it is not reasonably practicable, without notice to the Customer, and the Company shall under no circumstances be precluded from raising a debit in respect of any additional costs, fee or disbursements, notwithstanding that a previous quote for the Price or debits (whether excluding or partly including the items now sought to be charged) had been raised and whether or not any notice was given that further debits were to follow.
- (e) The Customer authorises the Company and its subcontractors, but with no obligation on the part of the Company and its subcontractors to advance any duties, taxes, imposts, outlays or charges at any port or place in respect of the Goods and the Customer indemnifies the Company for the reimbursement of such disbursements and for payment of any fine, expense, loss or damage incurred by the Company in connection therewith.
- (f) The Customer acknowledges and agrees that the Company may receive allowances, brokerages and commissions from shipping and forwarding agents, insurance brokers, airlines, and any other persons with whom the Company deals pursuant to this agreement and that the Company shall retain all such allowances, brokerage and commission for its own account and shall not be obliged to disclose receipt of the same or account to the Customer for all or any part of them.

4. Warranties

- (a) The Customer (on behalf of itself, the consignor and the consignee) warrants to the Company that:
- (i) the person customarily dealing with the Company is authorised to sign the Customer's letter of instruction or standard order form, waybill or consignment note, if and where required by the Company, and warrants that he or she has the authority of the Customer to accept delivery. Without prejudice to the foregoing warranty, the Customer undertakes to indemnify the Company in respect of any liability whatsoever or howsoever caused in respect of the Goods to any person who claims to have, has or may have had such authority;
- (ii) pending the delivery and full payment for the Price of the Goods, it has not granted and will not grant to any other person a Security Interest in respect of the Goods;
- (iii) it will maintain appropriate insurance in respect of the Goods as soon as the risk of the Goods passes to the Customer, and will not do anything which might void any insurance policy held by the Customer or the Company;
- (iv) it will for purpose of this agreement and purchase of the Goods, provide all documents, information and assistance required by the Company to comply with the requirements of the Government Authorities in an accurate and timely fashion as required by those Government Authorities; and
- (v) it will maintain as confidential the terms of the Authority and these Trading Conditions.
- (b) The Company warrants the accuracy of all markings and brandings of the Goods, descriptions, values and other particulars furnished for the carriage, customs,

consular and that the Goods are packed to withstand the ordinary risks of handling, storage and carriage, having regard to their nature. To the maximum extent permitted by law, all warranties or guarantees expressed or implied (whether by custom or law) in respect of the carriage of the Goods or any other Service provided by the Company or any of its subcontractor to the Customer pursuant to these Trading Conditions, are excluded.

- (c) The Company must endeavour that each order is safely and securely packed for transportation to or collection by the Customer having regard to:
 - (i) the fragility and perishability of the Goods;
 - (ii) the distance the Goods are likely to travel; and
 - (iii) the method of transportation used to transport the Goods.

5. Passing of title and rights in relation to Goods

- (a) Title to Goods constituting an order free of encumbrances and all other adverse interests will not pass to the Customer upon delivery of the Goods until and unless full payment of the Price the Goods constituting an order is made to Company by the Customer, the Customer's nominated agent or courier, as the case may be.
- (b) The parties agreed, for purposes of section 20 of the *Sale of Goods Act 1895* (WA), risk in each order passes to the Customer upon delivery of that order to the Customer or collection of that order by the Customer's agent or courier as the case may be, irrespective of the Company's title to the Goods or right to repossess the Goods as a holder of the Security Interest.
- (c) If the Company agrees to delivery without the Customer's payment for the Price in full for the Goods, the Company does not forego the right to repossess the Goods and the Company continue to retain title over the Goods, in which case, the Customer agrees and grants to the Company a Security Interest over those Goods to secure payment of the Price and grants to the Company the right to repossess the Goods on that basis even though delivery of the Goods has occurred. In this circumstances, the Customer expressly acknowledges and further agrees that this clause constitutes the creation of a Security Interest as defined under section 12 of the PPSA.
- (d) The Company reserves the rights in relation to the Goods until all accounts owed by the Customer to the Company are fully paid. These are rights:
 - (i) to ownership of the Goods;
 - (ii) to enter the Customer's premises (or the premises of any associated company or agent where the Goods are located) without liability for trespass or any resulting damage and retake possession of the Goods; and
 - (iii) subject to, and in accordance with, PPSA, to keep or resell any Goods repossessed.
- (e) If the Customer resells the Goods or products manufactured using the Goods, the Customer must hold part of the proceeds of any such sale, as represents the invoice price of the Goods sold or used in the manufacture of the Goods sold, in a separate identifiable account as the beneficial property of the Company. The Customer must pay this amount to the Company upon request. Despite these provisions, the Company is entitled to maintain an action against the Customer for the Price and the risk of the Goods must pass to the Customer upon delivery.
- (f) Prior to title in the Goods passing to the Customer under the terms of this agreement, the Customer agrees that:
 - (i) the Customer has no right or claim to any interest in the Goods to secure any liquidated or unliquidated debt or obligation the Company owes to the Customer;

- (ii) the Customer cannot claim any lien over the Goods;
 - (iii) the Customer will not create any absolute or defeasible interest in the Goods in relation to any third party except as may be authorised by the Seller; and
 - (iv) where the Customer is in actual or constructive possession of the Goods:
 - (A) the Customer will not deliver them or any document of title to the Goods to any person except as directed by the Company; and
 - (B) it is in possession of the Goods as a bailee of those Goods and owes the Company the duties and liabilities of a bailee.
- (g) The Company and the Customer agree that:
- (i) the property of the Company in the Goods remains with the Company until the Company has been paid in full for the Goods under all individual order for the supply of the Goods;
 - (ii) the Customer is a bailee of the Goods until property in them passes to the Customer and this bailment continues in relation to each of the Goods until the price of the Goods has been paid in full; and
 - (iii) pending payment in full for the Goods, the Customer:
 - (A) must not supply any of the Goods to any person outside of its ordinary or usual course of business;
 - (B) must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business; and
 - (C) must not remove, deface or obliterate any identifying plate, mark or number on any of the Goods.
- (h) If the Customer supplies any of the Goods to any person before all moneys payable by the Customer have been paid to the Company, the Customer agrees that:
- (i) it holds the proceeds of re-supply of the Goods on trust for and as agent for the Company immediately when they are receivable or are received;
 - (ii) it must either pay the amount of the proceeds of re-supply to the Company immediately when they are received, or pay those proceeds into an account with a bank or a financial institution or deposit-taking institution as trustee for the Company;
 - (iii) any accessory or item which accedes to any of the Goods by an act of the Customer, or of any person at the direction or request of the Customer, becomes and remains the property of the Company until the Company is paid; and
 - (iv) if the Customer fails to pay for the Goods within the period of credit (if any) extended by the Company to the Customer, subject to, and in accordance with, the PPSA, the Company may recover possession of the Goods at any site owned, possessed or controlled by the Customer and the Customer agrees that the Company has an irrevocable licence to do so.

6. Termination

- (a) In the absence of any breach of this agreement, neither party may terminate this agreement save and except in the following circumstances:
 - (i) A party enters into any composition or arrangement with its creditors or has a receiver appointed over any of its assets or is the subject of any resolution or petition for winding up or judicial management (other than for the purpose of amalgamation or reconstruction).
 - (ii) A party is in material breach of any of its obligations under this agreement; and where the breach is capable of remedy but the said party fails to remedy the breach for a period of 2 business days after receipt of a written notice by the other party requiring rectification of the breach.

- (b) Exercise of the right of termination afforded to either party under this clause will not prejudice the legal rights or remedies which either party may have against the other in respect of a breach of any term, condition or warranty of this agreement.
- (c) The obligations of the parties that by their nature could reasonably be construed as being intended to continue to apply beyond the termination of this agreement will continue to apply.

7. Personal Property Securities Act 2009 (Cth) (PPSA)

- (a) Where the relevant sub-clause (d) applies, this agreement is a security agreement.
- (b) The interest of the Company in the Goods and all proceeds from the sale of the Goods by the Customer to a third party is a security interest.
- (c) The Customer consents to the Company registering its security interest on the Personal Property Securities Register and agrees to provide all assistance reasonably required by the Company to facilitate registration.
- (d) Until title in the Goods has passed to the Customer as contemplated by clause 7, the Customer agrees not to in any way assign, charge, lease or otherwise deal with the Goods in such a manner as to create a security interest over the Goods in favour of the Customer or any third party. The parties agree that this clause will not prohibit the Customer from selling the Goods in the ordinary course of business.
- (e) The Customer waives its rights to receive any notice under the PPSA (including notice of verification statement) unless the notice is required by that Act and cannot be excluded.
- (f) The Company and the Customer agree that this agreement and all related information and documents are confidential (Confidential Information) and will not be disclosed to unauthorised representatives or third parties, except to the extent disclosure is permitted by this agreement or required by law. The Company and the Customer agree that the Company will not disclose the Confidential Information pursuant to a request under section 275(1) of the PPSA.
- (g) Unless the Goods are used predominantly for personal, domestic or household purposes, the Company and the Customer agree that each of the following requirements or rights under the PPSA does not apply to the enforcement of the Seller's security interest in the Goods or of this agreement:
 - (i) any requirement for the Company to give the Customer a notice of removal of accession;
 - (ii) any requirement for the Company to give the Customer a notice of the Seller's proposed disposal of the Goods;
 - (iii) any requirement for the Company to include in a statement of account, after disposal of the Goods, the details of any amounts paid to other secured parties;
 - (iv) any requirement for the Company to give the Customer a statement of account if the Company does not dispose of the Goods;
 - (v) any right the Customer has to redeem the Goods before the Company exercises a right of disposal; and
 - (vi) any right the Customer has to reinstate this agreement before the Company exercises a right of disposal of the Goods.

8. Acknowledgements and agreement in relation to international carriage and shipping

- (a) The Customer acknowledges and agrees, that the terms of carriage of the Goods are done pursuant to or under any mandatory applicable law (including the *Carriage of Goods by Sea Act 1991*, the *Civil Aviation (Carrier's Liability) Act 1959* or any of the international conventions referred to therein or otherwise compulsorily applicable and as amended from time to time).
- (b) Subject to the express written instructions of the Customer, the Company reserves the right to choose or vary the means, route and procedure to be followed in respect of the supply, carriage and delivery of the Goods and the provision of the Services to be performed in respect of the Goods. For this purpose, the Company is entitled to adopt any procedure to be followed in the handling, storage and transportation of the Goods and is entitled and authorised to engage sub-contractors to perform all or any of the functions required of the Company upon such terms and conditions as the Company in its absolute discretion may deem appropriate.
- (c) The Customer expressly authorises the Company to complete the delivery and carriage of the Goods or performance of the Services with reasonable dispatch subject to the right of the Company to substitute alternate carriers or Service providers without notice to the Customer having regard to any circumstances arising from international trade and prevailing diplomatic relations between Australia and China, the costs of international shipping and other means of delivery and carriage of the Goods or performance of the Services.
- (d) Where the transport of the Goods extends or requires transport outside and beyond the terms provided for in the international convention, statute, Law, bill of lading or airway bill, the Customer further acknowledges that the Company may be required to enter into a further contractual agreement with the forwarder or carrier regarding that portion of transport of the Goods in order to limit liability on behalf of the forwarder or carrier, or where the transport of the Goods was unforeseen, the limitation of liability provisions in place for the foreseen transport will extend to the unforeseen transport, even where that liability provision does not envision transport of that kind, and in which case, the Company reserves all rights to vary the Price to reflect any additional fees or charges or levies imposed under the said contractual agreement for the transport of the Goods.
- (e) The Customer acknowledges and agrees, that it shall comply with (and will be solely responsible for compliance with) all applicable laws and Government regulations of any country to, from, through or over which the Goods may be carried, including those relating to packing, carriage, storage, customs clearance, delivery or other Services in respect of the Goods, and shall furnish such information and provide such documents as may be necessary to comply with such laws and regulations. The Company shall not be liable to the Customer for loss or expense due to the Customer's failure to comply with this provision. The Company will not be in breach of any of its obligations to the Customer or liable for any loss suffered by the Customer arising from or connected with the Company's compliance with any law, including disclosing confidential information to government authorities.
- (f) The Customer acknowledge that Goods moving by airfreight or seafreight are subject to the applicable Airfreight Convention and the applicable international treaties including the Hague Rules. The Customer's recovery of loss or damage, if

any, is against the airline or seafreight carrier and is limited in accordance with the Airfreight Convention, the Hague Rules or any other Conventions that may be applicable. In the event of any loss or damage suffered by the Customer whilst the Goods are in the possession of the airline or seafreight carrier, the Company will seek to recover on behalf of the Customer from the principal carrier amounts payable under the Conventions as they are applicable. The Customer will indemnify, defend and hold the Company harmless against any claims for loss or damage to their Goods incurred whilst they were in the possession of the airline carrier.

- (g) The Customer acknowledges and agrees, that all Goods be packed and restrained consistent with the latest edition of the Load Restraint Guide published by the National Transport Commission, Australia (the "Guide"). The Company, its subcontractor or agent may open and inspect the freight to ensure compliance with the Guide. Should it be necessary to unpack and reload freight to ensure compliance this will be at the Customer's expense.
- (h) The Customer acknowledges and agrees, that imported containers found to be over-mass or otherwise inconsistent with supplied documentation (e.g. VGM, CWD, transport documentation) will not be transported. Sourcing alternative suitable vehicle units and/or reloading will be at the Customer's expense.
- (i) Without limiting the generality of the foregoing, Customer further acknowledges and agrees that:
 - (i) the Company's or the Company's subcontractor's or agent's Reporting Obligations may require the Company, its agents, employees and subcontractors to disclose a breach or possible breach of any Customs Related Law to any Government Authority;
 - (ii) none of the Company, its agents, employees and subcontractors will have any liability to the Customer or any other party arising from compliance with its Reporting Obligations or the conditions of its licences; and
 - (iii) the Customer must indemnify and keep indemnified the Company, its agents, employees and contractors from all costs and liabilities they incur in relation to their Reporting Obligations in respect of the Services or in relation to the Goods, including all legal costs which include, without limitation any legal costs incurred in determining whether a Reporting Obligation has arisen.
- (j) The Customer agrees that the Company may treat or otherwise deal with the Goods as directed or required by the Department of Agriculture in relation to any biosecurity or other risks.

9. Power of attorney

- (a) By agreeing to these Trading Conditions, the Customer constitutes and appoints the Company, its agents, employees and subcontractors as its lawful attorney with full irrevocable power and authority to take any and all action and to execute any and all documents and instruments, in the name of and on behalf of the Customer, as may be required or for the purpose of carriage and importation of the Goods.
- (b) Notwithstanding that the Customer appoints the Company as its attorney, the power and authority vested in the attorney is effective if and when the Customer fails to comply with a request within the required time or in the event of a default of the Customer.
- (c) The Customer acknowledges that the Company will not be liable for any loss or penalty incurred by the Customer as a result of:
 - (i) any delay by an attorney in exercising their powers; or
 - (ii) an attorney not exercising its powers.

- (d) The Customer indemnifies and will keep indemnified the Company against any reasonable loss or costs it suffers or incurs in exercising powers under this power of attorney.

10. Communications with the Company

- (a) Wherever it is necessary, for the purpose of these Trading Conditions or any other purpose whatsoever, for instructions to be given to the Company, such instructions will be valid only if given in writing, acknowledged by the Company in writing and given in sufficient time in all the circumstances for the Company reasonably to be able to adopt the instructions.
- (b) Standing or general instructions, or instructions given late, even if received by the Company without comment, shall not be binding upon the Company.
- (c) If the Company adopts standing or general instructions, or instructions given late, for one or more transaction for the Customer or any other party, that does not in any way affect the validity of those instructions in relation to any future transaction. No attempt by the Company to adopt late instructions will constitute an acceptance by the Company or affect the validity of those instructions.

11. GST

- (a) If the Company is or may become liable to pay GST in relation to any Supply under these Trading Conditions:
 - (i) unless otherwise stated, all charges quoted are exclusive of the GST imposed under the GST Law;
 - (ii) the Customer shall be responsible for payment of any GST liability in respect of the Services as provided by the Company or by third parties or Sub-contractors which shall be payable at the same time as the GST-exclusive consideration;
 - (iii) the Customer must also pay GST on the Taxable Supply to the Company, calculated by multiplying the GST exclusive consideration by the GST Rate;
 - (iv) GST shall be payable by the Customer without any deduction or set-off for any other amount at the same time as the GST exclusive consideration is payable;
 - (v) the Company agrees to provide the Customer with a Tax Invoice to enable the Customer to claim an Input Tax Credit; and
 - (vi) if the Customer defaults in the payment on the due date of any amount payable under this clause, then without prejudice to any other remedies of the Company and upon demand by the Company, the Customer shall pay to the Company an amount equal to the amount of any damages or interest or additional GST that may become payable by the Company due to the default of the Customer.

12. Lien

- (a) The Company shall have a particular and general lien on all Goods of the Customer and any documents relating thereto and on any other goods or cargo of the Customer in the possession or control of the Company or any documents relating thereto and on any other goods or cargo of the Customer which may come into the possession or control of the Company or any documents relating thereto for all sums payable by the Customer to the Company (whether overdue or not) and for that purpose the Company shall have the right to sell any such goods by public auction or private treaty without further notice to the Customer.
- (b) The lien will also cover the Company's costs and expenses relating to the exercise

of its lien and right of sale, including the Company's reasonable legal fees. For the purposes of the lien, the Company will retain constructive possession of the Goods and the lien and rights granted by this clause will survive delivery of the Goods. The Company is entitled to retain the proceeds of sale of the Goods in respect of all sums due and owing from the Customer.

- (c) The lien and rights granted by this clause shall survive the termination of this agreement and the Company shall be entitled to retain the proceeds of sale of the Goods in respect of any outstanding amounts for the Price. The Company sells or otherwise disposes of such Goods pursuant to this clause as principal and not as agent and is not the trustee of the power of sale.

13. Indemnity by the Customer

- (a) Without limiting the effect of these Trading Conditions, the Customer agrees to indemnify and keep indemnified the Company for:
 - (i) any loss or damage directly or indirectly caused by the Goods or by breach of these Trading Conditions by the Customer;
 - (ii) amounts of Customs Duty, GST and other payments made to Government Authorities by the Company on behalf of the Customer;
 - (iii) any penalties payable by the Company (whether pursuant to a court order or pursuant to an Infringement Notice) due to the Customer:
 - (A) providing information that is incorrect or misleading;
 - (B) omitting to provide material information required to the Government Authorities;
 - (C) providing information in a manner which does not enable the Company, its employees, agents and subcontractor to comply with the requirements of the Government Authorities for reporting in prescribed periods; and/or
 - (D) failing to provide information or documentation requested by the Company, its employees, agents and subcontractor;
 - (iv) penalties associated with the failure by the Customer to maintain or provide its documents or records in the manner and at the time contemplated by the Government Authorities;
 - (v) demurrage or other charge for detention or failure to take delivery of the Goods or return of any items provided by the Company as part of the delivery of the Goods;
 - (vi) any Customs Duty, GST or other charge assessed against the Company in relation to the supply and sale of the Goods and the provision of the Services;
 - (vii) any charges levied by Government Authorities or other costs incurred by the Company for examination and treatment of the Goods;
 - (viii) any costs, charges or fees, including legal fees, incurred in obtaining any Customs Advices whether or not the Company directed or requested the Customer to obtain the Customs Advices;
 - (ix) any costs, charges or penalties associated with the Company, its agents or subcontractors being deemed to be the Shipper in any arrangements for the transport or movement of the Goods for the Customer whether payable to a Government Authority or otherwise; and
- (b) The Customer agrees to pay any amounts claimed pursuant to the indemnity within 7 days of demand by the Company.

14. Insurance

- (a) Prices quoted are calculated at the date of issue of a relevant quotation and may or may not include insurance.

- (b) By default, it is agreed that the Customer must insure the Goods for their full insurable or replacement value (whichever is the higher) with an insurer licensed or authorised to conduct the business of insurance in the place where the Customer carries on business.
- (c) Where no express instructions from the Customer is given in respect of the insurance on the Goods, the Company is entitled to exercise its discretion to effect insurance on the Goods as to the value of the Goods and charge the Customer accordingly.
- (d) All such insurances effected by the Company are subject to the usual exceptions and conditions of the policies of the insurer or underwriter taking the risk.
- (e) At the discretion of the Company such insurance may name the Customer or owner as insured. In the event of any dispute in regard to liability under any such insurance policy for any reason whatsoever the Customer or other insured shall have recourse against the insurer or underwriter only and the Company shall have no liability or responsibility in relation to any such insurance policy.

15. Storage after 14 days

- (a) Where the Goods are stored by the Company for the Customer and they are uncollected for whatever reason they may be sold or returned at the Company's option at any time after the expiration of 14 days from a notice in writing sent to the Customer at the address which the Customer gave to the Company on delivery of the Goods.
- (b) All costs, charges and expenses incurred by the Company and arising in connection with the storage, sale or return of the Goods shall be paid by the Customer and may be deducted from the proceeds of the sale of the Goods.
- (c) In respect of this clause, the Company sells or otherwise disposes of such Goods as principal and not as agent and is not trustee of the power of sale.
- (d) In the event that any sale of Goods pursuant to this clause does not provide sufficient proceeds to discharge all liability of the Customer to the Company, the Customer acknowledges that it is not released from the remainder of the liability to the Company merely by sale of the Goods.

16. Destruction of Dangerous Goods

In the event that the Goods are found to be Dangerous Goods they may be destroyed or otherwise dealt with at the sole discretion of the Company or any other person in whose custody they may be at the relevant time. If such Goods are accepted under arrangements previously made in writing they may nevertheless be destroyed or otherwise dealt with if they become dangerous to other goods or property. The expression 'goods likely to cause damage' includes goods likely to harbour or encourage vermin or other pests and all such goods as fall within the definition of hazardous and dangerous goods in the legislation governing carriage by rail in the States and Territories of Australia and OHS laws.

17. Inspection

The Company, its employees, agents and sub-contractors may without liability open any package or other container which the Goods are placed or carried to inspect or weigh the Goods to determine their specification, weight, nature or condition of the Goods.

18. Delivery and pillaged Goods

- (a) Where the Price includes the delivery charges and costs, the Company is authorised to deliver the Goods at the address given to it by the Customer.
- (b) The Company is deemed to have satisfied its delivery obligations under the Service Agreement if the Company delivers the Goods to the address given by the Customer and obtains from a person at that address a receipt or a signed delivery docket.
- (c) If the Goods are landed from any vessel in a damaged or pillaged condition and an examination might be held or other action taken by the Company in respect thereof, no responsibility attaches to the Company for any failure to hold such examination or take such other action unless the Company has been given sufficient notice to enable it to arrange for such examination or for the taking of such other action as the case may be.

19. Storage of Goods pending delivery

- (a) Without limiting the effect of clause 2(g), pending forwarding and delivery, the Goods may be warehoused or otherwise held at any place or places at the sole discretion of the Company at the Customer's risk and expense.
- (b) In circumstances where the Company stores the Goods, the Company may, by notice in writing, require that the Customer remove the Goods for any reason whatsoever within 2 business days from receipt of a notice delivered to the address which the Customer gave to the Company on delivery of the Goods.
- (c) If the Customer fails to do so, the Company may remove the Goods and store them in such a manner and in such a place as the Company thinks appropriate at the Customer's expense and risk.

20. Force majeure

- (a) The Company shall not be liable to the Customer for any breach or failure to perform its obligations under these Trading Conditions or any damage or loss to Goods resulting from one or more of the following:
 - (i) perils, dangers and accidents of the sea or other navigable waters;
 - (ii) act of God;
 - (iii) act of war;
 - (iv) act of terrorism;
 - (v) act of public enemies;
 - (vi) arrest or restraint of princes, rulers or people, or seizure under legal process;
 - (vii) strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
 - (viii) pandemic;
 - (ix) riots and civil commotions;
 - (x) saving or attempting to save life or property at sea; or
 - (xi) any other cause arising beyond the reasonable control of the Company, without the actual fault or privity of the Company and without the actual fault or privity of the agents or servants of the Company.

- (b) If the occurrence of any event contemplated in this clause causes a delay of over 5 business days in any obligation of the Company, then the delivery of the Goods and the provision of Services may be terminated by notice in writing by either party to the other party. However, all costs, charges and expenses already incurred by the Company prior to the termination or arising in connection therewith shall be paid by the Customer.
- (c) Any claim made against the Company, its servants or sub-agents is limited to the full extent permitted by Law. To the extent that the liability of the Company is limited by any Convention, statute, Law or contract, and that limitation exceeds the limitation of liability pursuant to these Trading Conditions then the liability pursuant to that Convention, statute, Law or contract shall apply.

21. Intellectual property

- (a) The Customer acknowledges that the Company shall retain all Intellectual Property in any documents or things created by the Company in the course of delivery of the Goods and provision of its Services pursuant to these Trading Conditions;
- (b) Without limiting the effect of subclause 24(a) the Customer acknowledges and agrees that the Company shall retain all results of any research, enquiries or investigations undertaken by it in the course of delivery of the Goods and provision of its Services and is not obliged to provide those results to the Customer, unless the documents form part of the specification the operation manual of the Goods.

22. Non-Consumer Contract and Non-Small Business Contract provisions

- (a) This clause only applies where this agreement between the Company and the Customer is not a Consumer Contract or Small Business Contract within the meanings of the Australian Consumer Laws.
- (b) The Customer must not assign the Customer's rights or transfer the Customer's obligations under this agreement without the Company's prior written consent.
- (c) The Company may assign the Company's rights and obligation under this agreement without the Customer's consent.
- (d) No modification amendments or other variation of the Trading Conditions shall be valid and binding on the Company unless made in writing and duly executed by and on behalf of the Company.
- (e) The Company shall not be liable in any event for any Consequential Loss whether the Company had knowledge that such damage might be incurred.
- (f) The Company its servants and agents shall not be responsible for loss or damage of any kind whatsoever arising out of the sale of the Goods and provision of its Services to the Customer (whether caused by negligence or wilful default by the Company its servants or agents), and the Customer agrees to indemnify the Company in respect of any claims made by sub-contractors or third parties concerning the provision of Services by the Company and the following matters are expressly covered by this limitation of liability:
 - (i) any liability to pay amounts to Government Authorities (including, without limitation, customs duty or GST) that would not have otherwise been payable or any penalties (including penalties imposed directly on the Company, its servants or agents) as a result of their reliance on incorrect information provided by the Customer, consignor or consignee

- of the Goods, or their respective agents whether imposed by court or Infringement Notice;
- (ii) any liability incurred (including any penalties imposed directly on the Company, its servants or agents) as a result of or in connection with any finding that Certificates of Origin produced pursuant to a relevant Free Trade Agreement are invalid;
 - (iii) any liability concerning the making of any statement, forecast, information or giving advice in relation to the liability of the Customer to pay any amounts owing to any Government Authorities;
 - (iv) any liability in respect of the loss, misdelivery, deterioration, non-delivery, contamination, evaporation or damage to the Goods or Consequential Loss arising as a result however caused;
 - (v) any loss or depreciation of market value attributable to delay in forwarding the Goods or failure to carry out instructions of the Customer;
 - (vi) loss, damage, expense or additional cost arising from or in any way connected with marks or brands on, weight, numbers, content, quality, description of the Goods;
 - (vii) loss or damage resulting from fire, water, explosion or theft;
 - (viii) loss, damage or delay occasioned by examination of the Goods by any of the Government Authorities;
 - (ix) loss, damage or delay occasioned by treatment of the Goods by any of the Government Authorities (including without limitation, the border control and restrictions imposed by the Commonwealth Government in response to COVID-19 or its variant or future pandemic, or any fumigation or decontamination or other treatment by the Department of Agriculture);
 - (x) any losses, liabilities, costs, charges or penalties incurred by the Company, its agents or subcontractors as a result of or in connection with the Company complying with any conditions or Laws in relation to the sale and delivery of the Goods or the provision of its Services; and
 - (xi) loss, damage or delay occasioned by delay in the carriage of the Goods or handling of the Goods in the course of the carriage of the Goods.

23. Definitions and interpretation

1.2 Definitions

In these Trading Conditions, the following defined terms will have the following defined meanings:

ABF means the Australian Border Force as defined in the *Australian Border Force Act 2015* and includes, where applicable, the Department of Home Affairs, the Australian Border Force Commissioner and the Comptroller-General of Customs;

Airfreight Convention means either:

- (a) the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999; or
- (b) the Convention for the Unification of Certain Rules relating to International Carriage by Air, signed at Warsaw on 12 October 1929; either unamended or amended by the Hague Protocol 1955; at Guatemala City 1971, by the additional Protocol No 3 of Montreal 1975 and/or by the additional Protocol No. 4 of Montreal 1975;

whichever may be applicable;

Australian Consumer Law means Schedule 2 of the *Competition and Consumer Act 2010 (Cth)*;

Biosecurity Act means the *Biosecurity Act 2015 (Cth)* and any succeeding Legislation and any regulations made pursuant to the Biosecurity Act;

Company means TL Enterprises (WA) Pty Ltd (ACN 636 886 658) (the **Company**) and the nominees, agents, sub-agents and employees of the Company;

Consequential Loss means any loss or damage arising from a breach of contract or agreement (including breach of this agreement), tort, or any other basis in law or equity including, but without limitation to, loss of profits, loss of revenue, loss of production, loss or denial of opportunity, loss of bargain, loss of access to markets, loss of goodwill, indirect or remote or unforeseeable loss, loss of business reputation, future reputation or publicity, wasted expenditure, any loss or gain for which restitution damages is capable of being awarded, or any similar loss which was not contemplated by the parties at the time of entering this agreement;

Consumer Contract means a contract between the Company and the Customer for a supply of Services to a Customer that is an individual whose acquisition of the Services is wholly or predominantly for personal, domestic or household use or consumption, in the manner provided for under Subsection 23(3) of the Competition and Consumer Act;

Corporations Act means the *Corporations Act 2001 (Cth)*;

Customs means the Department of Home Affairs and its departments including the ABF;

Customs Act means the *Customs Act 1901* (as amended from time to time), and any succeeding Legislation and any regulations made pursuant to the Customs Act;

Customs Duty has the same meaning as **Duty** in the Customs Act;

Customs Related Law has the same meaning as in Section 4B of the Customs Act;

Dangerous Goods means Goods or articles or substances of which Goods are comprised which are capable of posing a risk to health, safety, property or the environment and fall within one or more of the UN classifications of dangerous goods or are otherwise liable to cause damage to any person or property whatsoever;

Department of Home Affairs means the Department of Home Affairs and its departments including the ABF, the Australian Border Force Commissioner and the Comptroller-General of Customs;

Director of Biosecurity has the same meaning as defined in the Biosecurity Act;

Goods mean the goods or article of manufacture described in the separate booking form or the order between the Company and the Customer, and may include the chattels, articles or things tendered for carriage or bailment or other services by the Company to the Customer as may be agreed.

Government Authorities means, without limitation, all Government departments and agencies, in Australia or in any other country, with responsibility for the import and export of goods, the collection of revenue on the import and export of goods, and the transport and movement of those goods to include, without limitation, the ABF, the Department of Home Affairs the Australian Maritime Safety Authority, the Department of Infrastructure, Regional Development and Cities, the Department of Agriculture, and the ATO;

Government Rulings means any advice, ruling, decision or precedent provided or published by the ABF or any Government Authorities, including without limitation a

customs tariff classification advice as may be issued by Customs;

GST has the same meaning as under the GST Law and means the Goods and Services Tax imposed under the GST Law;

GST Law means the *A New Tax System (Goods and Services Tax) Act 1999*;

GST Rate means the rate of GST under the GST Law;

Hague Rules means the International Convention for the Unification of Certain Rules relating to Bills of Lading signed at Brussels on 25 August 1924, or those rules as amended by the Protocol signed at Brussels on 23 February 1968 (the Hague Visby Rules) and the SDR Protocol (1979);

Infringement Notice means a notice issued by a Government Authority, including without limitation, a penalty notice or an infringement notice, issued in respect of an offence or an alleged offence, by which a penalty is imposed without the need for a court appearance;

Input Tax Credit has the same meaning as **Input Tax Credit** under the GST Law;

Intellectual Property means all intellectual property, including each of the following, whether registered or not, and arising under Australian or any other law; any licence or other right to use or grant the use of any of the following; and any application or right to be registered as proprietor or user of any of the following:

- (a) any business name;
- (b) any trade or service mark;
- (c) any patent, invention or discovery;
- (d) any copyright;
- (e) any circuit layout or computer software;
- (f) any design;
- (g) any trade secret, know-how or confidential information;
- (h) any moral rights; or
- (i) any right that is similar to any of the above.

Laws means any International Conventions, treaties or domestic laws, regulations or guidelines of the Commonwealth of Australia, any of the States, Territories or Municipalities of Australia, or of any country from which, through which or into which the Goods are carried and including, without limitation all regulations, ordinances and directions made pursuant to the Laws and any successor Laws;

OHS Laws means any occupational health and safety legislation, regulations or guidelines, codes of conduct or policies of the Commonwealth of Australia or any of the States, Territories or Municipalities of Australia;

PPSA means the *Personal Property Securities Act 2009* (Cth);

Reporting Obligations means the obligations of the Company to report the arrival, carriage and movement of goods pursuant to the Customs Act or any Customs Related Law or as required by any Government Authorities or which the Company, at its sole discretion, considers to be necessary to comply with the conditions or obligations of its Licences;

Security Interest has the same meaning as under the PPSA;

Services means any performance of work by the Company for the Customer in anyway connected with the sale and supply of the Goods including, without limitation:

- (a) Carriage of the Goods from the country of origin of manufacture;
- (b) Advice or information provided in connection with the Services;
- (c) Customs clearance;
- (d) Delivery services;
- (e) Warehousing or storage services subject to clause 2(g) and clause 19(b);

- (f) Making any reports, entries and declarations required by any Government Authorities;
- (g) Quoting the ABN as may be required under the GST Law;
- (h) Providing all necessary information and completing all necessary documentation and reports for the purposes of any Government Authorities; and
- (i) Entering into contracts with sub-contractors on behalf of the Customer to enable the carriage, import, export, storage or transportation of the Goods;

Shipper means a legal entity or person named on the bill of lading or sea waybill or equivalent multimodal transport document as shipper and/or who (or in whose name or on whose behalf) a contract of carriage has been concluded with a shipping company or any other definition of 'shipper' as set out in any Laws or as determined by any Government Authorities;

Small Business Contract has the meaning given to that term in the Australian Consumer Law;

Supply has the same meaning of Supply under the GST Law;

Tax Invoice has the same meaning as Tax Invoice under the GST Law;

Taxable Supply has the same meaning as Taxable Supply under the GST Law;

Trading Conditions means these TL Enterprise WA Pty Ltd's Standard Terms and Trading Conditions;

PPSA means Personal Property Securities Act 2009 (Cth);

1.3 Interpretation

- (a) These Trading Conditions and any collateral agreements made by the Company with the Customer wherever made shall be governed and construed according to the laws of Western Australia and shall be subject to the exclusive jurisdiction of the courts of Western Australia and those courts which can hear appeals from those courts.
- (b) All the rights, immunities and limitations of liability contained herein shall continue to have their full force and effect in all the circumstances notwithstanding any breach of any term or condition hereof or any collateral agreement by the Company and notwithstanding that the Services have been provided, the Goods delivered as directed by the Customer or the Authority having expired or been terminated.
- (c) In the interpretation of these Trading Conditions the singular includes the plural and vice versa, and words importing corporations mean and include natural persons and vice versa.
- (d) In the interpretation of these Trading Conditions, a business day means any day that is not a Saturday or Sunday on which banks are open for general banking business in Western Australia.
- (e) No agent or employee of the Company has the authority to waive or vary these Trading Conditions unless the Company approves such waiver or variation in writing. Any forbearance by the Company in enforcing the Trading Conditions does not constitute a waiver. If the Company waives a breach of a Trading Condition, the waiver does not operate as a waiver of another breach of the same or any other Trading Condition or as a continuing waiver.
- (f) Where any provision (or part thereof) of these Trading Conditions is held to be illegal or unenforceable, it may be severed and shall in no way affect or prejudice

the enforceability of any other term or condition herein.

- (i) Reference to any Laws or to any section or provision of any Laws includes any statutory modifications, re-enactments, substitutions or replacements thereof and all Laws issued thereunder.
- (j) Reference to any Convention or any Article of any Convention includes any modifications, substitutions or replacements thereof.
- (k) References to clauses and subclauses are references to clauses and subclauses in these Trading Conditions.
- (l) Headings have no effect on interpretation of the Trading Conditions.
- (m) These Trading Conditions do not affect any rights the Customer has under the Competition and Consumer Act.

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