

TERMS OF CREDIT

The Customer applies to establish a credit account with XFM on the following terms:

1. Definitions

In these Terms of Credit, the following terms shall have the following meaning:

- 1.1. **Commercial Credit Agreement** means this document, comprising of:
 - (a) Commercial Credit Application;
 - (b) Terms of Credit; and
 - (c) Outcome of Commercial Credit Application;
- 1.2. **Commercial Credit Application** means the Customer's application for credit as made by the Customer;
- 1.3. **Customer** means the Customer applying to establish a credit account whose details appear in the Commercial Credit Agreement;
- 1.4. **Goods** means goods requested by the Customer in accordance with any other order process imposed by XFM, as advised to the Customer from time to time;
- 1.5. **Information** means information about the Customer, including information regarding the Customer's credit arrangement with XFM, the Customer's credit worthiness, credit history and credit capacity;
- 1.6. **Interested Person, Personal Property, Security Agreement, Security Interest and Verification Statement** have the meanings prescribed to them in the PPSA;
- 1.7. **PPSA** means the Personal Property Securities Act 2009 (Cth);
- 1.8. **Register** means the Personal Property Securities Register established under the Personal Property Securities Act 2009 (Cth);
- 1.9. **Services** means any services provided by XFM as requested by the Customer;
- 1.10. **Terms of Credit** means the terms contained in, or imposed pursuant to this Commercial Credit Agreement and the Trading Terms and Conditions of XFM;
- 1.11. **Trading Terms and Conditions** means XFM's standard Trading Terms and Conditions for the supply of Goods and Services as amended from time to time, which are expressly incorporated into the Terms of Credit;
- 1.12. **Trade Reference** means any trade reference listed in the Commercial Credit Application and any Trade Reference who may in future be submitted to XFM as a Trade Reference; and
- 1.13. **XFM** means Xpress Freight Management Pty Ltd ACN 641 859 243 and affiliated entities and companies.

2. Acknowledgement

The Customer acknowledges that:

- 2.1. the information provided by the Customer in relation to the Commercial Credit Application is correct and is for the use by XFM in determining the amount and conditions of credit to be extended to the Customer;
- 2.2. the person/s signing the Commercial Credit Application is duly authorised by the Customer to apply for credit and execute this application on the Customer's behalf;
- 2.3. XFM has relied on the Information provided by the Customer in the Commercial Credit Application;
- 2.4. they will advise XFM in writing of any proposed changes to the trading address, legal entity, structure or management or control of the Customer or any judgment made against the Customer within 7 days of the occurrence of the same and any failure to do so shall be deemed to be a breach of the obligations set out herein;
- 2.5. no Goods or Services will be ordered unless the Customer has the capacity to pay the invoiced price;
- 2.6. The Customer warrants that the Customer is not insolvent or bankrupt and no proceedings have been instituted for the bankruptcy or liquidation of the Customer.
- 2.7. the Commercial Credit Application will not be valid unless all details requested in the Commercial Credit Application are provided and the Customer duly executes the Commercial Credit Application, accepting the Terms of Credit and Trading Terms and Conditions; and
- 2.8. it is not entitled to any credit facility until the Customer receives notice in writing from XFM stating that credit facilities have been given and confirming the Trading Terms and Conditions upon which such credit facilities are given. Until the Customer receives such notice, any Goods or Services that are supplied by XFM to the Customer will be on the basis of payment up front.

3. Credit Account

- 3.1. XFM may, at its sole discretion, offer the Customer a credit account subject to these Terms of Credit and the Customer will provide such Information as XFM may request to enable it to assess the Commercial Credit Application.
- 3.2. Without limiting clause 3, XFM may, at its sole discretion, require the directors, partners or owners of the Customer and/or another third party to enter into a deed of Guarantee and Indemnity in the form annexed to this agreement.
- 3.3. XFM may revoke or vary the terms on which the credit account is provided to the Customer at any time and will provide the Customer with two weeks' notice of such variation (noting that the terms of credit as amended will only apply to further transactions made by the Customer after the two week notice period has subsided). Where XFM agrees to provide a credit account it will be subject to a credit limit. It is the obligation of the Customer to ensure the account trades within the Customer's approved credit limit and any amount in excess of the approved credit limit shall be repayable immediately by the Customer.

3.4. Where the Customer obtains authority from XFM allowing a third party to conduct transactions upon the Customer's account, such authority can only be cancelled by notice in writing from the Customer. The Customer acknowledges that third party authority to operate a credit account is given solely for the convenience of the Customer and under no circumstance will XFM be liable for any unauthorised transaction on the credit account by a third party and the Customer will remain liable to XFM for any Goods and Services purchased by the third party on the Customer's credit account.

3.5. Where the Customer makes the Commercial Credit Application as trustee of a trust, the Customer agrees to be liable to XFM for the obligations of the trust. The Customer warrants that it is the only Trustee of the trust and will remain Trustee of the trust, it is not aware of any action having been taken to remove it as Trustee of the trust and it has the power under the Trust Deed to enter and observe its obligations under these Terms of Credit and the assets of the trust shall be available to meet payment of any payments due and owing to XFM.

4. Payment terms

4.1. The Customer will pay the purchase price of Goods and Services to which credit is provided within 7 days from the date of invoice of those Goods and Services. All accounts are to be settled in full within the agreed trading terms. Credit facilities may only continue if payment is maintained in accordance with those agreed trading terms. Credit may be suspended or cancelled if any amounts due are not paid by due date.

4.2. Where the Customer does not make payment as required under these Terms of Credit as varied from time to time the Customer will pay:

(a) interest on overdue amounts at the rate of the current Magistrates' Court of Western Australia prescribed rate for interest on judgment sums plus two percent (2%) from the date of due payment until the date of payment in full of the overdue amount, plus interest; and

(b) all costs and expenses (including legal costs) on a full indemnity basis incurred by XFM as a result of the delay in payment and in connection with the recovery of the overdue amounts.

4.3. XFM may withhold some or all Goods and Services ordered by the Customer until all or any overdue payments have been made. XFM may, in its absolute discretion, decline to reinstate a credit account which has fallen outside its then current trading terms.

4.4. It is expressly understood and agreed that these credit terms may be terminated at any time by XFM. In such an event, all monies owing to XFM will be immediately due and payable.

4.5. XFM may at any stage during the continuance of the credit agreement impose a condition precedent to the grant of further credit that the Customer is to give security or additional information (as XFM shall in its discretion think fit) in a form acceptable to XFM. XFM shall be entitled to withhold supply of Goods and Services or further credit until such security is obtained.

4.6. Ownership in and title to any Goods supplied by XFM to the Customer on credit remains with XFM until the Customer has paid XFM both the purchase price for the Goods and any other money that the Customer may owe to XFM at any time on any account.

5. Charging Clause

5.1. In consideration of the granting of credit pursuant to this Commercial Credit Application the Customer (and if more than one then each jointly and severally) hereby charges in favour of XFM all of the Customer's interest in real property both present and future with the payment of all monies which may be owing to XFM by the Customer from time to time upon any account. The Customer shall upon request by XFM sign all documents and do all things that XFM may reasonably require to be signed and done to secure further to XFM any such monies owing from time to time.

5.2. Without limiting clause 5.1, the Customer hereby consents to the registration at any time by XFM of a caveat over any land in which the Customer has an interest.

6. Personal Property Securities Act 2009 (Cth)

6.1. This Commercial Credit Agreement constitutes a Security Agreement for the purposes of the PPSA.

6.2. The Customer acknowledges and agrees that XFM may register on the Register any Security Interest it obtains in Personal Property of the Customer and the Customer agrees to do all things necessary to facilitate that registration.

6.3. To the extent permitted by law, the Customer irrevocably waives any rights it may have to receive notices under sections 95, 118, 121, 123(2), 130, 132(3)(d), 132(4) and 135 of the PPSA, or to reinstate this Security Agreement under section 143 of the PPSA.

6.4. The Customer waives its rights under section 157 of the PPSA to receive a notice of Verification Statement.

6.5. Pursuant to section 275(6) of the PPSA, the Customer agrees XFM is not required to disclose to an interested person any information pertaining to XFM's Security Interest unless required to do so pursuant to the PPSA or at law generally. Nothing in this clause prevents XFM from disclosing to an Interested Person such information and the Customer expressly consents to XFM doing so.

6.6. Upon request by XFM, the Customer will reimburse XFM for any costs incurred by XFM in registering, preserving and or enforcing its rights under the PPSA.

7. Trading Terms and Conditions and Terms of Credit

7.1. By executing this Commercial Credit Agreement, the Customer:

(a) agrees to comply with the Trading Terms and Conditions, which are expressly incorporated into the Terms of Credit, and acknowledges having either having been provided with a copy of the Trading Terms and Conditions current as at the date of making the Commercial Credit Application or being referred to view same on the website

www.xfm.com.au;

(b) acknowledges and agrees that in the event that the Commercial Credit Application is successful, the Terms of Credit will apply as the binding terms and conditions upon which a credit account is opened in the Customer's name and credit is provided to the Customer; and

(c) agrees that the Terms of Credit will be applicable for all future supplies of Goods and Services to be made to the Customer by XFM.

8. Processing of Commercial Credit Application

- 8.1. XFM will process the Commercial Credit Application within a reasonable time of its lodgement by the Customer and record its decision in writing to the Customer.
- 8.2. After notifying the Customer of the approval of the Commercial Credit Application, XFM agrees to establish a Credit Account in favour of the Customer pursuant to the Terms of Credit.
- 8.3. XFM will be under no obligation to provide credit to the Customer if XFM refuses to approve the Commercial Credit Application.

9. Credit reporting and the Privacy Act

- 9.1. The Customer acknowledges that XFM has advised the Customer in accordance with the provisions of section 18E(8)(c) of the Privacy Act 1988 that certain items of personal information about the Customer contained in the Customer's Commercial Credit Application form will be kept on a credit information file of XFM and might be disclosed to a credit reporting agency in accordance with the provisions of the Privacy Act 1988.
- 9.2. In making application for credit the Customer:
 - (a) agrees that in accordance with the provisions of section 18K(1)(b) and (e) of the Privacy Act 1988 the disclosure by a credit reporting agency and/or use by XFM of the relevant information referred to in those sections may occur for the purpose of assessing the Customer's Commercial Credit Application or any Commercial Credit Application made by XFM and the Customer acknowledges that the provisions in this clause shall continue to have effect for the duration of the grant of credit facilities should the Customer's Commercial Credit Application be approved;
 - (b) agrees and consents in accordance with the provisions of section 18K(1)(c) of the Privacy Act 1988 that XFM may obtain or disclose information contained in a credit report for the purpose of assessing whether to accept the Customer in respect of the credit facilities;
 - (c) agrees and consents in accordance with the provisions of section 18K(1)(h) of the Privacy Act 1988 for XFM to disclose or obtain the credit report for the purpose of the collection of payments that are overdue in respect of the credit facility;
 - (d) agrees and consents in accordance with the provisions of section 18L(4) of the Privacy Act 1988 for XFM to use information received or contained in a credit report for the purpose of assessing the Commercial Credit Application

that concerns the Customer's commercial activities, commercial credit worthiness or information that has been obtained concerning the Customer's credit worthiness;

(e) agrees that for the purposes of section 18N(1)(b) of the Privacy Act 1988 XFM may disclose information derived from a credit report or the entire credit report and its possession to any other credit provider for the purpose of providing a reference or references to that other credit provider in the conduct of the Customer's accounts or the accounts of XFM.

- 9.3. The Customer agrees that for the purposes of the Privacy Act 1988 (Cth), XFM may give to a credit reporting agency personal information about the Customer or otherwise concerning this Commercial Credit Application including:

- (a) the Customer's name, address, date of birth and driver's licence number;
- (b) other personal information concerning any person named in this application;
- (c) the fact that this Commercial Credit Application has been made and the amount of credit applied for;
- (d) the fact that XFM is a current credit provider to the Customer;
- (e) details of payments overdue more than 60 days and for which collection has Commenced;
- (f) details of payments no longer overdue;
- (g) details of cheques drawn by the Customer for amounts more than \$100.00 which have been dishonoured more than once;
- (h) in the circumstances specified under the Privacy Act 1988 (Cth), advice that in the opinion of XFM the Customer has committed a serious credit infringement;
- (i) advice that credit provided to the Customer by XFM or other obligation by the Customer to XFM has been paid or discharged.

- 9.4. The Customer authorises XFM to give, or seek from, any credit providers that may be named in:
 - (a) a credit report;
 - (b) the Register; or
 - (c) a credit reporting agency report, information that credit providers are permitted to give or receive from each other under the Privacy Act 1988 (Cth).
- 9.5. The Customer acknowledges that XFM may utilise other sources which it considers necessary in determining whether or not to provide any credit account, including obtaining a report from a credit reporting agency or the Register which report may include personal credit information about the Customer in relation to commercial credit proposed to be provided by XFM.

- 9.6. To assist XFM in determining whether to establish or continue the Customer's credit account with XFM, the Customer authorises XFM to obtain Information from Trade References.
- 9.7. This Commercial Credit Agreement shall constitute authority by the Customer to the Trade References to release the Information to XFM and a copy of the Commercial Credit Agreement may be used by XFM as proof of the Customer's consent to the use of the application for this purpose.
- 9.8. The parties agree that these Terms of Credit shall be governed and construed with the laws of the State of Western Australia and the parties agree to submit to the jurisdiction of the Courts of that State.

GUARANTEE and INDEMNITY

This is an important document and you should obtain independent legal and accounting advice prior to executing it. As part of your Commercial Credit Application this personal guarantee and indemnity must be completed and signed by all directors and business partners.

TO: XPRESS Freight Management Pty Ltd
21 Carolyn Way
Forrestfield WA 6058

IN CONSIDERATION of Xpress Freight Management Pty Ltd ACN 641 859 243 (XFM) supplying the Good and/or services on credit (**Goods and/or Services**) to the Customer noted below (**Customer**) at my/our request, I/we (Guarantor) agree with XFM as follows:

1. **The Guarantor** guarantees the due and punctual:
 - (a) payment by the Customer to XFM of all moneys (**Moneys**) which the Customer may now or in the future be liable to pay to XFM actually or contingently on any account; and
 - (b) observance and performance by the Customer of the Customer's obligations (**Obligations**) under the Commercial Credit Application for supply of the Goods and/or Services by XFM to the Customer on credit; and indemnifies XFM against all loss (including unpaid Moneys) and damage suffered or incurred by XFM by reason of the failure by the Customer to pay the Moneys or to observe the Obligations. I/we acknowledge that this obligation on my/our behalf shall also extend to any legal and other costs and expenses incurred by XFM in seeking payment from the Customer or in enforcing this Guarantee and indemnity.
2. **If there is more than one guarantor**, "Guarantor" means all of them collectively and each of them individually and the Guarantor's covenants are joint and several. "Co-surety" includes any other person named as Guarantor or who otherwise guarantees payment of the Moneys.
3. **This deed binds the Guarantor's successors**, administrators, executors and assigns and constitutes a continuing and irrevocable Guarantee and Indemnity until expressly released by XFM. It remains effective and is not discharged by any interim payment or account settlement.
4. **The Guarantor's** obligations under this deed are unconditional and shall remain unaffected by any circumstances that might otherwise impact them under

laws pertaining to sureties including, but not limited to:

- (a) any change in the legal capacity, rights or obligations of the Guarantor, the Customer, a Co-surety or any other person; or
- (b) the fact that, in relation to any of the Moneys or any security, guarantee or indemnity for them, XFM;
 - i) obtaining a judgment against the Customer, a Co-surety or any other person; or
 - ii) giving up, releasing, varying or exchanging or failing to obtain, perfect, register or realise, or deal in any other way with any security, guarantee or indemnity; or
 - iii) the granting of an extension of time, offers any other concession, enters into a composition or compromise with, or takes or omits any action that impacts the obligations of the Customer, a co-surety, or any other person to XFM or the Guarantor; or
 - iv) receiving any dividends out of the estate or assets of the Customer, a Co-surety or any other person for any reason; or
- (c) the fact that any security, guarantee or indemnity held or taken by XFM is void, defective or informal or ranks after any other security or obligation for any reason; or
- (d) the death, mental or physical disability or insolvency of the Customer, a Co-surety or any other person; or
- (e) a variation or extension to, or a stopping, replacement or refusal of any credit or other arrangement (including an increase in any credit or a variation in the terms of supply of product) given to the Customer whether with or without the Guarantor's consent or knowledge; or
- (f) the fact that any Moneys may not be recoverable from the Customer, a Co-surety or any other person for any reason; or
- (g) the cessation of business by any firm or partnership in which the Customer or the Guarantor may be part of or any change in its members.

5. **The Guarantor's** obligations under this deed are principal obligations, and XFM is not required to take any action or make any demand against the Customer before enforcing these obligations against the Guarantor.

6. **The Guarantee** continues despite any changes in the amount of money owed by the Customer to XFM.

7. **The Guarantor** must not lodge a proof of debt or make any claim against the assets of the Customer in competition with XFM if the Customer becomes bankrupt, is wound up, enters into a deed of arrangement, composition, or compromise to settle its debts, or, if an individual, passes away. If instructed by XFM, the Guarantor must lodge a proof of debt and hold any distributions or payments received on trust for XFM.

8. **The Guarantor** charges as beneficial owner and as trustee of every trust all the Guarantor's land (including land acquired in the future) in favour of XFM to secure the payment of the Moneys and the performance and observance of the Guarantors covenants under this deed. In this clause "trust" means each trust for which the Guarantor holds land as trustee.

- 9.** **The Guarantor** shall pay all XFM's costs, fees and expenses associated with this deed and the enforcement of this deed.
- 10.** **A certificate signed by XFM**, specifying the amount of Moneys payable or addressing any other matter or fact, shall serve as conclusive evidence of such amount or matter as at the stated date, unless the Guarantor can demonstrate with proof otherwise.
- 11.** **The Guarantor** fully understands the risks associated with this deed and freely elects to execute this deed. This Guarantee and Indemnity binds each of the signatories hereto as Guarantors. Each Guarantor hereby acknowledges that it has read the terms of this Guarantee and Indemnity and has been:
 - (a) advised to; and
 - (b) given the opportunity to, seek independent legal advice prior to execution.
- 12.** **Each of the Guarantors:**
 - (a) consents to XFM obtaining a credit report that includes personal credit information from a credit reporting agency for the purpose of evaluating the Guarantor's suitability to fulfil their obligations on behalf of the Customer. The Guarantor further acknowledges that this consent will remain valid for the duration of the Guarantee, provided XFM agrees to extend credit to the Customer;
 - (b) acknowledges that XFM may disclose certain personal information about each Guarantor to a credit reporting agency, in accordance with the provisions of the Privacy Act 1988 (Cth); and
 - (c) consents to XFM obtaining credit information from Trade References supplied for the purpose of assessing whether to accept each Guarantor as a guarantor for the obligations of the Customer.
- 13.** **This deed** is governed by the laws of Western Australia and the applicable laws of the Commonwealth of Australia. The Guarantor submits to the non-exclusive jurisdiction of the courts of that state of the Commonwealth of Australia elected by XFM.

Please read the following conditions carefully and in their entirety. You will be bound by the conditions in this schedule if we carry or store Products for you.

This means:

- **You must take out your own insurance cover over the Products.**
- **If both you and the consignee are both operating a business:**
 - **the Products will be at your sole risk and our services are priced on this basis; and**
 - **we will not be liable for any loss of or damage to the Products, or any other losses you suffer, regardless of the cause of such loss or damage.**

CONDITIONS OF CARRIAGE AND STORAGE

1. Definitions

The meanings of the terms used in this Schedule (other than those defined in the Trading Terms and Conditions) are set out below.

- 1.1 **Carriage** means the whole of the operations and services undertaken by XFM or any person on behalf of XFM in respect of the Products (whether gratuitously or not) including but without limiting the generality of this definition, loading, unloading, packing, handling, transporting and storing the Products and the provision of any advice.
- 1.2 **Chain of Responsibility Law** means the Heavy Vehicle National Law as enacted in any Australian state, the Road Traffic (Administration) Act 2008 (WA) and the Road Traffic (Vehicles) Act 2012 (WA) and any other state, territory or Commonwealth legislation dealing with the obligations of parties involved in road transport activities, such as consignors, transport operators, loaders, drivers and schedulers.
- 1.3 **Consequential Loss** means any indirect or consequential loss, loss of use, loss of product or production, delayed, postponed, interrupted or deferred production, inability to produce, deliver or process, loss of profit, revenue or anticipated revenue, loss of bargain, contract, expectation or opportunity, punitive or exemplary damages, in each case arising from or in connection with the performance of this agreement or at any time of provision of the Services.
- 1.4 **Container** includes any container, trailer, wagon, transportable tank, pallet, flat rack or any other unit or device used to consolidate Products.
- 1.5 **Crane** includes any machine used for lifting Products, including a sideloader.
- 1.6 **Dangerous Goods** means Products that are or may become noxious, dangerous, flammable or damaging, or that are or may become liable to damage any property whatsoever.
- 1.7 **Force Majeure Event** means an act, event or cause that is beyond the reasonable control of XFM including acts of God, lightning, earthquakes, floods, storms, other natural disasters, explosions, fire, acts of war, acts of public enemies, terrorism, public disorders, riots, civil commotion, revolution, sabotage, malicious damage, any order or temporary or permanent injunction of any court or acts of a government or government instrumentality, strikes, lockouts, labour disputes (to the extent they exceed 7 days), road closures, traffic congestion, quarantine or customs restriction, embargo, interruption of power supplier, scarcity of fuel, accident, collision or breakdown a vehicle, machinery or equipment.
- 1.8 **Fuel Levy** means any sum payable to XFM based on movements in the price of diesel fuel, calculated on a weekly or monthly basis.
- 1.9 **Person** means any individual, firm, corporation, trust or government authority.
- 1.10 **Products** (for the purposes of these Conditions) means the property accepted by XFM from the Customer for Carriage including any container or packaging supplied by or on behalf of the Customer.
- 1.11 **Receiver** means any Person to whom XFM shall deliver or is intending to deliver the Products.
- 1.12 **Regulated Waste** means 'regulated waste' under the Environmental Protection Regulation 2008 (Qld) and any other commercial or industrial waste (whether or not it has been immobilised or treated) where dealings with that waste are regulated by any state or federal legislation.
- 1.13 **Services** (for the purposes of these Conditions) means all of the services undertaken by XFM in connection with the Products including but not limited to carriage, transport, storage, loading and unloading and associated tasks to be provided by XFM or it's employees or Subcontractors for the Customer.
- 1.14 **Subcontractor** means any Person with whom XFM may arrange to provide the Services, or any part of the Services and any Person that Person may arrange to provide the Services.
- 1.15 **Wilful Misconduct** means a deliberate act or omission which is contrary to or goes beyond the conduct to be expected of a party, where such party knows that or is reckless to the fact that such act or omission is contrary to or goes beyond the conduct to be expected of them.

2. Negation of liability as a common carrier

- 2.1 XFM is not a common carrier and will accept no liability as such. All Products are carried, and all storage and other services are performed by XFM, subject only to these Conditions. XFM reserves the right to refuse the Carriage of Products for any person and the Carriage of any class of Products at its discretion.

3. Customer's warranties and obligations

- 3.1 The Customer warrants that:
 - (a) the Products are fit for Carriage and have been suitably packaged for such purposes, without any special care in handling or movement;

- (b) the Products will be packaged in containers, packaging and pallets that conform to the requirement of the Receivers;
- (c) the Customer has the authority of all persons owning or having any interest in the Products to accept these Conditions on their behalf;
- (d) the Person delivering the Products to XFM is authorized to do so and is authorized to sign documents in relation to the carriage and storage of the Products;
- (e) the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer are full, accurate, true and correct;
- (f) there is a suitable practicable road and approach for XFM and XFM's vehicles to the place from which the Products are to be removed and the place to which the Products are to be delivered;
- (g) any place from which any Products are to be collected or to which any Products are to be delivered will have safe and adequate loading facilities and equipment available;
- (h) where the Products contain Regulated Waste, the Customer will provide to XFM all necessary documentation required by law to allow the transport of the Products by XFM;
- (i) a person with authority to accept delivery of the Products will be available to accept delivery at the delivery premises during trading hours;
- (j) the Customer will be responsible for the loading and unloading of any Products that consist of items of machinery for which a licence to operate is required;
- (k) Carriage is supplied for the purpose of a business, trade, profession or occupation carried on or engaged in by the Customer;
- (l) the Customer has complied with all laws and regulations in relation to Carriage of the Products including in relation to :
 - (i) the nature, condition, packaging, storage or carriage of the Products (including Chain of Responsibility Law obligations); and
 - (ii) workplace health and safety.
- (m) unless specifically declared in writing (and being compliant with all applicable laws) prior to Carriage, the Products are not Dangerous Goods or Regulated Waste;
- (n) If the Products are deemed to be Dangerous Goods or Regulated Waste, the Customer has complied with all applicable laws and regulations governing the carriage and storage of such Dangerous Goods or Regulated Waste. This includes ensuring compliance with the notification, classification, description, labelling, transport, packaging and storage of all Products with a dangerous goods classification; and
- (o) the Customer has effected a policy of insurance to cover any loss of or damage to the Products during Carriage.

3.2 The Customer must:

- (a) at the Customer's cost, provide any information or documents required by XFM to perform the Carriage;
- (b) provide sufficient instructions to allow XFM to adequately perform the Carriage in a timely manner;
- (c) provide any information concerning the nature of the Products and their packaging that XFM requests;
- (d) where the Products require special treatment (such as a particular orientation during Carriage), provide written notice to XFM of the special treatment required; and
- (e) where required by law, provide an accurate container weight declaration.

3.3 XFM relies on the details of description, items, pallet space, quantity, weight, quality, value and measurements supplied by the Customer, but does not admit their accuracy.

4. Subcontracting

4.1 XFM, at its discretion, may subcontract on any terms the whole or any part of the Carriage.

4.2 If XFM subcontracts any Carriage, XFM:

- (a) will not be relieved of any of its liabilities or obligations under any agreement incorporating these conditions; and
- (b) will be liable to the Customer for any act or omission of the Subcontractor as if such act or omission were the act or omission of XFM.

4.3 Every exemption, limitation, condition and liberty contained in these conditions and every right, exemption from liability, defence and immunity applicable to XFM or to which XFM is entitled under these conditions will also be available to and will extend to protect:

- (a) all Subcontractors;
- (b) every employee or agent of XFM or of a Subcontractor; and
- (c) all persons who are or are found to be vicariously liable for the acts or omissions of any person falling within 4.3(a) or (b).

4.4 For the purposes of clause 4.3, XFM is or will be deemed to be acting as agent or trustee on behalf of and for the benefit of all such persons and all such persons will to this extent be, or be deemed to be, parties to any agreement incorporating these conditions.

5. Limitation of Liability of XFM

5.1 In the event that the Customer is not a participant of the FreightSafe Warranty:

- (a) To the extent permitted by law, the Customer acknowledges and agrees that XFM and its employee, agent, subcontractor or personnel of XFM nor any other person who undertakes the Carriage of the Products at any time pursuant to these conditions shall not, under

any circumstances (except where any statute otherwise requires) be liable for:

- (i) any loss of or damage to, deterioration, evaporation or contamination of the Products,
- (ii) any Consequential Loss suffered by the Customer; or
- (iii) misdelivery, delay in delivery or non-delivery of the Products or any of them,

whether in the course of Carriage or otherwise save for in the event where loss, damage, deterioration, evaporation, contamination, misdelivery, delay in delivery or non-delivery is caused by the proven negligence or Wilful Misconduct of XFM or its employee, agent, subcontractor or personnel.

- (b) To the extent that liability cannot be excluded under law, XFM's liability will be limited, at its sole discretion, to either:
 - (i) the resupply of the Goods and/or Services; or
 - (ii) the cost of resupply of the Goods and/or services.
- (c) Without limiting the generality of the foregoing, XFM will not be liable for any loss of or damage to Products:
 - (i) caused by a Force Majeure Event;
 - (ii) caused by XFM or its employees, agents, subcontractors or personnel following instructions given to it by the Customer;
 - (iii) caused by vermin, infestation, infection or mould;
 - (iv) caused by vibration, road conditions, weather or weather events of any kind whatsoever, including but not limited to rain, hail or storm damage;
 - (v) comprising glass, internal or external fittings, plasterwork, cornices or any other fragile material or substances;
 - (vi) that are brittle, inherently defective or in such a condition that they cannot be loaded, unloaded or transported by road without damage;
 - (vii) caused by inherent vice or the nature of the Products;
 - (viii) where the loss or damage is to Dangerous Goods of Hazardous Materials;
 - (ix) where such loss or damage comprises of mechanical, electrical or electronic breakdown, derangement, or malfunction of the Products; or
 - (x) caused by insufficiency or unsuitability of packing or preparation of the Products to withstand the ordinary incidents of Carriage. For the purpose of this subclause, 'packing' will be deemed to include stowage of any Products inside a building or other structure.
- (d) Any Liability of XFM under this clause 5 will be

reduced proportionately to represent the extent to which the Customer or any other person's negligent or wrongful acts or omissions have contributed to or caused, the loss, damage, costs, misdelivery, delay in delivery or non-delivery of the Products.

- (e) Nothing whatsoever done or omitted to be done or other conduct by XFM in breach of contract or otherwise will under any circumstances constitute a fundamental breach of contract, or a repudiation of contract such as to have the effect of disentitling XFM from obtaining the benefit of and enforcing all rights, defences, exemptions, immunities and limitations of liability of XFM contained in these Conditions, and all such rights, defences, exemptions, immunities, limitations of liability and like protection will continue to have full force and effect in any event whatsoever.

6. Pallets and Containers

- 6.1 Without limiting the generality of clause 5, the Customer:
 - (a) acknowledges that XFM has no responsibility or liability in relation to:
 - (i) any Container or pallet used for Carriage; or
 - (ii) any hire charge or demurrage charge associated with any Container used for Carriage;
 - (b) must ensure that any pallets are transferred from and to any relevant hire accounts and that any necessary documentation is signed and delivered to the applicable pallet hire company; and
 - (c) releases and indemnifies XFM from and against:
 - (i) any liability in relation to the loss of Containers or pallets where such loss has not occurred due to the proven negligence or Wilful Misconduct of XFM, its employees, agents, subcontractors or personnel; and
 - (ii) the failure of any party to transfer pallets on or off any hire account or to return a Container.

7. Crane/lifting services

- 7.1 Where XFM provides Crane services at the request of the Customer, the Customer warrants that:
 - (a) the ground at the site where the Crane will be used is adequate to support the Crane;
 - (b) the ground giving access to the site is stable and firm and of a gradient to allow the Crane to be operated safely;
 - (c) sufficient clearance is afforded in respect of all overhead wires;
 - (d) the specifications and size of the Crane are suitable for the site where the Crane will be used and for the purpose required by the Customer; and
 - (e) the road surfaces, access and egress to the site are clear of obstacles at all times and will allow safe movement of the Crane.

7.2 XFM agrees to provide a selection of slings, lugs and chains and will specifically provide any Customer requested slings, lugs and chains (if XFM has same available). However XFM will not be responsible for loss or delay if any slings, lugs or chains are found to be unsuitable for the purpose required by the Customer.

7.3 The Customer warrants that the weight and dimensions of the Product/s provided is/are correct and understands and confirms that XFM will book a Crane based on the weight and dimensions of the Product/s provided by the Customer, which will be lifted in one lift and the radius of the proposed lift, measured from the radial point of the Crane, will therefore not exceed the limits of the Crane.

8. Indemnities

8.1 Except where any statute otherwise requires, the Customer will indemnify XFM:

- (a) in respect of any liability whatsoever in respect of the Products to any person (other than the Customer) who claims to have, who has, or who in the future may have any interest in the Products or any part of the Products; and
- (b) against all losses, or any other liability suffered or incurred by, or made or instituted against, XFM as a result, directly or indirectly, of:
 - (i) a breach of the Customer's obligations under these Conditions;
 - (ii) the nature or condition of the Products; or
 - (iii) any negligence, Wilful Misconduct or recklessness of the Customer, the consignor or the consignee.

8.2 Except where any statute otherwise requires, XFM will indemnify the Customer for any direct loss suffered by the Customer due to proven negligence or Wilful Misconduct of XFM.

9. Inspection

9.1 The Customer authorises XFM, but XFM will not be obliged, to open any document, wrapping, package or other Container in which the Products are placed or carried or that are otherwise associated with the Products, for the purpose of determining the nature, condition, ownership, destination of the Products or for any other purpose that is reasonably necessary.

9.2 If XFM is required by law to open any document, wrapping, package or other Container in which the Products are placed or carried, XFM will not be liable for any loss, damage or delay incurred as a result of any opening, unpacking, inspection or repacking of the Products and will be entitled to recover the reasonable costs of such opening, unpacking, inspection or repacking.

10. Route and deviation

10.1 The Customer authorises any deviation from the usual route or manner of Carriage of Products that may in the absolute discretion of XFM be considered desirable or necessary in the circumstances.

10.2 If the Customer expressly or impliedly instructs XFM to use, or it is expressly or impliedly agreed that XFM will use a particular method of handling or storing the Products or a particular method of Carriage, XFM will give priority to that method but if it cannot conveniently be adopted by XFM the Customer authorises XFM to handle or store or to carry or to have the Products handled, stored or carried by another method or methods.

11. Delivery

11.1 XFM is authorised to deliver the Products at the address nominated to XFM by the Customer for that purpose. XFM will be conclusively presumed to have delivered the Products in accordance with these Conditions if at that address it obtains from any person a receipt or signed delivery docket for the Products.

11.2 If the nominated place of delivery should be unattended or if delivery cannot otherwise be effected by XFM or the consignee otherwise fails to take delivery of the Products XFM may at its option deposit the Products at that place (which will be conclusively presumed to be due delivery under these Conditions) or store the Products and if the Products are stored by XFM the Customer will pay or indemnify XFM for all costs and expenses incurred in or about such storage. In the event that the Products are stored by XFM, XFM will be at liberty to redeliver them to the Customer from the place of storage at the Customer's expense.

12. Storage

12.1 Where Products are stored by XFM at the request of the Customer, the Customer will provide:

- (a) an address to which notices will be sent;
- (b) samples of the signatures of persons entitled to collect the Products; and
- (c) an inventory of the Products to be stored.

12.2 XFM will be entitled to remove the Products from a place of storage to another place of storage at its discretion and will provide notice to the Customer of the new place of storage on the same day as the Products have been moved.

12.3 The Customer must give 48 hours' notice to XFM of its intention to remove Products from storage.

12.4 XFM will not be obliged to deliver any Products except to the Customer or to a person authorised in writing by the Customer to receive the Products without:

- (a) a direction in writing from the Customer; and
- (b) payment of all amounts due by the Customer to XFM on any account whatsoever.

12.5 The Customer will remove its Products from storage within seven days of receipt of written notice from XFM.

- 12.6 If any identifying document or mark is lost, damaged, destroyed or defaced, XFM may open any document, wrapping, package or other Container in which the Products are placed or carried to inspect them either to determine their nature or condition or to determine their ownership.
13. **Delay in loading or unloading**
- 13.1 The Customer will be liable for and remain responsible to XFM for all its proper charges incurred by XFM for any reason, including, but not limited to the reason of delay in loading or unloading the Product. A charge may be made by XFM in accordance with XFM's schedule of rates (a copy of which shall accompany this Commercial Credit Application) in respect of any delay in loading or unloading of Product that has been caused by the Customer provided that it has not occurred as a result of a default of XFM. A delay period will commence upon XFM reporting for loading or unloading and will terminate once the Product has been fully loaded or unloaded.
14. **Supplier's charges**
- 14.1 XFM's charges will be deemed fully earned on receipt of the Products by XFM and are non-refundable in any event. The Customer agrees to pay all sums due to XFM without any deduction, counterclaim or set-off.
- 14.2 Any special instruction given by the Customer to the effect that charges will be paid by the consignee or any other third party will be deemed to include a stipulation that if the consignee or third party does not pay the charges within seven days of the date of delivery or attempted delivery of the Products the Customer will pay such charges.
- 14.3 Where XFM stores Products for the Customer, the Customer must:
- (a) pay XFM's expenses and charges to comply with any law or regulation or any order or requirement made under them or with the requirement of any market, harbour, dock, railway, shipping, customs, excise or warehouse authority, or other person;
 - (b) if any Products are under customs control, pay all customs duty, excise duty and costs (including any fine or penalty) that XFM becomes liable to pay or pays;
 - (c) supply or pay for labour or machinery or both to load or unload the Products; and
 - (d) compensate XFM for any cost, expense or loss to XFM's property or any person caused by the Products.
- 14.4 In addition to any other charges due under these Conditions, the Customer must pay:
- (a) if the Products are at any time re-quantified, re-weighed or re-measured, any proportional additional charges; and
 - (b) all other charges incurred in relation to the Carriage of the Products, including the Fuel Levy.
15. **Products requiring temperature control**
- 15.1 If XFM agrees to the Carriage of any Products that require temperature control, the Customer must give written notice to XFM:
- (a) of the nature of those Products;
 - (b) of the temperature range to be maintained;
 - (c) confirming that the Products have been properly packed; and
 - (d) confirming that the Products have been properly maintained at the required temperature prior to Carriage.
- 15.2 The Customer acknowledges that:
- (a) temperature variations can occur; and
 - (b) any temperature record maintained by XFM will, in the absence of a manifest error, be conclusive evidence of the temperature during Carriage.
16. **Dangerous Goods**
- 16.1 Unless XFM agrees in writing with the Customer, XFM will not accept Dangerous Goods for Carriage. If Dangerous Goods are tendered without prior written agreement, the Dangerous Goods may at any time be destroyed, disposed of, abandoned or rendered harmless without compensation to the Customer and without prejudice to XFM's right to charge for the Carriage of the Products.
- 16.2 If XFM accepts Dangerous Goods for Carriage:
- (a) such Products must be accompanied by a full written declaration disclosing their nature;
 - (b) the Customer must comply with all laws, regulations, ordinances and codes that deal with the Carriage of Dangerous Goods, including but not limited to the *Australian Code for the Transport of Dangerous Goods by Road & Rail*; and
 - (c) the Customer warrants that the Products are packed in a manner adequate to withstand the ordinary risks of Carriage and Storage having regard to their nature.
- 16.3 The Customer will indemnify XFM against all loss, damage or injury howsoever caused arising out of the Carriage of any Dangerous Goods whether declared as such or not and whether or not the Customer was aware of the nature of the Products.
- 16.4 The indemnity in clause 16.3 extends to Consequential Loss.
- 16.5 If, in the opinion of XFM, any Dangerous Goods accepted under clause 16.2 become, or are likely to become, dangerous to other goods or property, or any person, XFM may nevertheless destroy, dispose of or abandon the Dangerous Goods without compensation to the Customer and without prejudice to XFM's right to charge for the Carriage of the Products.
17. **Notification of claim**
- 17.1 Notwithstanding any other provision of these Conditions (other than clause 3.2 of the Trading Terms and Conditions), XFM will in any event be discharged from all liability

whatsoever in respect of the Products unless written notice of a claim or an intended claim (together with particulars of the circumstances on which the claim is based) is given to XFM:

- (a) in the case of Products allegedly lost or damaged in the course of loading, unloading or transit, within 24 hours of delivery of the Products (if the Products are perishable) or 14 days of delivery of the Products (if the Products are not perishable) or, in the case of non-delivery, within 14 days of the time at which, in the ordinary course of business, delivery would have been effected; or
 - (b) in the case of Products allegedly lost or damaged during storage, within 14 days of the date of removal or attempted removal of the Products from storage.
- 17.2 XFM will be discharged from all liability whatsoever in respect of the Products unless suit is brought:
- (a) in the case of Products allegedly lost or damaged in the course of loading, unloading or transit within 12 months of their delivery or of the date on which they should have been delivered; or
 - (b) in the case of Products allegedly lost or damaged during storage, within 12 months of the date of removal or attempted removal of the Products from storage.

18. Chain of Responsibility Law

- 18.1 XFM and the Customer must comply with all applicable laws and regulations, including Chain of Responsibility Law.
- 18.2 The Customer must not impose any requirement on XFM that would directly or indirectly encourage or require XFM or any person on behalf of XFM to speed, drive while fatigued or otherwise perform the Carriage in an unsafe manner.

19. Competition and Consumer Act 2010 (Cth)

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