**Terms and Conditions of Trade**

**THE PARTIES AGREE:**

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# Background

* 1. The Client has approached the Service Provider and requested that the Service Provider provide it with freight forwarding services from time to time.
  2. The Service Provider has agreed to this request and the parties enter into this Agreement in order to record the terms and conditions upon which such services will be provided.

# DEFINITIONS

* 1. In this Agreement unless inconsistent with the context or subject matter:
     1. **“ACL”** means the Australian Consumer Law (as set out in Schedule 2 to the *Competition and Consumer Act 2010* (Cth));
     2. **"Agreement"** means this agreement consisting of the Schedule, these Terms and Conditions of Trade and any Quote;
     3. **“Applicable Laws”** any laws governing or affecting the arrangements contemplated by this Agreement;
     4. **“Cargo”** means any goods to be freighted, as set out in a Quote, or other goods in which the Client has requested the Supplier to supply Services for;
     5. **“Carrier”** means a third party carrier service that provides freight services;
     6. **"Claim"** means any claim, action, demand or proceeding however arising (including under contract, statute, common law or equity) in respect of any Loss or alleged Loss;
     7. **"Client"** means the Client named in the Schedule;
     8. **"Client's Address for Service"** means the email address or address of the Client set out in the Schedule;
     9. **“Corporations Act”** means the Corporations Act 2001 (Cth);
     10. “**Credit Limit**” means the credit limit stated in the Schedule, or such other credit limit approved by the Service Provider in writing;
     11. “**Dangerous Cargo**” means goods which are or may become dangerous, inflammable, radio-active or are damaging in nature and goods likely to harbour or encourage vermin or other pests;
     12. **"Force Majeure"** means an act, omission or circumstance over which the Service Provider could not reasonably have exercised control;
     13. **"GST"** has the meaning given to it in the GST Act;
     14. **"GST Act"** means the A New Tax System (Cargo and Services Tax) Act 1999 (Cth);
     15. **“Guarantor”** means the person(s) (if any) named as Guarantor in the Schedule;
     16. **“Insolvency Event”** means:
         1. a controller (as defined in section 9 of the Corporations Act), administrator or similar officer is appointed in respect of a person or any asset of a person;
         2. a liquidator or provisional liquidator is appointed in respect of a person;
         3. any application (that is not withdrawn or dismissed within seven days is made to a court for an order, or an order is made, or a meeting is convened or a resolution is passed, for the purpose of (i) appointing a person referred to in paragraph i) or ii) of this definition; (ii) winding up or deregistering a person; or (iii) proposing or implementing a scheme of arrangement of a person, other than with the prior approval of the Agent under a scheme of arrangement pursuant to Part 5.1 of the Corporations Act;
         4. any action, proceedings, procedure or step is taken for the purpose of implementing or agreeing (i) a moratorium of any indebtedness of a person; (ii) any other composition, compromise, assignment or arrangement with any creditor or creditors of a person; or (iii) any similar proceeding or arrangement by which the assets of a person are subjected conditionally or unconditionally to the control of its creditors or a trustee;
         5. any event occurs in relation to a person in any jurisdiction that is analogous, or has a substantially similar effect, to those set out in paragraphs i) to iv) of this definition (inclusive); or
         6. a person is or admits in writing that it is, or is declared to be, or is taken under any applicable law to be (for any purpose), insolvent or unable to pay its debts
     17. **"Loss"** meansany loss, liability, cost, charge, expense, tax, duty or damage of any nature whatsoever, including special, incidental, or consequential damages, losses or expenses (howsoever arising or caused, including, without limitation, negligence);
     18. “**Payment Terms**” means the payment terms set out in the Schedule;
     19. “**Personnel**” means the directors, officers, employees, contractors, suppliers, advisers or agents of a party;
     20. **"PPSA"** means the *Personal Property Securities Act 2009* (Cth) and its regulations as amended and in force from time to time;
     21. **"PPS Register"** means the Personal Property Securities Register established under the PPSA;
     22. **“Quote”** means any proposal or quote provided by the Service Provider to the Client in respect of Services;
     23. “**Schedule**”means the Schedule attached to these Terms and Conditions of Trade, or any Schedule which links these Terms and Conditions of Trade;
     24. **"Service Provider"** means the Service Provider named in the Schedule;
     25. "**Service Provider's Address for Service**" means the email address or address of the Service Provider set out in the Schedule;
     26. **"Services"** means freight forwarding services supplied by the Service Provider to the Client from time to time, as contemplated under this Agreement;
     27. **"Services Fee"** means the fees payable by the Client to the Service Provider in respect of the Services;
     28. **“State”** means New South Wales;
     29. **"Tax Invoice"** has the same meaning as in the GST Act; and
     30. **“Term”** means the term of this Agreement.
  2. In this Agreement unless inconsistent with the context or subject matter:
     1. Headings and subheadings are for convenience only and do not affect the interpretation of this Agreement.
     2. References to clauses, schedules, annexures, appendices, attachments and exhibits are references to the clauses of, and the schedules, annexures, appendices, attachments and exhibits to, this Agreement.
     3. References to parties are references to the parties to this Agreement.
     4. References to a party to any agreement or document include that party's permitted assignees and successors, including executors and administrators and legal representatives.
     5. Words denoting the singular include the plural and words denoting the plural include the singular.
     6. Words denoting any gender include all genders.
     7. The word 'person' includes any individual, corporation or other body corporate, partnership, joint venture, trust, association and any government agency.
     8. A reference to a body (other than a party to this Agreement), whether statutory or not, that ceases to exist or has its powers or functions transferred to another body is a reference to the body that replaces it or that substantially succeeds to its powers or functions.
     9. A reference to any agreement or document (including this Agreement) includes any amendments to or replacements of that document.
     10. A reference to a law includes:
         1. legislation, regulations and other instruments made under legislation and any consolidations, amendments, re-enactments or replacements of them;
         2. any constitutional provision, treaty or decree;
         3. any judgment;
         4. any rule or principle of common law or equity,

and is a reference to that law as amended, consolidated, re-enacted, replaced or applied to new or different facts.

* + 1. Any promise, agreement, representation or warranty given or entered into on the part of two or more persons binds them jointly and each of them severally.
    2. Any promise, agreement, representation or warranty given or entered into on the part of two or more persons is for the benefit of them jointly and each of them severally.
    3. No provision of this Agreement will be construed adversely to a party because that party was responsible for the preparation of that provision or this Agreement.
    4. If a period of time begins on a given day or the day of an act or event, it is to be calculated exclusive of that day.
    5. A reference to time is a reference to time in the capital city of the State.
    6. A reference to a day is a reference to a day in the capital city of the State.
    7. A reference to a day is to be interpreted as the period of time commencing at midnight and ending 24 hours later.
    8. If any act is required to be performed under this Agreement by a party on or by a specified day and the act is performed after 5.00 pm on that day, the act is deemed to be performed on the next day.
    9. If any act is required to be performed under this Agreement on or by a specified day and that day is not a business day, the act must be performed on or by the next business day.
    10. A reference to an amount of dollars, Australian dollars, $ or A$ is a reference to the lawful currency of the Commonwealth of Australia, unless the amount is specifically denominated in another currency.
    11. Specifying anything in this Agreement after the terms 'include', 'including', 'includes', 'for example', 'such as' or any similar expression does not limit the sense of the words, description, definition, phrase or term preceding those terms unless there is express wording to the contrary.
    12. Where this Agreement is executed for a party by an attorney, the attorney by executing it declares that the attorney has no notice of revocation of the power of attorney.
    13. This Agreement includes all schedules, annexures, appendices, attachments and exhibits to it.
    14. A reference to writing or written includes email.
    15. Where a word or phrase is defined, other parts of speech and grammatical forms of that word or phrase have corresponding meanings.

# Engagement

* 1. The Client engages the Service Provider and the Service Provider accepts that engagement, to provide the Services during the Term in accordance with the terms of this Agreement.
  2. The Client acknowledges that it has engaged the Service Provider to source and arrange freight services provided by Carriers for the freight of the Client’s Cargo from time to time. The Service Provider acts as an agent of the Client for the purpose of performing duties in connection with the freight of their Cargo, in the account of or in the name of the Client.
  3. The Client acknowledges that the Services are provided to facilitate freight service arrangements between the Client and the Carrier. The Service Provider is not the provider of such freight services, nor does it control the conduct of Carriers.

# INCORPORATION OF CARRIER TERMS

* 1. Any freight services booked with a Carrier are subject to the then current terms and conditions of the relevant Carrier.
  2. The Client acknowledges that they are solely responsible for ensuring that they have read and understood any applicable Carrier terms and conditions (whether or not they are provided by the Service Provider to the Client), and they agree to comply with all obligations thereunder as the supplier of the Cargo. The Service Provider will not be liable for any Loss or damage suffered by the Client in connection with such Carrier terms (regardless of whether the Service Provider brought these to the attention of the Client or not).

# provision of SERVICES

* 1. The Client may request the Service Provider provide Services by submitting a request for services to the Service Provider in a method accepted by the Service Provider, such as by email or phone (each referred to as a **Service Request**). The Service Provider may accept or reject any Service Request in its discretion.
  2. Upon receipt of a Service Request, if the Service Provider is able to provide the requested Services it will provide the Client with a Quote. The Client may accept a Quote by notifying the Service Provider that it accepts the Quote. A Quote may lapse at any time.
  3. Once the Client has accepted a Quote the Service Provider will use reasonable endeavours to book the freight services set out in the Quote with the Carrier. The Client acknowledges and agrees that the supply of Services remains subject to availability and if, for any reason, the Service Provider is unable to proceed with the Services (for example if the relevant Carrier is unable to provide the nominated freight services), the Service Provider reserves the right to cancel the Services (and issue a refund in respect of the fees (if any) paid by the Client for that part of the Services which is cancelled, if applicable).
  4. In the event of any inconsistency between this Agreement and any Quote, the terms contained in the Quote will prevail to the extent of such inconsistency.
  5. Unless otherwise agreed, all Quotes provided to the Client are subject to change.
  6. Once a Client has accepted a Quote it cannot be cancelled by the Client for any reason (except to the extent permitted under this Agreement or by law).

# freight services

* 1. Unless otherwise instructed, the method of carriage of the freight services will be at the discretion of the Service Provider and Carrier.
  2. The relevant Carrier, and not the Service Provider, is solely responsible for honouring any confirmed bookings and making available any freight services booked through the Services.
  3. The legal rights of the Client in connection with the provision of freight services are against the relevant Carrier and not the Service Provider (except to the extent the relevant issue is directly caused by the Service Provider). Specifically, if for any reason the Carrier is unable to provide a freight service or provides negligent freight services, the Client’s rights are against that Carrier and not the Service Provider notwithstanding that the Service Provider may have booked the Carrier’s services. Any bookings by the Service Provider in connection with the Services with a Carrier are deemed to have been made on behalf of the Client.

**Exclusivity**

* 1. The Client acknowledges and agrees that:
     1. the Client engages the Service Provider to provide the Services on an exclusive basis during the Term;
     2. the Client must not make the same or similar arrangements with any third party in relation to freight forwarding services and shipments of Cargo during the Term; and
     3. the Client must not allow any third party to perform services that are the same as or similar to the Services, in relation to the shipments of Cargo during the Term.
  2. For the avoidance of doubt, nothing in this Agreement prohibits the Service Provider from providing services the same as or similar to the Services to other third parties.

**Compliance with Laws**

* 1. The Client acknowledges and agrees that it will not by receiving or requesting the Services:
     1. breach any Applicable Laws, rules and regulations (including any applicable privacy laws); or
     2. infringe the intellectual property rights or other rights of any third party or breach any duty of confidentiality.

**Delay**

* 1. If the Service Provider’s performance of its obligations under this Agreement is prevented or delayed by any act or omission of the Client or its Personnel for a period of at least 21 days, then, without prejudice to any other right or remedy it may have, the Service Provider may:
     1. terminate this Agreement; and/or
     2. invoice the Client for any part or parts of the Services already performed and any Services currently in progress.

# pricing & fees

* 1. Subject to the other terms of this clause, the Services Fee will be as set out in the Quote. All charges from the Carrier for the freight services (regardless of the time these are received, including post-delivery and invoicing) will be passed on to the Client, and the Client agrees to pay such charges, at the same time as paying the Services Fee.
  2. The Client is solely responsible for payment of any disbursements, customs duties and charges, and any import/export duties, taxes and GST in respect of the Cargo and the Services. Such amounts must be paid at the time set out in the Payment Terms or at such other time notified by the Service Provider.
  3. Availability and price of any freight services can change at any time including after a booking has been placed and confirmed by the Service Provider. Price changes may occur by reasons outside the Service Provider’s control including: an increase in weight of Cargo to be freighted, currency fluctuations, surcharges and any other tasks the Carrier carries out (such as a re-weigh of Cargo).
  4. Freight charges are quoted on a rate per kilogram basis. Light and/or bulky freight will be subject to their kilogram equivalents by multiplying the volume of the freight in cubic meters by a factor of 250m3 (**Volumetric Weight**) unless otherwise agreed in writing or by calculating their kilogram equivalents using such other formula utilised by the nominated carrier. The freight charges shall be determined as the greater of the actual dead weight or the Volumetric Weight, unless otherwise stated in the Quote. Item rates will be subject to maximum weights and volumes stated in the Quote. Exceeding the weight or size limits on item rates will incur a multiple charge.
  5. The Client agrees to pay the Service Provider al costs, plus the Services Fee, in accordance with the payment terms set out in the Schedule.
  6. In the event that the Service Provider or the Carrier determines that additional costs are applicable to the Client’s Quote, or the Client subsequently requests amendments to such freight services (such as added weight) then the Service Provider reserves the right to amend the Quote as such, and any additional charges and Services Fee will be payable by the Client.
  7. Subject to any Applicable Laws, all payments made are non-refundable. Please refer to clause 11 for further information.
  8. The Service Provider is not responsible for incorrect charging of freight, customs duties or levies which are not directly caused by the Service Provider. In no circumstances will the Service Provider be liable for a refund of such charges.

# PAYMENT

* 1. The Service Provider will issue a Tax Invoice to the Client for the Services Fee and all other fees and charges payable upon the Cargo at the time determined by the Service Provider.
  2. The Client must pay each Tax Invoice within 7 days of the date of the Tax Invoice, unless otherwise agreed in writing.
  3. All payments must be made by electronic funds transfer to the Service Provider’s nominated bank account.
  4. The Client will also pay to the Service Provider, on demand, on a full indemnity basis, all amounts that the Service Provider may, at its absolute discretion, expend or incur (including legal costs on a solicitor and own client basis and any debt collection agency costs/commissions) as a result of the Client defaulting on any of the terms of this Agreement.
  5. If payment is not made by the Client in accordance with clauses 8.2 to 8.4, then without limitation to any other rights of the Service Provider:
     1. the Client must pay the Service Provider interest on all outstanding monies from the due date until the date of payment at the rate of 10% per annum accruing daily and compounding monthly;
     2. the Service Provider may refuse to supply any further part of the Services to the Client until all outstanding monies, including any accrued interest, are paid in full;
     3. the Service Provider may withhold the Cargo and refuse to deliver them or permit the Client to collect them, and to this end the Service Provider has a lien over such Cargo; and/or
     4. the Service Provider may terminate this Agreement and/or cancel any Quote whereupon the full price for the Services then supplied, whether or not the time for payment under this Agreement has arrived, will be immediately due and payable (this includes any cancellation fees charged by the Carrier following from cancellation of a Quote).
  6. The Client may not withhold payment from the Service Provider or make any deduction from any amount owing without the Service Provider's prior written consent, irrespective of any claim the Client may have against the Service Provider for any thing or matter whether related to the provision of the Services or not.
  7. The Service Provider reserves the right to change the price of the Services it provides to the Client from time to time. Such changes shall not apply retrospectively.

# Terms of credit

* 1. **Credit Limit**
     1. The Service Provider is not obliged to provide any further Services to the Client once the Credit Limit has been reached.
     2. The Service Provider may, at its option, provide further Services to the Client, where to do so will result in the Credit Limit being exceeded and the Client agrees that the Service Provider is expressly authorised to provide those Services and this Agreement will continue to apply in full to all monies owing.
     3. The Service Provider is under no obligation to advise the Client when the Credit Limit has been reached or exceeded.
  2. **Right to refuse further credit or vary the Credit Limit**
     1. The Service Provider may at any time, for any reason whatsoever:
        1. vary the Credit Limit of the Client to increase or decrease the Credit Limit; or
        2. refuse further credit to the Client; or
        3. cancel the Client’s credit account with all Tax Invoices to be paid on prepaid basis only,

without any liability to the Client whatsoever.

* 1. **Personal Information**

The Service Provider is bound by the Australian Privacy Principles in the *Privacy Act 1988* (Cth) in dealing with Personal Information provided by the Client.

# amendments

* 1. Amendments such as a change of dates, or names are subject to the terms of the Carrier and may occur additional costs.

# Cancellations and refunds

* 1. Subject to Applicable Laws, the Services cannot be cancelled as once the Client accepts a Quote the Service Provider books the relevant freight services and at that point changes/cancellations are not possible, unless otherwise agreed by the Service Provider in its discretion.
  2. All payments made to the Service Provider for freight services/charges (excluding any Service Fee retained by the Service Provider) are deemed to be made to the Carrier and the Service Provider is not responsible for any refunds a Carrier may be required to give. Despite this, the Service Provider may refund the Client where the Client seeks a refund from a Carrier and the Carrier has refunded that amount to the Service Provider. The Services Fee is payable to the Service Provider in respect of the Services, and not in respect of freight services. In the event that the fees paid to the Carrier are refunded to the Client, the Client is not entitled to a refund of any Services Fee.
  3. Whilst Carriers may be obliged by law to provide a refund, return or permit a cancellation, the Service Provider makes no representations that any Carrier will comply with such obligations and accepts no responsibility if they fail to do so. All refunds and cancellation fees are subject to the Client’s rights under the ACL.

# Client duties and responsibilities

* 1. **Supply of information, approvals, documents and assistance**

The Client acknowledges and agrees that it will promptly provide all information, documentation, approvals and assistance reasonably required by the Service Provider in order for the Service Provider to provide the Services as soon as possible on being requested to do so. Any delays may delay the Services and may incur additional charges.

* 1. **Freight terms**

The Client must:

* + 1. provide accurate measurements and weights of the Cargo on the consignment note. If the Client fails to do so, then the Carrier may determine so, and the Carrier’s determination will be final and binding;
    2. ensure that all wood packing material, crates, pallets, & dunnage must comply with Quarantine International ISPM 15 regulations and must be free of any bark or the Cargo may not be loaded;
    3. include three copies of the Dock Receipt and ensure appropriate customs paperwork accompanies all Cargo;
    4. ensure that all Cargo are clearly marked/labelled with name of consignee, ID number and relevant shipping labels (as required by the Carrier); and
    5. ensure that the bill of lading instructions are provided when Cargo are tendered to the Carrier and/or 72 hrs prior to vessel arrival. Failure to provide may result in the Cargo being placed on hold. The Client must include this Agreement for instructions for release.

If customs validation is required, the Client must ensure that the Cargo and paperwork is at the terminal no later than four working days prior to vessel arrival. Dangerous Cargo may not be shipped unless with the prior written approval of the Service Provider.

# delivery and release of goods

* 1. The Service Provider is not responsible for any delays of freight services provided by the Carrier.
  2. The parties acknowledge and agree that:
     1. any times provided by the Service Provider to the Client in respect of the delivery of the Cargo and freight services are variable and estimates only and are non-binding on the Service Provider. The Service Provider cannot and is unable to guarantee any timelines for delivery of the Cargo or performance of freight services. Although the Service Provider will attempt to procure that the freight services take place on time, sometimes delays are inevitable, and the Service Provider will not be responsible for any Losses suffered by the Client in the event of delay; and
     2. late delivery of any Cargo or freight services will not constitute a breach of this Agreement by the Service Provider or entitle the Client to refuse to take delivery of the Cargo, claim damages or terminate this Agreement. The Client acknowledges that there may be delays in the delivery of the Cargo and the Service Provider will not be in breach of this Agreement should this occur.
  3. The Client must ensure that a duly authorised representative of the Client is present at the estimated time of arrival of the Cargo at the port of destination as advised by the Service Provider. If the Client fails to take delivery of the Cargo at the port of destination, it shall be placed in storage for the account of, at the cost of and at the risk of the Client.
  4. Subject to the other terms of this clause, delivery of the Cargo under this Agreement is completed when the Client (or its employees or agents) takes possession of the Cargo at the port of destination.
  5. Notwithstanding anything to the contrary express or implied in this Agreement, the parties agree that the Service Provider will not release the Cargo to the Client until all fees for the Services and all other amounts owing in respect of the Services are paid to the Service Provider notwithstanding:
     1. the ownership of the Cargo remaining with the Client; and/or
     2. the risk of the Cargo remaining with the Client.
  6. The risk of refusal of the Cargo by a governmental authority is solely that of the Client. If Cargo are refused entry at the transhipment point, if any, or the port of discharge, the Client agrees to pay for the carriage of the Cargo either to the next port of discharge where the Cargo can be accepted or to the port of loading.

# COndition of Cargo

* 1. The Client warrants that the Cargo presented for shipment are sufficiently clean to the satisfaction of the requirements of the countries of loading, transhipment if any, and discharging. The Client acknowledges the responsibility for this and agrees to indemnify and hold the Service Provider harmless in respect of any expenses and liability arising in respect of any breach of these warranties.
  2. If, in the reasonable opinion of the Service Provider (or Carrier), a given Good is not likely to be permitted to be discharged in the port of discharge (or transhipped in the port of transhipment, if applicable) in the condition in which the Good is presented for shipment, the Service Provider (or Carrier) shall have the right, but no obligation, a) to refuse to load the Cargo until the Client has the Cargo cleaned, or b) to clean that Cargo at the cost and risk of the Client. Any such action, or lack of action, by the Service Provider (or Client) shall not affect any right of the Service Provider or Client or increase any obligation or liability or constitute any new obligation on the part of the Service Provider or Client.
  3. The Cargo will be received in external apparent good order and condition, except as otherwise described in the Carrier’s receipt.
  4. Any apparent damage to the Cargo must be noted immediately on receipt by the Client on the transportation document at the time of taking delivery of the Cargo.

# PERSONAL PROPERTY SECURITIES

* 1. The Client acknowledges and agrees that notwithstanding any other provision of this Agreement:
     1. the PPSA applies to any performance of Services of any kind by the Service Provider to the Client;
     2. by agreeing to and/or accepting or adopting this Agreement the Client grants to the Service Provider a purchase money security interest in the Cargo, to secure payment of all moneys owing or payable by the Client under this Agreement and any other moneys payable by the Client to the Service Provider from time to time on any account whatsoever;
     3. if a purchase money security interest is not able to be claimed by the Service Provider in respect of the Cargo for any reason, the Service Provider will have a security interest in the Cargo;
     4. the Client agrees that the Service Provider's security interest in Cargo covered by this Agreement may be registered on the PPS Register and the Client agrees to do all things necessary and required by the Service Provider to effect registration of the Service Provider's security interest on the PPS Register in order to give the Service Provider's security interest the best priority possible and anything else the Service Provider requests the Client to do in connection with the PPSA without delay;
     5. the Client warrants that all information provided by the Client to the Service Provider, including but not limited to the Client’s details, including the entity, name, ACN or ABN and address set out in the Schedule is correct in all respects and must not change its name, address or other details set out in the Schedule without providing the Service Provider with at least 20 business days prior written notice;
     6. the Client unconditionally and irrevocably appoints the Service Provider as its attorney to do any of acts and matters set out in this clause 15 in the event that the Client fails, delays or declines to execute such documents or do such acts;
     7. the Client agrees that it will not grant a security interest or other encumbrance in the Cargo whether under the PPSA or any other law to a third party unless it has obtained the prior written consent of the Service Provider, which the Service Provider may refuse to provide or grant in its absolute and unfettered discretion. The Service Provider may request, and the Client must provide any information that the Service Provider requires, acting reasonably, in order to fully consider whether to grant its consent;
     8. the Service Provider's security interest in the Cargo extends to any proceeds in all present and after acquired property including without limitation book debts and accounts receivable arising from the selling or hiring of the Cargo by the Client;
     9. it has received value as at the date of provision of the Services and has not agreed to postpone the time for attachment of the security interest (as defined in the PPSA) granted to the Service Provider under this Agreement;
     10. neither the Service Provider or the Client will disclose any information to any interested person unless required to do so under the PPSA;
     11. the Client waives its right under the PPSA:
         1. to receive a copy of any verification statement, financing change statement, or any notice that the Service Provider intends to sell the Cargo or to retain the Cargo on enforcement of the security interest granted to the Service Provider under this Agreement or any other notice under the PPSA unless the notice is required to be given by the PPSA and cannot be contracted out of;
         2. to object to a proposal by the Service Provider to dispose of or purchase or retain the Cargo in satisfaction of any obligation owed by the Client to the Service Provider;
         3. to receive a statement of account following the sale of the Cargo; or
         4. to redeem the Cargo;
     12. will not give (or allow any person to give) to the Service Provider a written demand requiring the Service Provider to register a financing change statement under the PPSA or enter into (or allow any other person to enter into) the PPS Register a financing change statement under the PPSA; and
     13. a default under any other security agreement under which it has granted a security interest to any other party in respect of the Cargo is deemed to be a breach of this Agreement.
  2. The parties agree that the Service Provider is not required to respond to a request made under Section 275 of the PPSA and that neither party will disclose information of the kind set out in Section 275(1) of the PPSA.
  3. Further Supplies/Services

The parties acknowledge and agree that any performance of Services of any kind by the Service Provider to the Client which is not specifically set out in a Quote but for which the Service Provider has or later issues a Tax Invoice or any other documentation to the Client is deemed to form part of the Agreement and is subject to the terms of the Agreement.

* 1. Enforcement
     1. The enforcement provisions contained in this Agreement are in addition to any rights available to the Service Provider under the PPSA and apply to the maximum extent permitted by law.
     2. Without limitation to clause 15.4(a) and any other provision of this Agreement section 125, 129(2), 142 and 143 of the PPSA are contracted out of.
  2. Power of Attorney

The Client irrevocably nominates constitutes and appoints the Service Provider and/or its officers and/or its nominees severally to be the true and lawful attorneys of the Client on behalf of and in the name of the Client to do all things necessary and sign all such documents as may be necessary to deal with the Cargo in accordance with the enforcement provisions of this Agreement, the PPSA or otherwise, if the Client is in default of this Agreement.

* 1. Interpretation

A term used in this clause 15 is taken to have the meaning defined under the PPSA.

# Insurance

* 1. The Client must take out and maintain at its own cost the following insurance policies:
     1. in respect of the Cargo, marine and shipping insurance for full replacement value of the Cargo;
     2. product liability insurance in an amount not less than $2,000,000 on a per occurrence basis;
     3. commercial general liability insurance including premises or operations, broad form property damage, independent contractors, and contractual liability covering its obligations hereunder for bodily injury and property damage, with a combined single limit of not less than $1,000,000 each occurrence.

The Client acknowledges that the Service Provider is not required to affect any insurance in respect to the Client’s Cargo. Adequate insurance of the Cargo is solely the responsibility of the Client.

* 1. All insurance policies that the Client must have current throughout the term of this Agreement must:
     1. be established with one or more insurance companies which are respectable, reputable and financially sound, approved by the Service Provider (such approval not to be unreasonably withheld);
     2. name the Client as the insured;
     3. name the Service Provider as an interested party;
     4. cover the Service Provider’s and Client’s interests;
     5. not be varied or cancelled without the prior approval of the Service Provider; and
     6. be on terms that are acceptable to the Service Provider (acting reasonably).
  2. If requested by the Service Provider, the Client must produce to the Service Provider evidence of any insurance policies (including renewals) effected by the Client under this clause.
  3. A copy of the insurance policies required under this clause must be supplied to the Service Provider prior to the commencement of this Agreement.
  4. The Client must promptly give to the Service Provider notice of:
     1. the Client’s intention to cancel, replace or alter any insurance effected by the Client in accordance with this clause;
     2. any notice or correspondence received by the Client from an insurer indicating its intention to cancel or materially alter any of those insurances; and
     3. the occurrence of any fact or event which may not be known to the Service Provider and:
        1. may give rise to a claim against the Service Provider or the Client, which may be covered by any one of those insurances;
        2. may prejudice the entitlement to claim under any of those insurances; or
        3. should be disclosed to the insurer and may affect its decision to continue to insure the Client or the risk.

# CONFIDENTIAL INFORMATION

* 1. The Client acknowledges that the Client may become acquainted with or have access to information relating directly or indirectly to the Service Provider, its assets and the operation and affairs, including without limitation, pricing and relationships with Carriers (**Confidential Information**), and agrees to maintain the confidence of the Confidential Information and to prevent its unauthorised disclosure to or use by any other person, firm or company.

# personnel & Subcontracting

The Service Provider may subcontract, delegate and/or perform the Services through any other party competent to perform that Service. without the prior written consent of the Client.

# no assignment

* 1. The Client must not transfer or assign its rights under this Agreement to anyone else, without the prior written consent of the Service Provider, which may be granted or withheld by the Service Provider in its sole, absolute and unfettered discretion. The Client must provide any information the Service Provider requires to consider whether to grant its consent.
  2. Any change in 50% or more of the shareholding of the Client will constitute a deemed assignment which requires the Service Provider's prior written consent in accordance with clause 19.1.
  3. The Client acknowledges and agrees that the Service Provider may transfer, assign or otherwise dispose of its interest in this Agreement upon giving written notice to the Client.

# warranties

* 1. The warranties contained in clause 20.2 are additional to warranties implied by law. Each of the warranties will be read and construed as a separate and independent warranty and will not be limited by reference to each other. All warranties will be valid at all times during the term of the Agreement and will be continuing warranties which will survive the termination or expiration of this Agreement.
  2. The Client warrants to the Service Provider that as at the date of this Agreement and for the duration of this Agreement:
     1. the information contained in this Agreement is true and correct and it has disclosed all relevant information to the Service Provider to assess the credit-worthiness of the Client;
     2. it has the legal right and power to enter into this Agreement;
     3. it is the owner of the Cargo or the authorised agent for the Cargo or otherwise is entitled to possess and part with possession of the Cargo as contemplated by this Agreement;
     4. unless otherwise notified, the Cargo provided for freight are not Dangerous Cargo and are not liable to cause damage to any person or property during the course of their carriage;
     5. the execution, delivery and performance of this Agreement by the Client has been duly and validly authorised by all necessary corporate action on its part;
     6. this Agreement is a valid and binding Agreement on the Client, enforceable in accordance with its terms;
     7. the Client is not suffering an Insolvency Event and no Insolvency Event is imminent; and
     8. it has the capacity to make the payment in accordance with this Agreement.

# termination

* 1. The Service Provider may in its absolute discretion, by written notice to the Client, immediately terminate this Agreement or one or more Quotes (and shall have no liability for any Loss suffered by the Client due to the termination):
     1. if the Client fails to make payment in accordance with clause 6;
     2. if the Client suffers an Insolvency Event;
     3. in the event of Force Majeure (such as if there are issues with the weather and the Service Provider is unable to supply the agreed Services); or
     4. if the Client breaches any warranty or obligation contained in this Agreement or a Quote and fails to rectify the breach within 7 days of being given a notice to do so.
  2. The Client may terminate this Agreement if the Service Provider breaches the terms of this Agreement and fails to rectify the breach within 14 days of being given a notice to do so.
  3. The Client may terminate an individual Quote if the Service Provider breaches the terms of that Quote and fails to rectify the breach within 14 days of being given a notice to do so.
  4. Either party may terminate this Agreement, without cause, on giving at least 30 days’ written notice. Such termination will not be of effect until the Services contemplated under all Quotes are completed (unless otherwise agreed in writing by the Service Provider).
  5. The rights and remedies of the parties contained in this clause are in addition to any other rights and remedies by law, in equity or under this Agreement.

# Consequences of termination

* 1. Upon termination of this Agreement, all existing Quotes shall automatically terminate. The Client shall be liable to pay to the Service Provider for all Services supplied by the Service Provider under such Quotes up until the date of termination, and such amounts shall be a debt immediately due and owing.
  2. The termination of a Quote does not affect any other Quote/s which shall continue. Upon termination of a Quote the Client shall be liable to pay the Service Provider for all Services supplied by the Service Provider under that Quote up until the date of termination, and such amounts shall be a debt immediately due and owing.

# Business Protection

* 1. **Restraint on Nominated Carriers**

In order to reasonably protect the Service Provider, the Client agrees with the Service Provider that it will not (and will procure its Personnel do not), whether directly or indirectly (including through a related entity), for each of the Restraint Periods:

* + 1. canvass, solicit, approach or accept any approach from, or deal in any way with any Nominated Carrier with a view to obtaining the custom or dealing with that Nominated Carrier;
    2. act in any way which may assist or induce a Nominated Carrier to breach any agreement with the Service Provider, or to terminate or to not renew any contract of any sort that they may have with the Service Provider, or to circumvent the involvement of the Service Provider in any arrangement;
    3. interfere in any way with the relationship between the Service Provider and its Nominated Carriers.
  1. **Definitions**

For purposes of this clause:

* + 1. “Nominated Carrier” means any Carriers who the Service Provider has engaged to carry or transport the Client’s Cargo in the preceding 12 month period;
    2. “Restraint Period” means during the term of this Agreement and for a period of:
       1. 6 months;
       2. 3 months,

after the expiry or termination of this Agreement.

* 1. **Interpretation**

This clause has effect as if it consisted of several separate covenants and restraints consisting of each separate covenant and restraint set out in clause 23.1 combined with each separate Restraint Period (as appropriate) ("Restraint Covenants") and if any of the Restraint Covenants are or become invalid or unenforceable for any reason then the invalidity or unenforceability does not affect the validity or enforceability of any of the other Restraint Covenants. This clause shall be interpreted as a goodwill covenant and without reference to, and independent of, any other covenant in restraint of trade contained any other agreement or deed given by the Client.

* 1. **Acknowledgements**

The Client acknowledges and agrees that:

* + 1. any combination of the acts referred to in clause 23.1 combined with each separate Restraint Period referred to would be unfair and calculated to damage the Service Provider;
    2. the Client has received substantial and valuable consideration for the Restraint Covenants including that it:
       1. has acquired significant information about the business of the Service Provider including the names of contractors, officers, agents, suppliers and customers with whom the Service Provider does business;
       2. has had the opportunity to forge personal links with employees, contractors, officers, agents, suppliers and customers; and
       3. has had the opportunity to learn and acquire trade secrets, business connections and other Confidential Information about the Service Provider’s business;
    3. disclosing Confidential Information, or using Confidential Information to the Client's benefit or the benefit of a competitor of the Service Provider, could materially harm the Service Provider’s business;
    4. the Restraint Covenants contained in this Agreement are reasonable in scope, duration and time, and reasonably necessary to protect the Service Provider’s goodwill and legitimate interests and that the Client has been responsible for and approves its drafting;
    5. it has received legal advice or has had the opportunity of obtaining legal advice in relation to this advice;
    6. the Service Provider may apply for injunctive relief if the Client breaches or threatens to breach this clause; and
    7. the words "directly or indirectly interested or engaged in or concerned with" are all to be given the widest possible interpretation and include (without derogation from their generality) such activities through any association or arrangement with any person, relative, nominee or trust in or over which any interest or influence (absolute or partial) is held.
  1. **Permitted activities**

This clause will not apply in circumstances where the activity has been expressly agreed to in writing from time to time by the Service Provider.

# indemnitY and release

* 1. Except as provided under this Agreement and to the extent permitted by law the Client releases the Service Provider and its officers, employees and agents from any and all Claims by the Client or any of its officers, employees, agents or invitees, except to the extent (if any that) the Loss the subject of the Claim is caused by the act or omission of the Service Provider.
  2. Except to the extent caused or contributed to by breach of this Agreement by the Service Provider, the Client indemnifies the Service Provider against any direct losses, liabilities, costs, charges or expenses and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses suffered or incurred by the Service Provider arising out of or in connection with:
     1. the Client’s breach or negligent performance or non-performance of this Agreement;
     2. the Service Provider’s performance of its obligations under this Agreement being prevented or delayed by any act or omission of the Client or its Personnel;
     3. any claim made against the Service Provider or the Client by a third party arising out of or in connection with:
        1. the provision of the Services and/or this Agreement; or
        2. the Cargo,

to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of this Agreement by, or is attributable to the acts or omissions of the Client or the Client’s Personnel;

* + 1. any illegal practices that the Client or the Client’s Personnel performs or engages in;
    2. the enforcement of this Agreement; and
    3. any act, omission or wilful misconduct of the Client or the Client’s Personnel (including any negligent act or omission).
  1. The Client must make payments under this Agreement:
     1. in full without set-off or counterclaim, and without any deduction in respect of taxes unless prohibited by law; and
     2. in the currency in which the payment is due, and otherwise in Australian dollars, in immediately available funds.
  2. It is not necessary for the Service Provider to incur expense or make payment before enforcing a right of indemnity under this clause.
  3. The indemnities in this clause:
     1. are continuing obligations of the Client, independent from its other obligations under this Agreement and survive termination or expiry of this Agreement; and
     2. are absolute and unconditional and unaffected by anything which otherwise might have the effect of prejudicing, releasing, discharging or affecting the liability of the Client.

# exclusion and limitation of liability

* 1. The Service Provider provides the Services on an "as is" basis and without any warranties, representations, or conditions of any kind, whether express, implied or statutory, to the extent permitted by law. the Service Provider excludes all rights, representations, guarantees, conditions, warranties, undertakings, remedies or other terms in relation to the Services that are not expressly set out in this Agreement to the maximum extent permitted by law.
  2. The Client’s Cargo are freighted and stored at the Client’s own risk and the Service Provider shall not be liable on any account for any loss or damage occasioned to the Client’s Cargo at any time from their initial collection to the time of their delivery to the consignee. The Client acknowledges and agrees that the Service Provider carries on business as a facilitator of the freighting and warehousing of goods whereby the collection, carrying and storage of those goods is undertaken by the Carrier.
  3. Without limiting the generality of clause 25.1, the Service Provider expressly excludes any liability in contract, tort or otherwise for any injury, damage, Loss, delay or inconvenience caused directly or indirectly by:
     1. any act or omission of the Client, including any delay caused by the Client;
     2. the delivery or non-delivery of any freight services provided by a Carrier;
     3. any act, omission or default of third parties (including any Carrier); and
     4. the booking of any freight services.
  4. For the avoidance of doubt the Service Provider is not liable to the Client for a breach of obligations by the Carrier in providing the Client any freight services. The Carrier is solely liable for a breach of obligations in providing the Client a freight service.
  5. Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
  6. Subject to the other terms of this clause, the Service Provider's maximum aggregate liability to the Client for any loss or damage or injury arising out of or in connection with the supply of services under this agreement, including any breach by the Service Provider of this agreement however arising, under any indemnity, in tort (including negligence), under any statute, custom, law or on any other basis, is limited to the actual Service Fees (less any disbursements of any kind, customs duties, taxes and any fees paid by the Service Provider to a Carrier) paid by the Client to the Service Provider under this Agreement in respect of the Services to which the liability relates.
  7. Nothing in this Agreement is intended to have the effect of excluding, restricting or modifying the application of all or any of the provisions of Part 5-4 of the ACL, or the exercise of a right conferred by such a provision, or any liability of the Service Provider in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL to a supply of goods or services.
  8. If the Service Provider is liable to the Client in relation to a failure to comply with a guarantee that applies under Division 1 of Part 3-2 of the ACL that cannot be excluded, or is otherwise liable for any matter that cannot be excluded, the Service Provider’s total liability to the Client for that failure is limited to, at the option of the Service Provider the costs of the resupply of the relevant Services to which the liability relates or the payment of the costs of resupply of the relevant Services.
  9. Without limitation to the other terms of this Agreement, the Service Provider excludes any liability to the Client, whether in contract, tort (including negligence) or otherwise, for any special, indirect or consequential loss arising under or in connection with this Agreement.
  10. Notwithstanding anything else in this clause, the Service Provider’s liability will be reduced to the extent the loss or damage is caused by or contributed to by the Client or the Client’s Personnel.
  11. If the Client recovers any amount under an insurance policy in respect of a claim under or in relation to or arising out of this Agreement and that amount is less than the loss or damage incurred by the Client, the amount of the shortfall will be the amount of the Client’s loss for the purposes of this Agreement.

# Force Majeure

* 1. The Service Provider will not be in breach of this Agreement or liable to the Client for any Loss incurred by the Client as a direct result of the Service Provider failing or being prevented, hindered or delayed in the performance of its obligations under this Agreement where such prevention, hindrance or delay results from a Force Majeure Event.
  2. If a Force Majeure Event occurs, the Service Provider must notify the Client in writing as soon as practicable and that notice must state the particulars of the Force Majeure Event and the anticipated delay.
  3. On providing the notice above, the Service Provider will have the time for performance of the affected obligations extended for a period equivalent to the period during which performance has been delayed, hindered or prevented, however, the Service Provider must continue to use all reasonable endeavours to perform those obligations.
  4. Subject to the other terms of this clause, the performance of the affected obligations must be resumed as soon as practicable after such Force Majeure Event is removed or has ceased.

# Notices

* 1. All notices authorised or required under this Agreement to be given by a party to the other shall be in writing sent by email or delivered personally or sent by pre-paid registered post and in each case addressed to the other party at that party's Address for Service or as the case may be at such other address as a party may from time to time notify to the other.
  2. The following shall constitute proof of receipt:
     1. proof by posting by registered post; or
     2. proof of dispatch by email.
  3. Receipt of a notice given under this Agreement will be deemed to occur:
     1. in the case of a communication sent by pre-paid registered post, on the third business day after posting;
     2. in the case of an email, on the business day immediately following the day of dispatch.
  4. If a notice is sent via post, it must also be sent via email.

# GST

* 1. Words and phrases used in this clause 28 that have defined meanings in the GST Law have the same meaning as in the GST Law, unless the context indicates otherwise.
  2. Unless expressly stated otherwise, the consideration for any supply under or in connection with these Terms is exclusive of GST.
  3. To the extent that any supply made under or in connection with these Terms is a taxable supply (other than any supply made under another agreement that contains a specific provision dealing with GST), the amount payable by the recipient is the consideration provided under these Terms for that supply (unless it expressly includes GST) plus an amount (**Additional Amount**) equal to the amount of that consideration (or its GST-exclusive market value) multiplied by the rate at which GST is imposed in respect of the supply.
  4. The recipient must pay the Additional Amount at the same time as the consideration to which it is referable, and on the issue of an invoice relating to the supply.
  5. Whenever an adjustment event occurs in relation to any taxable supply to which clause 28.3 applies:
     1. the Supplier must determine the amount of the GST component of the consideration payable; and
     2. if the GST component of that consideration differs from the amount previously paid, the amount of the difference must be paid by, refunded to or credited to the recipient, as applicable.

# Guarantee and indemnity

* 1. In consideration of the Service Provider agreeing to be bound by this Agreement, the Guarantor, and where there is more than one Guarantor the Guarantors jointly and severally, as a principal obligor and not merely as surety, irrevocably and unconditionally guarantee to the Service Provider and its successors, transferees and assigns the due and punctual performance, observance and discharge by the Client of all the Guaranteed Obligations if and when they become performable or due under this Agreement (or any agreement entered into pursuant to or in connection with it).
  2. The liability of the Guarantor under the guarantee in this clause 29 will not be reduced, discharged or otherwise adversely affected by:
     1. any act, omission, matter or thing which would have discharged or affected the liability of the Guarantor had it been a principal obligor instead of a guarantor or indemnifier; or
     2. anything done or omitted by any person which, but for this provision, might operate or exonerate or discharge the Guarantor or otherwise reduce or extinguish its liability under the guarantee in this clause 29.
  3. This guarantee and indemnity shall be a continuing guarantee and indemnity which shall not be discharged except by complete performance of all the Guaranteed Obligations.
  4. The Guarantor waives any right it may have to require the Service Provider (or any trustee or agent on its behalf) to proceed against or enforce any other right or claim for payment against any person before claiming from the Guarantor under this clause 29.
  5. The Guarantor must, on a full indemnity basis, pay to the Service Provider on demand the amount of all costs and expenses (including legal and out-of-pocket expenses and any GST on them) incurred by the Service Provider in connection with:
     1. the preservation, or exercise and enforcement, of any rights under or in connection with the guarantee in this clause 29 or any attempt so to do; and
     2. any discharge or release of this guarantee.
  6. Until all amounts that may be or become payable by the Client under or in connection with this Agreement have been irrevocably paid in full, and unless the Service Provider otherwise directs in writing, the Guarantor must not exercise any security or other rights it may have by reason of performing its obligations under this clause 29, whether such rights arise by way of set-off, counterclaim, subrogation, indemnity or otherwise.
  7. The guarantee in this clause 29 is in addition to and independent of all other security that the Service Provider may hold from time to time in respect of the discharge and performance of the Guaranteed Obligations.
  8. The Guarantor as principal obligor and as a separate and independent obligation and liability from its obligations and liabilities under clauses 29.1 and 29.2, unconditionally and irrevocably agrees to indemnify and keep indemnified the Service Provider in full and on demand from and against all and any losses, costs, charges, claims, liabilities, damages, demands and expenses suffered or incurred by the Service Provider arising out of, or in connection with, the Guaranteed Obligations not being recoverable for any reason, or the Client’s failure to perform or discharge any of the Guaranteed Obligations.
  9. In this clause “Guaranteed Obligations” means all present and future obligations and liabilities of the Client under this Agreement or arising from any termination of this Agreement and all agreements and obligations entered into pursuant to or in connection with it, including all money and liabilities of any nature from time to time due, owing or incurred by the Client under this Agreement or arising from any termination of this Agreement (or any agreement entered into pursuant to or in connection with it).

# GENERAL

* 1. **Special Conditions**

Any Special Conditions set out in this Schedule form part of this Agreement. In the event of inconsistency between the terms of this Agreement and any Special Conditions, the Special Conditions prevail to the extent of the inconsistency.

* 1. **Variation**

An amendment or variation of any term of this Agreement must be in writing and signed by each party.

* 1. **No Waiver**
     1. No party may rely on the words or conduct of any other party as being a waiver of any right, power or remedy arising under or in connection with this Agreement unless the other party or parties expressly grant a waiver of the right, power or remedy. Any waiver must be in writing, signed by the party granting the waiver and is only effective to the extent set out in that waiver.
     2. Words or conduct referred to in clause 30.3(a) include any delay in exercising a right, any election between rights and remedies and any conduct that might otherwise give rise to an estoppel.
  2. **Counterparts**

This Agreement may be executed in any number of counterparts. All counterparts taken together constitute one instrument. A party may execute this Agreement by signing any counterpart. The date on which the last counterpart is executed is the date of this Agreement. Communication of the fact of execution to the other parties may be made by sending evidence of execution by email.

* 1. **Costs**

The parties must bear their own costs of and incidental to the negotiation, preparation and execution of this Agreement.

* 1. **Severability** 
     1. If the whole or any part of a provision of this Agreement is or becomes invalid or unenforceable under the law of any jurisdiction, it is severed in that jurisdiction to the extent that it is invalid or unenforceable and whether it is in severable terms or not.
     2. Clause 30.6(a) does not apply if the severance of a provision of this Agreement in accordance with that clause would materially affect or alter the nature or effect of the parties' obligations under this Agreement.
  2. **No Merger**

On completion or termination of this Agreement, the rights and obligations of the parties set out in this Agreement will not merge and any provision that has not been fulfilled remains in force.

* 1. **Survival**

Any clause which by its nature is intended to survive termination or expiry of this Agreement will survive such termination or expiry.

* 1. **Further Action**

Each party must do all things (including completing and signing all documents) reasonably requested by the other party that are necessary to give full effect to this Agreement and the transactions contemplated by this Agreement.

* 1. **Time of the Essence**

Time is of the essence in this Agreement in respect of any date or time period and any obligation to pay money.

* 1. **Relationship of the Parties**

Nothing in this Agreement gives a party authority to bind any other party in any way. Nothing in this Agreement imposes any fiduciary duties on a party in relation to any other party.

* 1. **Remedies Cumulative**

Except as provided in this Agreement and permitted by law, the rights, powers and remedies provided in this Agreement are cumulative with and not exclusive to the rights, powers or remedies provided by law independently of this Agreement.

* 1. **Entire Agreement**

This Agreement states all the express terms agreed by the parties about its subject matter. It supersedes all prior agreements, understandings, negotiations and discussions in respect of its subject matter.

* 1. **No Reliance**

No party has relied on any statement, representation, assurance or warranty made or given by any other party, except as expressly set out in this Agreement.

* 1. **Governing Law and Jurisdiction**

This Agreement is governed by the law in force in the State. Each party irrevocably submits to the exclusive jurisdiction of courts exercising jurisdiction in the State and courts of appeal from them in respect of any proceedings arising out of or in connection with this Agreement.