

**1. Definitions**

- 1.1 “GMK” shall mean G.M. Kane & Sons Pty Ltd T/A GMK Logistics and its successors and assigns or any person acting on behalf of and with the authority of G.M. Kane & Sons Pty Ltd T/A GMK Logistics (including its employees, agents or Sub-contractors).
- 1.2 “Sub-Contractor” shall mean and include:
  - (a) railways or airways operated by the Commonwealth or any state or any other country or by any corporation; or
  - (b) any other person or entity with whom GMK may arrange for the carriage or storage of any Goods the subject of the contract; or
  - (c) any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clauses 1.2(a) and 1.2(b).
- 1.3 “Client” means the person/s or any person acting on behalf of and with the authority of the Client requesting GMK to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
  - (a) if there is more than one Client, is a reference to each Client jointly and severally; and
  - (b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
  - (c) includes the Client’s executors, administrators, successors and permitted assigns.
- 1.4 “Consignee” shall mean the person to whom Goods are to be delivered by way of GMK’s Services.
- 1.5 “Goods” shall mean all cargo together with any container, packaging, or pallet(s) to be moved from one place to another by way of GMK’s Services, or to be stored by GMK.
- 1.6 “Services” shall mean all Services supplied by GMK to the Client (which shall be as described on the quotations, invoices, consignment note, airway bills, manifests, sales order or any other forms as provided by GMK to the Client) and shall include any advice or recommendations.
- 1.7 “Services” shall mean all services supplied by GMK to the Client (including, but not limited to, anything done or to be done in relation to the Goods, or the provision of any services ancillary to the Goods such as moving, storing or leaving the Goods at any warehouse, yard, terminal, wharf or other place or area, loading or unloading the Goods from any vehicle, vessel or other conveyance, stowing or packing the Goods, or fumigating, transshipping, or otherwise handling the Goods, or anything else done in relation thereto including the offering of any advice or recommendations.
- 1.8 “Price” shall mean the cost of the Services (plus any GST where applicable) as agreed between GMK and the Client subject to clause 3 of this contract.
- 1.9 “GST” means Goods and Services Tax (GST) as defined within the “A New Tax System (Goods and Services Tax) Act 1999” (Cth).

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

- 2.1 Nothing in this agreement is intended to have the affect of contracting out of any applicable provisions of the Fair Trading Acts in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.
- 2.2 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer’s statutory rights.
- 2.3 Liability of GMK arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the Competition and Consumer Act 2010 or howsoever arising, is limited to any of the following as determined by GMK:
  - (a) rectifying the Services; or
  - (b) supplying the Services again; or
  - (c) paying for the Services to be supplied again.
- 2.4 If GMK is required to rectify, re-supply, or pay the cost of re-supplying the Services under clause 2.3 or the CCA, but is unable to do so, then GMK may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

**3. Acceptance**

- 3.1 Any instructions received by GMK from the Client for the supply of Services shall constitute acceptance of the terms and conditions contained herein.
- 3.2 These terms and conditions may only be amended with the consent of both parties in writing, and shall prevail to the extent of any inconsistency with any other document or contract between the Client and GMK.
- 3.3 These terms and conditions are to be read in conjunction with GMK’s quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by GMK to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.
- 3.4 These terms and conditions together with any printed on the reverse side hereof, contain the whole of the contract between the Client and GMK in relation to the provision of Services and any previous contracts are hereby negated.
- 3.5 The use of a Client’s own form (and/or terms and conditions) shall in no way derogate from these conditions, the whole of which shall, notwithstanding anything contained in any such form (and/or terms and conditions), constitute terms of the contract so entered into. Any provisions in any such form (and/or terms and conditions) which is contrary to any provisions of these Terms and Conditions shall, to the extent of such inconsistency, be inapplicable.
- 3.6 The Client shall do anything necessary or desirable to give (and must not do anything which may prevent) full effect being given to this contract.
- 3.7 Any exercise of discretion by GMK shall be absolute and unfettered and may be unreasonable or arbitrary.
- 3.8 None of GMK’s agents or representatives are authorised to make any representations, statements, promise, warranty, conditions or contracts not expressed by the manager of GMK in writing, nor is GMK bound by any such unauthorised statements.

**4. Electronic Transactions Act**

4.1 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 9 of the Electronic Transactions Act 2000 (New South Wales & South Australia), the Electronic Transactions Act 2001 (Australian Capital Territory), the Electronic Transactions (Victoria) Act 2000, the Electronic Transactions Act 2003 (Western Australia), the Electronic Transactions (Northern Territory) Act 2000, Section 14 of the Electronic Transactions (Queensland) Act 2001, Section 7 of the Electronic Transactions Act 2000 (Tasmania), (whichever is applicable), or any other applicable provisions of that Act or any Regulations referred to in that Act.

**5. Errors and Omissions**

5.1 The Client acknowledges and accepts that GMK shall, without prejudice, accept no liability in respect of any alleged or actual error(s) and/or omission(s):  
(a) resulting from an inadvertent mistake made by GMK in the formation and/or administration of this contract; and/or  
(b) contained in/omitted from any literature (hard copy and/or electronic) supplied by GMK in respect of the Services.

5.2 In the event such an error and/or omission occurs in accordance with clause 5.1, and is not attributable to the negligence and/or wilful misconduct of GMK; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

**6. Change in Control**

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

**7. Price And Payment**

7.1 At GMK's sole discretion the Price shall be either;  
(a) as indicated on invoices provided by GMK to the Client in respect of Services provided;  
(b) GMK's current Price at the date of Delivery of the Goods according to GMK's current rates schedule; or  
(c) GMK's quoted Price (subject to clause 7.2) which shall be binding upon GMK provided that the Client shall accept in writing GMK's quotation within thirty (30) days (quarantine and statutory charges or origin or destination additional charges are not included, unless specifically stated at the time of quoting);  
(d) have been calculated by weight, measurement or value, on the basis of particulars furnished by, or on behalf of, the Client. GMK may, at any time, open any container or any other package or unit in order to re-weigh, or re-value or re-measure or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.

7.2 GMK reserves the right to change the Price:  
(a) if a variation to GMK's quotation is requested or required (including as to the nature or quantity of the Goods, nature and location of the collection and/or Delivery address, facilities available for packing, loading or unloading, weather conditions or delays beyond the control of GMK, Delivery times or date or otherwise, etc.);  
(b) to reflect any increases to GMK in the cost of providing the Services which are beyond the reasonable control of GMK (including, without limitation, increases in the cost of labour or materials, foreign exchange fluctuations, administration costs (including photocopying, postage, etc.), or increases in fuel costs, taxes or customs duties, insurance premiums or warehousing costs, or for any other services, facilities or resources provided by GMK);  
(c) for any delay over thirty (30) minutes in either loading and/or unloading (from when GMK arrives onsite), and/or any overnight or extended storage occurring other than from GMK's fault.

7.3 GMK may by giving notice to the Client increase the Price of the Services to reflect any increase in the cost to GMK of providing the Services where such increases are beyond the reasonable control of GMK (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties, insurance premiums, or warehousing costs).

7.4 GMK may at any time (at its sole discretion) amend its current Price list upon fourteen (14) days written notice to the Client.

7.5 In the event GMK appears likely to incur any extraordinary expenses in connection with a consignment GMK shall immediately consult the Client and shall only proceed with the Services with the Client's approval to do so. The Client acknowledges and agrees that once such approval is given that they shall immediately become liable to reimburse GMK for all such extraordinary costs then incurred.

7.6 The Carrier may charge freight by weight, measurement or value, and may at any time re-weigh, or re-value or re-measure, or require the Goods to be re-weighed, or re-valued or re-measured and charge proportional additional freight accordingly.

7.7 Provided that the Consignee holds an account with GMK, any charges payable for any consignment where the associated consignment note is marked "Receiver to Pay" will be invoiced by GMK directly to the Consignee. If the Consignee does not pay the full amount of the invoice by the due date, then the Client shall be held liable for any unpaid amount together with any reversal fees charged by GMK to the Client (at its sole discretion).

7.8 At GMK's sole discretion a deposit may be required.

7.9 At GMK's sole discretion;  
(a) payment shall be due on Delivery of the Goods, or  
(b) payment shall be due before Delivery of the Goods.

7.10 Time for payment for the Services shall be of the essence and will be stated on the invoice, consignment note, airway bills, manifests or any other forms. If no time is stated then payment shall be due fourteen (14) days following the date of the invoice.

7.11 Payment will be made by cash, or by cheque, or by bank cheque, or by credit card (a surcharge may apply per transaction), or by direct credit, or by any other method as agreed to between the Client and GMK.

7.12 The Client shall not be entitled to set off against or deduct from the Price any sums owed or claimed to be owed to the Client by GMK.

7.13 GST and other taxes and duties that may be applicable shall be added to the Price except when they are expressly included in the Price.

## 8. Provision of Services

- 8.1 GMK is authorised to “**Delivery**” the Goods at the address given to GMK by the Client for that purpose and it is expressly agreed that GMK shall be taken to have delivered the Goods in accordance with this contract if at that address GMK obtains from any person a receipt or a signed Delivery docket for the Goods.
- 8.2 If the Delivery address or the site Delivery location is unattended, or if Delivery cannot be effected by GMK (whether due to lack of equipment at the relevant location or otherwise) then GMK at its sole discretion may:
- (a) deposit the Goods at that place and such action will be deemed to constitute valid Delivery; or
  - (b) return the Goods to the sender and charge the Client any costs incurred by GMK in so doing; or
  - (c) store the Goods, in which case the Client shall be liable for, and shall reimburse GMK for all costs and expenses incurred in connection with such storage.
- 8.3 GMK may deliver the Goods by separate instalments (in accordance with the agreed Delivery schedule). Each separate instalment shall be invoiced and paid for in accordance with the provisions in this contract.
- 8.4 Delivery of the Goods to a third party nominated by the Client is deemed to be Delivery to the Client for the purposes of this agreement.
- 8.5 It is the Client's sole responsibility to address adequately each consignment and to provide written Delivery instructions to enable effective Delivery.
- 8.6 If the Client instructs GMK to use, or it is agreed GMK will use, a particular method of carriage, handling or storage then GMK give priority to that method where convenient for GMK but the end method of carriage, handling or storage shall be as determined by GMK in its sole discretion.
- 8.7 GMK may in its absolute discretion, notwithstanding any prior instruction or agreement between the Client and GMK, select the route of carriage or place of storage for the Goods.
- 8.8 If any identifying document or mark is lost, damaged, destroyed or defaced then GMK may open any document, wrapping, package or other container to inspect the Goods in order to determine their nature, condition, ownership or destination.
- 8.9 GMK may refuse to make a site Delivery for any reason whatsoever and clauses 8.2(b) & (c) shall then immediately apply. This clause shall apply in particular if:
- (a) site Delivery documentation in a form satisfactory to GMK has not been completed and executed by the Consignee; or
  - (b) the equipment required to unload the Goods is not available at the site Delivery location; or
  - (c) access to the premises at the site Delivery location is restricted.
- 8.10 In the event that GMK stores the Goods under clause 8.2(c) then GMK will re-deliver the Goods to the Consignee at a time mutually agreed between the parties. The Client shall be liable for any costs incurred by GMK in both the initial Delivery and the re-Delivery.
- 8.11 Where the Goods are accepted for forwarding by rail to an address at a place where GMK has no receiving depot then the Goods will be deemed duly delivered when they are delivered to the nearest railhead.
- 8.12 If the Consignee requests GMK upon Delivery to make a subsequent site Delivery of the Goods, then GMK may at GMK's discretion charge either the receiver or the sender the relevant fee as set out in the authorisation form.
- 8.13 If the Consignee requests GMK to assist in unloading the Goods (either by hand or through the use of any machinery, including forklifts) then GMK shall only do so on completion of a written release by the Consignee acknowledging that they accept full liability for all property loss or damage, or injury to any person that may result from the actions of GMK in providing such assistance, notwithstanding that GMK may at its sole discretion return the Goods to their depot without any liability to the Consignee whatsoever should they believe that the risk in providing such assistance is unacceptable.
- 8.14 The Client shall be deemed to have received all Goods in full and in good order and condition unless a written claim is lodged within two (2) days of the termination of any storage arrangements, Delivery of the Goods, or a request for removal of the Goods by GMK, whichever is the earlier.
- 8.15 If the Client requests GMK to provide proof of Delivery of a consignment, then GMK will provide such proof only upon payment of the relevant fee as set out in GMK's Price list from time to time.
- 8.16 Any time specified by GMK for the Delivery of Goods is an estimate only and GMK will not be liable for any loss or damage incurred by the Client as a result of Delivery being late. However, both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that GMK is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then GMK shall be entitled to charge the Client any additional costs incurred by GMK as a direct consequence of any resultant delay or rescheduling of the Delivery.

## 9. GMK Not Common Carrier

- 9.1 GMK is not a Common Carrier and will accept no liability as such. All articles are carried or transported and all storage and other Services are performed by GMK subject only to these conditions and GMK reserves the right to refuse the carriage or transport of articles for any person, corporation or body, and the carriage or transport of any class of articles at its discretion.

## 10. Client-Packed Containers

- 10.1 If a container has not been stowed by or on behalf of GMK, GMK shall not be liable for loss of, or damage to, the Goods caused by:
- (a) the manner in which the container has been stowed; or
  - (b) the unsuitability of the Goods for carriage or storage in containers; or
  - (c) the unsuitability or defective condition of the container.

## 11. Nomination Of Sub-Contractor

- 11.1 The Client hereby authorises GMK (if it should think fit to do so) to arrange with a Sub-Contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon Delivery of the said Goods to such Sub-

Contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as GMK. In so far as it may be necessary to ensure that such Sub-Contractor shall be so entitled GMK shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-Contractor.

**12. GMK's Servants or Agents**

12.1 The Client undertakes that no claim or allegation shall be made against any servant or agent of GMK which attempts to impose upon any of them any liability whatsoever in connection with the Goods and, if any such claim or allegation should nevertheless be made, to indemnify GMK and any such servant or agent against all consequences thereof.

**13. Charges Earned**

13.1 GMK's charges shall be considered earned in the case of Goods for carriage as soon as the Goods are loaded and dispatched from the Client's premises.

**14. Dangerous Goods**

14.1 Unless otherwise agreed in advance (in writing) with GMK the Client shall not tender for carriage or for storage any explosive, inflammable or otherwise Dangerous Goods. The Client shall be liable for and hereby indemnifies GMK for all loss or damage whatsoever caused by any Dangerous Goods.

**15. Client's Responsibility**

15.1 The Client expressly warrants to GMK that the Client is either the owner or the authorised agent of the owner of any Goods or property to which this contract for cartage and/or storage shall apply and by entering into this contract the Client accepts these conditions of contract for the Consignee as well as for all other persons on whose behalf the Client is acting.

15.2 If any person makes a claim or commences proceedings against GMK alleging an interest in any part of the consigned Goods then the Client indemnifies GMK from and against all liability, injury, loss or damage suffered by GMK as a result of such actions.

15.3 The Client warrants that the Client has complied with all relevant laws and regulations in relation to the safety, health, condition, packaging, labelling and carriage of the Goods and that the Goods are packaged in a manner to withstand ordinary risks associated with their carriage and storage having regard to their nature or condition. GMK may at any time request the Client by notice in writing to remove the Goods within a specified time and if such notice is not complied with, may dispose of (including by way of sale), remove or destroy at the expense of the Client any or all of the Goods which in the opinion of GMK have become or are likely to become deleterious, deteriorated, objectionable, unwholesome, damaged or contaminated. If Goods are sold under this clause then such sale shall be made under the provisions contained in clause 21.1 below.

**16. Carriage and Return of Pallets**

16.1 The Client is at all times responsible for the return of any pallets (used during the provision of the Services) to the pallet owner or any other nominated person as instructed by the pallet owner. The Client agrees that they shall not transfer any pallets to any account that they may hold with a pallet hirer.

**17. Loss Or Damage**

17.1 Subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods (including but not limited to chilled, frozen, refrigerated or perishable Goods):

- (a) GMK shall not be under any liability for any damage to, loss, deterioration, mis-Delivery, delay in Delivery or non-Delivery of the Goods (whether the Goods are or have been in the possession of GMK or not) nor for any instructions, advice, information or service given or provided to any person, whether in respect of the Goods or any other thing or matter, nor for any consequential or indirect loss, loss of market or consequences of delay; and
- (b) the Client will indemnify GMK against all claims of any kind whatsoever, howsoever caused or arising brought by any person in connection with any matter or thing done, said or omitted by GMK in connection with the Goods.

**18. Insurance**

18.1 The Client acknowledges that:

- (a) the Goods are carried and stored at the Client's sole risk and not at the risk of GMK; and
- (b) GMK is under no obligation to arrange insurance of the Goods and it remains the Client's responsibility to ensure that the Goods are insured adequately or at all; and
- (c) under no circumstances will GMK be under any liability with respect to the arranging of any such insurance and no claim will be made against GMK for failure to arrange or ensure that the Goods are insured adequately or at all.

**19. Claims**

19.1 Notwithstanding clauses 17 and 18, in the event that the Client believes that they have any claim against GMK then they must lodge any notice of claim for consideration and determination by GMK within fourteen (14) days of the date of Delivery, or for non-Delivery within fourteen (14) days of the anticipated date of Delivery or the removal or destruction of the Goods.

19.2 The failure to notify a claim within the time limits under clause 19.1 is evidence of satisfactory performance by GMK of its obligations hereunder.

19.3 GMK shall be discharged from all liability unless suit is brought in the proper forum and written notice thereof is received by GMK within nine (9) months of Delivery of the Goods.

**20. Special Terms Relating to the Storage of Goods**

- 20.1 All Goods that are to be stored under this agreement shall be tallied into and out of storage and if the Client (or the Client's representative) is not present at the time of receipt or Delivery of those Goods, as the case may be, then GMK's tally shall be accepted as final.
- 20.2 The Client acknowledges and agrees that (unless specifically advised to GMK) the quality, quantity and condition of the contents of any packages tendered for storage are generally unknown to GMK.
- 20.3 The Client shall ensure that all Goods (and/or containers in which the Goods are packaged) tendered for storage shall be clearly, distinctively, and indelibly branded.
- 20.4 The Client shall immediately notify GMK of any change of the ownership of any Goods which are stored on the Client's behalf under this agreement.
- 20.5 GMK reserves the right at any time to require the removal of any Goods held in storage on the Client's behalf by giving not less than one week's notice to the Client that they wish them to do so.
- 20.6 An inward receipt in relation to Goods stored by GMK shall not constitute a document of title to those Goods, or be negotiable, nor shall any right of the Client storing the Goods be assignable.
- 20.7 GMK shall store the Goods in bulk or in assorted lots at the convenience of GMK unless the Client furnishes GMK, prior to, or at the time of the receipt of the Goods, a manifest showing marks, brands or sizes to be kept and accounted for separately and the class of storage desired in which case the Client shall be liable for all additional costs incurred by GMK in facilitating the particular method of storage chosen.
- 20.8 The Client shall be liable to GMK on demand and at any rate before removal of the Goods from storage, for all charges or fees in connection with handling, loading or unloading, palletising, re-palletising, re-packing and/or Delivery of the Goods, as the case may require, which charges and fees shall be in accordance with GMK's standard Price list, as amended from time to time, and in addition to any storage fee.

**21. Default & Consequences Of Default**

- 21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at GMK's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.
- 21.2 If the Client owes GMK any money the Client shall indemnify GMK from and against all costs and disbursements incurred by GMK in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, GMK's contract default fee, and bank dishonour fees).
- 21.3 Further to any other rights or remedies GMK may have under this contract, if a Client has made payment to GMK, and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by GMK under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.
- 21.4 Without prejudice to GMK's other remedies at law GMK shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to GMK shall, whether or not due for payment, become immediately payable if:
- (a) any money payable to GMK becomes overdue, or in GMK's opinion the Client will be unable to make a payment when it falls due;
  - (b) the Client has exceeded any applicable credit limit provided by GMK;
  - (c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
  - (d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

**22. GMK's Rights To A Lien On Goods**

- 22.1 GMK shall have a right to take a particular and general lien on any Goods owned by the property of the Client and or a third party owner which are in the possession or control of GMK (and any documents relating to those Goods) for all sums owed at any time by the Client or a third party owner to GMK (whether those sums are due from the Client on those Goods or documents, or on any other Goods or documents), and GMK shall have the right to sell such Goods or cargo by public auction or private treaty after giving notice to the Client. GMK shall be entitled to retain the sums due to it, in addition to the charges incurred in detention and sale of such Goods or cargo, from the proceeds of sale and shall render any surplus to the entitled person.
- 22.2 Notwithstanding clause 22.1 nothing shall prejudice GMK's rights to use any of GMK's other rights and remedies contained in this agreement to recover any outstanding charge or fee charges or fees payable in respect of the Goods that were not recovered out the sale of the Goods in accordance with clause 22.1 and no exception shall be taken upon the grounds that the Price realised is less than the full market value of the Goods.

**23. Personal Property Securities Act 2009 ("PPSA")**

- 23.1 In this clause:
- (a) financing statement has the meaning given to it by the PPSA;
  - (b) financing change statement has the meaning given to it by the PPSA;
  - (c) security agreement means the security agreement under the PPSA created between the Client and GMK by these terms and conditions; and
  - (d) security interest has the meaning given to it by the PPSA.
- 23.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions:
- (a) constitute a security agreement for the purposes of the PPSA; and
  - (b) create a security interest in all Goods being transported by GMK over which GMK invokes a lien.
- 23.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which GMK may reasonably require to:

- (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  - (ii) register any other document required to be registered by the PPSA; or
  - (iii) correct a defect in a statement referred to in clause 23.3(a)(i) or 23.3(a)(ii);
  - (b) indemnify, and upon demand reimburse, GMK for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any Goods charged thereby;
  - (c) not register a financing change statement in respect of a security interest without the prior written consent of GMK;
  - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods in favour of a third party without the prior written consent of GMK.
- 23.4 GMK and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 23.5 The Client hereby waives its rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.
- 23.6 The Client waives its rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 23.7 Unless otherwise agreed to in writing by GMK, the Client waives its right to receive a verification statement in accordance with section 157 of the PPSA.
- 23.8 The Client shall unconditionally ratify any actions taken by GMK under clauses 23.3 to 23.5.

#### **24. Security And Charge**

- 24.1 In consideration of GMK agreeing to supply the Goods, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).
- 24.2 The Client indemnifies GMK from and against all GMK's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising GMK's rights under this clause.
- 24.3 The Client irrevocably appoints GMK and each director of GMK as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 24 including, but not limited to, signing any document on the Client's behalf.

#### **25. Privacy Act 1988**

- 25.1 The Client agrees for GMK to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by GMK.
- 25.2 The Client agrees that GMK may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
- (a) to assess an application by the Client; and/or
  - (b) to notify other credit providers of a default by the Client; and/or
  - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
  - (d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.
- 25.3 The Client consents to GMK being given a consumer credit report to collect overdue payment on commercial credit.
- 25.4 The Client agrees that personal credit information provided may be used and retained by GMK for the following purposes (and for other agreed purposes or required by):
- (a) the provision of Goods; and/or
  - (b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Goods; and/or
  - (c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
  - (d) enabling the collection of amounts outstanding in relation to the Goods.
- 25.5 GMK may give information about the Client to a CRB for the following purposes:
- (a) to obtain a consumer credit report;
  - (b) allow the CRB to create or maintain a credit information file about the Client including credit history.
- 25.6 The information given to the CRB may include:
- (a) personal information as outlined in 25.1 above;
  - (b) name of the credit provider and that GMK is a current credit provider to the Client;
  - (c) whether the credit provider is a licensee;
  - (d) type of consumer credit;
  - (e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
  - (f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and GMK has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
  - (g) information that, in the opinion of GMK, the Client has committed a serious credit infringement;
  - (h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars (\$150).
- 25.7 The Client shall have the right to request (by e-mail) from GMK:
- (a) a copy of the information about the Client retained by GMK and the right to request that GMK correct any incorrect information; and
  - (b) that GMK does not disclose any personal information about the Client for the purpose of direct marketing.
- 25.8 GMK will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

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

## **26. Cancellation**

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

## **27. Service of Notices**

- 27.1 Any written notice given under this contract shall be deemed to have been given and received:
- (a) by handing the notice to the other party, in person;
  - (b) by leaving it at the address of the other party as stated in this contract;
  - (c) by sending it by registered post to the address of the other party as stated in this contract;
  - (d) if sent by facsimile transmission to the fax number of the other party as stated in this contract (if any), on receipt of confirmation of the transmission;
  - (e) if sent by email to the other party's last known email address.
- 27.2 Any notice that is posted shall be deemed to have been served, unless the contrary is shown, at the time when by the ordinary course of post, the notice would have been delivered.

## **28. Trusts**

- 28.1 If the Client at any time upon or subsequent to entering in to the contract is acting in the capacity of trustee of any trust ("Trust") then whether or not GMK may have notice of the Trust, the Client covenants with GMK as follows:
- (a) the contract extends to all rights of indemnity which the Client now or subsequently may have against the Trust and the trust fund;
  - (b) the Client has full and complete power and authority under the Trust to enter into the contract and the provisions of the Trust do not purport to exclude or take away the right of indemnity of the Client against the Trust or the trust fund. The Client will not release the right of indemnity or commit any breach of trust or be a party to any other action which might prejudice that right of indemnity.
  - (c) The Client will not without consent in writing of GMK (GMK will not unreasonably withhold consent), cause, permit, or suffer to happen any of the following events;
    - (i) the removal, replacement or retirement of the Client as trustee of the Trust;
    - (ii) any alteration to or variation of the terms of the Trust;
    - (iii) any advancement or distribution of capital of the Trust; or
    - (iv) any resettlement of the trust property.

## **29. General**

- 29.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect that party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.
- 29.2 Except to the extent caused by GMK's negligence, the Client or any third-party owner of the Goods shall be liable for and shall defend, indemnify and hold harmless GMK in respect of any duties, taxes, imposts, levies, deposits and outlays whatsoever levied by any authority, and for all payments, fines, costs, expenses, loss and damage howsoever incurred or sustained by GMK in connection with the Goods and their transportation or storage on behalf of the Client or a third-party owner.
- 29.3 If any provisions of these terms and conditions are inconsistent with the PPSA, the PPSA shall prevail to the extent of that inconsistency.
- 29.4 These terms and conditions and any contract to which they apply shall be governed by the laws of New South Wales and are subject to the jurisdiction of the courts of Sydney, New South Wales.
- 29.5 Without limiting any other provision of these terms and conditions, if GMK in its sole discretion elects to pay any amount to the Client in respect of a damaged consignment, then upon payment of that amount, title in the consignment will pass to GMK.
- 29.6 GMK reserves the right to review these terms and conditions at any time. If, following any such review, there is to be any change to these terms and conditions, then that change will take effect from the date on which GMK notifies the Client of such change. Except where GMK supplies further Services to the Client and the Client accepts such Services, the Client shall be under no obligation to accept such changes.
- 29.7 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.
- 29.8 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.