

**GENERAL TERMS AND CONDITIONS OF TRADE** (Effective 1 April 2011)

To the fullest extent legally permissible including The Australian Consumer Law (**ACL**) all dealings between **Material Logistics Handling Pty Ltd ABN 93 608 225 565** (and/or any related and/or associated companies, trusts and/or other entities and/or any successors and/or assigns) whether trading as "Transtainer" and/or otherwise (Company) and each and every party dealing with the Company as a customer (Customer) in relation to any goods and/or services supplied or to be supplied by the Company (**goods** and/or **services**) are subject to the following terms and conditions (**Terms**) unless otherwise expressly agreed in writing. Where the ACL applies, to the extent of any inconsistency these Terms or any part thereof will be void and capable of severance without affecting any remaining clauses:

**1. Payment:** **a)** Payment shall be made by cash, cheque, bank cheque or EFTPOS, without deduction and within the credit period stipulated in each invoice or statement. If no credit period is stipulated, payment shall be made within 30 days from the date of invoice. **b)** The Customer agrees to pay an administration fee of 2% as the liquidated processing cost on credit card payments and/or on payments made outside the credit period stipulated in each invoice or statement.

**2. Interest:** Interest shall be charged on overdue accounts calculated daily at the cash target rate plus 2% until such time as the account is paid in full if an account remains unpaid after thirty (30) days from the invoice date. The Company reserves the right to withhold at any time the provision of goods and/or services to the Customer in the event the Customer fails to comply with the company's terms of payment or for any other reason.

**3. Property:** **a)** The Customer agrees that these Terms constitute a "security agreement" for the purposes of the *Personal Property Securities Act 2009* (Cth) (**PPSA**) and that the Company has and/or will have a "security interest" in respect of all goods and/or services whether present or after acquired for the purposes of the PPSA. Customer further agrees to waive rights that Customer has or may have with regard to PPSA sections 125, 130, 132(3)(d), 132(4), 135 and 157. These Terms may be produced as evidence of Customer's waiver of rights with regard to the sections listed.

**b)** Property in goods shall not pass until payment in full of all monies owed by the Customer. **c)** The Company reserves the right to take possession and dispose of goods as it sees fit at any time until full payment. The Customer grants permission to the Company to enter any property where any goods are stored with force if necessary. **d)** Immediately on delivery the Customer accepts liability for the safe custody of goods and indemnifies the Company for any related losses. **e)** On sale or disposition of any goods prior to full payment the Customer agrees to deposit all proceeds in a separate bank account and to not mix proceeds with any other monies and shall forthwith account to the Company despite that the Company may have granted any credit facility and/or time to pay. **f)** Until payment in full the Customer agrees:

(i) to keep all goods unpaid for as fiduciary for the Company and store all goods in a manner which shows the Company

the Company; and (iii) that sale on terms, for less than cost and/or to a related entity of the Customer shall not be "in the usual course". **g)** Without derogating from any rights of the Company as a creditor or under these Terms if goods are used in any construction, fabrication, manufacturing and/or other process (**Process**) which results in an entitlement of the Customer to receive money from any other person the Customer agrees to hold such part of any monies received by the Customer (or the corresponding book debt owed to the Customer in respect of those monies) as is equivalent to the value of any goods used in the Process as invoiced to the Customer by the Company UPON TRUST for the Company until payment in full for those goods and all monies owed to the Company. **h)** Nothing in this clause is intended to create a charge and this clause shall be read down to the extent necessary to avoid creating any charge. **i)** The Customer agrees a certificate signed by an officer of the Company and stating certain facts for the purposes of this clause shall be conclusive evidence of each fact stated.

**4. Limitation of Liability:** A. If the goods and/or services are supplied to the Customer as a 'consumer' as defined in the ACL, then the Customer has the benefit of certain consumer guarantees, non-excludable rights and remedies in respect of those goods and/or services (**Consumer Rights**) and nothing in these Terms shall exclude, restrict or modify any Consumer Rights: **a)** The Customer acknowledges and agrees that if it is a 'consumer' under the ACL then (i) its right to make any claim(s) for any loss or damage sustained by the Customer and/or any third parties shall be limited to the Consumer Rights (ii) the liability of the Company for failure to comply with a consumer guarantee in relation to the supply of goods and/or services will be limited to that set out under s64A of the ACL. **b)** To the fullest extent possible under law including the ACL (if applicable), the Company shall not be liable for any errors or omissions resulting from the Customer's failure to sign off on any of the goods and/or services; and/or any claim in any way caused and/or contributed to by the Customer or any of its employees or servants; **c)** The Customer warrants that: (i) any information, designs or other material provided by it does not infringe any copyright, trade mark or registered design, is not in breach of confidence and is not misleading and/or deceptive and (ii) any statement made by it purporting to be factual is true.

B. If any services and/or goods are supplied to the Customer and it is not a 'consumer' as defined under the

as owner; (ii) to only sell goods in the usual course of its business on the basis that all proceeds are held in trust for of a kind Ordinarily acquired for personal, domestic or household use or consumption, then (a) the liability of the Company for a breach of a condition or warranty under these Terms is limited to (i) in the case of services the supplying of the services again or the payment of the cost of having the Services supplied again; (ii) in the case of goods the replacement of the goods or the supply of equivalent goods or the repair of the goods. (b) Save as expressly provided for under these Terms the Company shall not be liable to the Customer or the Customer's servants, agents or representatives for any direct, indirect, incidental or consequential loss or damages of any nature however caused (whether based on tort including negligence, contract or otherwise) including but not limited to loss of profits, loss of production, loss of sales opportunity or business reputation, direct or indirect labour cost and overhead expenses and damage to equipment or property or any other claim whatsoever arising directly or indirectly or in any way attributable to the performance of the Company under these Terms and in no event shall any claim be recognized unless the claim is in writing and received by the Company within fourteen (14) days of the date of Delivery.

**5. Cancellations and Returns:** To the extent that the ACL does not apply the Customer agrees: a) not to cancel any order without the Company's prior approval; b) not to return goods without the Company's prior approval and if goods are not in brand new and unused condition with undamaged packaging and 3 weeks or more have passed since delivery; c) that the Company may take back goods in saleable condition on such terms as the Company considers to be reasonable; d) to pay the Company on request a restocking fee of 15% of the gross invoice value of all returns; e) not to return goods without first providing the Company an original invoice as proof of purchase; f) not to return any goods which have been custom made, custom processed or custom acquired; g) that the Company does not give cash refunds otherwise than in accordance with the Consumer Rights under the ACL (if applicable). If the ACL does apply to the Customer as a 'consumer' as defined therein then the parties will be bound by the provisions of Part 5-4 of the ACL dealing with remedies relating to guarantees in relation to the supply of goods or services.

**Refunds:** Once we receive your item, we will inspect it and notify you that we have received your returned item. We will immediately notify you on the status of your refund after inspecting the item. If your return is approved, we will initiate a refund to your credit card (or original method of payment). You will receive the credit within a certain amount of days, depending on your card issuer's policies.

**6. Quotations:** To the extent that the ACL does not apply the Customer agrees that: **a)** quotations must be in writing; **b)** the Company shall not be bound by any quotation if an

order is not placed within 14 days from the date of quotation; **c)** the Company may prior to receipt of any order amend any quotation and notify the Customer accordingly without ramification; **d)** the Company shall not be bound by any quotation if it forms the view that the subject matter of the quotation is to form part of a larger transaction or series of transactions with the Customer and if the Company also forms the view that those circumstances have substantially and/or materially changed;

ACL and the goods and/or services provided are other than **e)** the Customer shall pay any additional charges the Company levies for holding any goods referred to in any quotation pending placement of an order.

**7. Placement of Orders:** To the extent that the ACL does not apply the Customer agrees that: **a)** if any dispute arises concerning any order (including any question of identity, authority or any phone, fax or computer generated order) the internal records of the Company shall be conclusive evidence of what was ordered; **b)** each order placed shall be and be deemed to be a representation by the Customer made at the time that it is solvent and able to pay all of its debts as and when they fall due; **c)** when placing any order the Customer shall inform the Company of any facts which might reasonably affect acceptance of the order by the Company and/or any grant of credit and any failure to do so by or on behalf of the Customer shall be deemed to create an inequality of bargaining position, be deemed to constitute the taking of an unfair advantage of the Company and to be unconscionable, misleading and deceptive.

**8. Supply and Delivery:** **a)** the Company may supply by instalments and/or withhold or cancel supply without ramification where: (i) the Company has insufficient goods to fulfil orders; (ii) goods are not available to supply; (iii) the Customer is in breach of these Terms; (iv) the Company has any safety concerns; and/or (v) the Company considers it appropriate whether because of any minimum invoice policy or otherwise. **b)** The Customer agrees that: (i) the Company may elect to arrange delivery at its discretion and without any liability and at the cost and responsibility of the Customer in all things subject to the provisions of the ACL (if applicable); (ii) the Customer shall be deemed to have accepted delivery and liability for goods on being notified by the Company that goods are ready for collection and/or on goods being delivered to a carrier or to the Customer's business premises or nominated site whether attended or not; (iii) a certificate purporting to be signed by an officer of the Company confirming delivery shall be conclusive evidence of delivery as shall any signed delivery docket; and (iv) the Company shall not be liable for delay, failure or inability to deliver any goods subject to the provisions of the ACL (if applicable). **c)** The Customer agrees: (i) to pay for so much of any forward order as the Company invoices from time to time; (ii) that no delay or failure to fulfil any part of any order shall entitle the Customer to cancel or vary any order or delay or reduce any payment; (iii) to pay the

Company for any demurrage or other costs and expenses in handling and/or holding any goods once ready for delivery and/or collection; and (iv) the Company may supply an excess or deficiency of goods up to 5% of the volume or weight of the amount ordered and the Customer shall pay for the amount so supplied and shall not make any claim against the Company for the amount over or under supplied.

**9. Purchase Price:** **a)** In the absence of a binding quotation all sales are made at the price nominated by the Company at the time of delivery.

**b)** All government imposts, levies and excise duties (including any GST or equivalent) shall be to the Customer's account. **c)** Prices exclude government imposts, levies, excise duties (including any GST or equivalent) and/or any fees and/or fines levied by emergency Service providers unless the Company otherwise agrees.

**10. Variations:** To be binding any variation or cancellation of these Terms or any order must be approved by the Company in writing.

**11. Exclusions:** But for the operation of the ACL (if applicable) **a)** No dealing between the Company and the Customer shall be or be deemed to be a sale by sample.

**b)** If the Company publishes material concerning its goods, services and/or prices anything so published which is incompatible with these Terms is unless otherwise stated expressly excluded. **c)** The Customer shall rely on its own knowledge and expertise in selecting any goods and/or services for any purpose and any advice and/or assistance given by or for the Company shall be at the Customer's risk and shall not be or be deemed to be given as expert or adviser nor to have been relied on by the Customer or anyone claiming through the Customer. **d)** All goods are sold subject to all applicable trading terms, warranties and representations of the manufacturer. **e)** the Company shall not be responsible nor liable for: (i) paying and/or obtaining any necessary judicial, statutory, government and/or utility fees, expenses, orders, approvals, permits and/or licences; and/or (ii) any failure to comply with any special requirements of the Customer or any other person (whether relating to manufacture, design, fabrication, installation and/or any other particular intended use of any goods and/or services or otherwise). **f)** the Company shall not be liable for any goods and/or services: (i) made or performed to designs, drawings, specifications and/or procedures etc. and/or with materials which are provided and/or approved (whether fully or in part) by or on behalf of the Customer; (ii) utilised, stored, handled and/or maintained incorrectly or inappropriately; and/or (iii) manufactured and/or supplied by any other party. **g)** The Customer agrees to: (i) check all goods for compliance with all applicable laws, standards and/or guidelines before use, on-sale and/or application; (ii) comply with all

applicable laws, standards and/or guidelines and with all recommendations and/or directions made and/or given by the Company and/or by any manufacturer; and (iii) act in accordance with good practice at all times.

**12. Default:** To the fullest extent possible under the ACL (if applicable) **a)** On default or breach of any part of these Terms by the Customer the full balance of all unpaid monies shall be deemed by this clause to be immediately due and payable (save to the extent that the Company expressly directs otherwise in writing) and the Company may *inter alia* terminate any contract, retain all monies paid, cease further deliveries and/or provision of services,

recover all lost profits and/or at its discretion take immediate possession of any goods not paid for without prejudice to any other rights and without being liable in any way to any party. **b)** The Customer agrees not to commence or continue or permit to be commenced or continued through it any suit against the Company while the Customer is in default under any part of these Terms or in any of its dealings with the Company. **c)** The Customer agrees to indemnify the Company for all fees and expenses payable to solicitors, mercantile agents and other parties acting on behalf of the Company in respect of anything instituted or being considered against the Customer whether for debt, possession of any goods or otherwise (including all legal costs on an indemnity basis).

**d)** The Company may apply any payment in reduction of fees, interest and/or any principal debt in such order of priority as the Company in its discretion deems appropriate. **e)** The Customer irrevocably authorises the payment directly to the Company of any debt due to the Customer by any debtor of the Customer in reduction of any amount due to the Company under these Terms or otherwise.

**13. Indemnity:** To the fullest extent possible under the ACL (if applicable) the Customer fully indemnifies the Company against any claim or loss arising from or related in any way to any dealing between the Company and the Customer and/or arising under these Terms.

**14. Intellectual Property:** The Customer agrees that all intellectual property in the creation of any goods and/or services shall be and remain the property of the Company despite any contribution by the Customer.

**15. Other Terms and Conditions:** No terms and conditions sought to be imposed by the Customer upon the Company shall apply unless otherwise agreed in writing by both parties.

**16. Reconditioned Goods:** The Company shall not be liable for any reconditioning and/or repair of products made and/or supplied by the Customer and/or by any third party.

**17. Customer Restructure:** The Customer shall notify the Company in writing of any change in its structure or

management including any change in director, shareholder and/or management and/or any change in partnership and/or trusteeship within 7 days of each change. Until such notice is received the Customer guarantees the performance of all obligations passing to any third party and fully indemnifies the Company against all loss (including legal costs on an indemnity basis).

**18. Jurisdiction:** If the ACL does not apply the Customer agrees that all dealings with the Company shall be governed by the laws of SA and the Customer agrees to submit to the jurisdiction of the appropriate Court nominated by the Company in Adelaide.

**19. Credit Limit:** Any credit facility or credit limit is an indication only of the intention of the Company at the time. the Company may vary or withdraw credit at any time at its discretion and without any liability to the Customer or any other party. Upon breach of any of these Terms, the whole of the monies owing by the Customer shall become immediately due and payable.

**20. Waiver:** An election by the Company not to exercise any of its rights arising as a result of any breach of these Terms shall not constitute a waiver of any rights of the Company relating to any other breach.

**21. Notice:** If the ACL does not apply the Customer agrees that it shall be deemed to have notice of any change to these Terms immediately any change is adopted by the Company and whether or not the Customer has actual notice. The Customer shall be deemed to be bound by any terms and conditions of trade which may be adopted by the Company immediately any change is adopted and despite any other purported or pre-existing terms and conditions which might otherwise have applied.

**22. Security For Payment:** To the fullest extent possible under the ACL (if applicable) the Customer hereby grants to the Company a general lien over all property of the Customer until payment in full of all monies owing to the Company.

**23. Force Majeure:** If the ACL does not apply the Company shall not be in default or in breach of any contract with the Customer as a result of *Force Majeure* including any strike or lock-out.

**24. Insolvency:** a) If the Customer commits or is involved in any act of insolvency the Customer shall be deemed to be in default under these Terms. b) An act of insolvency is deemed to include the appointment of any insolvency practitioner and the calling of any formal meeting of creditors.

**25. Containers, Pallets and Stands:** The Customer agrees on request to return all containers, pallets, stands, reusable packaging and/or display equipment (**Equipment**) provided by the Company and to indemnify the Company for the full replacement cost of any Equipment not returned or damaged.

**26. Severability:** Any part of these Terms shall be capable of severance without affecting any other part of these Terms.