



1. DEFINITIONS

1.1 In these terms and conditions of carriage:

- 1) **"Destination"** means the address of the premises or the address of the Receiver to which the Goods must be delivered as directed by the Customer;
- 2) **"Contract"** means a contract for the provision of Services by Supplier to the Customer;
- 3) **"Contract Price"** means the price of acquiring Services as specified in Supplier's invoice;
- 4) **"Customer"** means the person or entity acquiring the Services under this Contract;
- 5) **"Goods"** means the items to be carried identified in the Quotation and the Order;
- 6) **"Order"** means the order submitted by the Customer to Supplier for the supply of Services;
- 7) **"Personnel"** means the Supplier's employees and agents and subcontractors;
- 8) **"Quotation"** means Supplier's written quotation to the Customer for Services;
- 9) **"Receiver"** means the person in occupation or control of the Destination who, if it is not the Customer, will be deemed to be the agent of the Customer for the purposes of this Contract;
- 10) **"Services"** means the services rendered for transport, carriage, shipment and/or storage of the Goods and any ancillary services to be provided by the Supplier;
- 11) **"Supplier"** means APC Storage Solutions Pty Ltd ACN 131 332 735 of 5 Hanwell Way, Bassendean WA 6054 and any related body corporate of that company within the meaning of section 50 of the Corporations Act 2001.

2. CONTRACT

- 2.1 The Contract shall consist of these terms and conditions of carriage, the Order, and any other document which is attached to or incorporated by reference in these terms and conditions of carriage.
- 2.2 Where there is any conflict or inconsistency between the documents constituting the Contract, unless otherwise provided, the documents will rank in order of precedence in accordance with the order in which they are listed in clause 0.
- 2.3 The Contract contains the entire agreement between the Supplier and the Customer and supersedes all prior communications and negotiations between the Supplier and the Customer in connection with its subject matter.
- 2.4 No terms or conditions submitted by either party that are in addition to, different from or inconsistent with those contained herein or in the Order, including without limitation, Customer's printed terms and conditions, or any terms and conditions contained in any order acknowledgment, confirmation, acceptance, bill of lading or other instrument, shall be binding upon either party unless specifically and expressly agreed to in writing signed and duly authorised by representatives of both parties.
- 2.5 No amendment or variation of the Contract is valid or binding on a party unless made in writing and signed by representatives of both parties.

3. SUPPLIER NOT COMMON CARRIER

- 3.1 The Customer acknowledges that the Supplier is not a common carrier and does not accept liability as a common carrier.
- 3.2 The Supplier reserves the right to refuse the transportation of any Goods or any class of goods at its absolute discretion and without obligation to give reasons for refusal.

4. THE GOODS

- 4.1 The Customer must provide full and frank disclosure to the Supplier about the composition and nature of the Goods to be carried by the Supplier. Without limitation of the foregoing, the Customer warrants that none of the Goods that it provides for carriage by the Supplier are dangerous or perishable.
- 4.2 If in Supplier's opinion the Goods are or may become dangerous, inflammable, explosive, volatile, offensive or damaging in nature, the

- 4.3 Supplier may at any time and at the Customers' cost destroy, dispose of, abandon or render them harmless without compensation to the Customer or Receiver and without prejudice to Supplier's right to payment of the Contract Price. This clause does not affect any other rights the Supplier may have under this Contract.

5. THE SERVICES

- 5.1 The Customer acknowledges that the Supplier provides transport services by road and may use any route or procedure to deliver the Goods to the Destination.
- 5.2 If the Supplier cannot conveniently supply the Services by its usual method, it may transport the Goods by any other method.

6. DELIVERY

- 6.1 The delivery time made known to the Customer is an estimate only and the Supplier shall not be liable for late delivery, non-delivery or failure to dispatch or otherwise perform within such times unless otherwise agreed in writing. In all cases, the time allowed for delivery shall be extended by a reasonable period for delays caused by the Customer, or by any other cause whatsoever beyond the Supplier's reasonable control.
- 6.2 The Supplier is authorised to deliver the Goods to the Destination or any other address directed by the Customer and the Supplier will be taken to have delivered the Goods, if at either address, the Supplier obtains from any person an acknowledgement of delivery.
- 6.3 If the Destination or any other address directed by the Customer is unattended, or the Customer fails to take delivery of the Goods, the Supplier may:
 - 1) leave the goods at the Destination; or
 - 2) store the Goods; and
 - 3) its actions pursuant to this clause 6.3 constitute delivery.
- 6.4 If the Supplier decides to store the Goods pursuant to clause 1), the Customer must pay the Supplier's reasonable expenses incurred.
- 6.5 The Supplier is not responsible for any loss or damage to the Goods in transit.
- 6.6 The provision of labour and a suitable forklift for the unloading and handling of the Goods at the Destination is the responsibility of the Customer, unless otherwise agreed in writing. Any charges arising from delay in unloading for which the Supplier is not responsible, will be to the Customer's account.

7. CUSTOMER WARRANTIES

- 7.1 The Customer warrants:
 - 1) it is either the owner or the authorised agent of the owner of the Goods and it accepts these terms and conditions for itself as well as for any other person for whom the Customer is acting; and
 - 2) subject to clause 10, neither it nor any other Person shall make an allegation or claim against the Supplier or any other person about the Services.
- 7.2 The Customer indemnifies the Supplier from any loss, damage, expense, penalty, fine or liability arising from a breach of the warranties in clause 0 or the Customer's obligations under the Contract.

8. INSURANCE

- 8.1 The Customer acknowledges that it has the responsibility to arrange for appropriate insurance cover for the Goods during transit.

9. PAYMENT FOR SERVICES

- 9.1 The Customer must pay the Contract Price immediately upon acceptance of the Order unless terms of credit have been extended by the Supplier upon completion of the Supplier's official Application for Credit Form. The terms of credit extended to the Customer (if any) will be specified in the Supplier's invoice.
- 9.2 The Customer acknowledges that the price stated in or during the time of quotation is an estimate based on rates of freight, insurance, customs duty, exchange rates, shipping expenses and other factors at the time the Quotation was prepared. If the Supplier considers that it needs to adjust the quoted price in light of circumstances which it considers have affected the cost of the Services, then at any



time prior to acceptance of an order, the Supplier may adjust the quoted price and such adjustments will be binding on the Customer.

- 9.3 If the Customer requires special packing in relation to the Goods the cost of the same is to the Customer's account and will be included in the Contract Price.
- 9.4 If the Customer requires delivery by overnight transport or other special delivery, any additional cost is to the Customer's account and will be included in the Contract Price.
- 9.5 If the Supplier omits to include any item of additional cost to the Customer's account in the Contract Price the Customer must pay to the Supplier such costs on demand.
- 9.6 The price at which the Services are supplied does not (unless otherwise stated or agreed in writing) include Goods and Services Tax or other governmental taxes directly applicable to the supply of goods or services, which must be added to the price and paid by the Customer as part of the Contract Price.

10. EXCLUSION OF IMPLIED CONDITIONS AND WARRANTIES

- 10.1 The only conditions and warranties which are binding on the Supplier in respect of:
 - 1) the quality of the Services supplied by it to the Customer; and/or
 - 2) advice, recommendation(s), information or services supplied by it or its Personnel to the Customer regarding the Services;are those imposed and required to be binding by statute (including the Australian Consumer Law).
- 10.2 To the extent permitted by statute the liability, if any, of the Supplier arising from the breach of the conditions or warranties referred to in clause 0 are, at the Supplier's option, limited to and completely discharged by either:
 - 1) the supply by the Supplier of equivalent Services; or
 - 2) the resupply by the Supplier of the Services supplied to the Customer.
- 10.3 Except as provided in clause 0, all conditions and warranties whether express or implied by law in respect of the quality or standard of Services which may apart from this clause be binding on the Supplier are excluded.

11. LIEN

- 11.1 The Customer acknowledges that the Supplier has a common law lien on the Goods for the Contract Price and any other charges which become due on any account for the Services.
- 11.2 If the Contract Price is not paid or the Customer or Receiver fails to take delivery or return of the Goods, the Supplier may without notice:
 - 1) store the Goods as Supplier thinks fit at the Customer's risk and expense, or
 - 2) open any package and sell all or any of the Goods as the Supplier thinks fit and apply the proceeds to discharge the lien and costs of sale.
 - 3) the Supplier may deduct or set-off from any moneys due from the Supplier to the Customer under any contract, debts and moneys due from the Customer to Supplier under these conditions or any contract.

12. WARRANTIES IN RESPECT TO SERVICES

- 12.1 The Supplier warrants that:
 - 1) all of the Services will be provided in an efficient manner in accordance with all applicable legislation and regulations;
 - 2) the Supplier and its Personnel will exercise the standards of diligence, skill and care normally exercised by a similarly qualified and competent person in the performance of comparable work; and
 - 3) all the Services will be of a satisfactory standard and in accordance with the Contract.

13. LIMITATION OF LIABILITY

- 13.1 Except in respect of death or personal injury caused by the Supplier's wilful negligence, or as expressly provided in these terms and conditions of carriage, the Supplier shall not be liable to the Customer or any third party by reason of any representation (unless fraudulent) or any implied warranty, condition of other term, or any duty at common law, or under the express terms of the Contract, for any loss of profit or any indirect, special or consequential loss, damage, costs, expense or other claims (whether caused by the negligence of the Supplier, its Personnel or otherwise) which arise out of or in connection with the provision of the Services and the entire liability of the Supplier under or in connection with the Contract shall not exceed the amount of the Supplier's charges for the provision of the Services, except as expressly provided in these terms and conditions of carriage.

14. CLERICAL ERRORS

- 14.1 Errors and omissions in the Supplier's invoices will not be binding upon the Supplier and may be corrected by the issue of a supplementary invoice or revised invoice which is otherwise in the same terms including the due date for payment.

15. FORCE MAJEURE

- 15.1 If a party is prevented from or delayed in complying with an obligation (other than to pay money) by an event beyond its reasonable control, performance by it of that obligation is suspended during the time, but only to the extent that, compliance is prevented or delayed.

16. WAIVER AND ASSIGNMENT

- 16.1 A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right, and the exercise of a power or right does not preclude either its exercise in the future or the exercise of any other power or right.
- 16.2 A waiver is not effective unless it is in writing and is effective only in respect of the specific instance to which it relates and for the specific purpose for which it is given.
- 16.3 The Supplier reserves the right to assign or subcontract out the whole or any part of the Contract at its sole discretion.

17. GOVERNING LAW AND JURISDICTION

- 17.1 The law of the State or Territory in which the Services are performed governs the Contract, and in the event of the Services being performed in more than one State or Territory then the law of the Destination will apply.
- 17.2 The parties submit to the non-exclusive jurisdiction of the courts of that State or Territory.

18. VARIATION OF TERMS

- 18.1 The Supplier reserves the right to replace or vary these terms and conditions of carriage from time to time upon 30 days' notice. All contracts from orders received by the Supplier after the expiry of 30 days' notice shall be deemed to be subject to the replacement of varied terms and conditions.

19. SEVERABILITY OF PROVISIONS

- 19.1 The parties agree:
 - 1) that any illegal or unenforceable provision will be severed from this document and will not affect the continued operation of the remaining provisions which are self-sustaining and capable of separate enforcement; and
 - 2) use their best endeavours to replace any severed provision with a legal and enforceable provision having a commercial import as close as permissible to the severed provision.
- 19.2 Notwithstanding that any provision of this document which is prohibited or unenforceable in any jurisdiction shall be construed to be ineffective to the extent of such prohibition or unenforceability in that jurisdiction, this construction will not affect the validity or enforceability of the provision in any other jurisdiction.