WA Transition Pty Ltd – Terms & Conditions of Trade

1. Definitions

1.1 "WA Transition" means WA Transition Pty Ltd, its successors and assigns or any person acting on behalf of and with the authority of WA Transition Pty Ltd.

1.2 "Client" means the person/s or any person acting on behalf of and with the authority of the Client requesting WA Transition to provide the Services as specified in any proposal, quotation, order, invoice or other documentation, and:
(a) if there is more than one Client, is a reference to each Client jointly and severally; and
(b) if the Client is a part of a Trust, shall be bound in their capacity as a trustee; and
(c) includes the Client's executors, administrators, successors and permitted assigns.

1.3 "Goods" means any goods or cargo together with any container, packaging, or pallet(s) which the Client has requested or arranged to be moved from one place to another by way of WA Transition's Services, or for storage by WA Transition.

1.4 "Services" means all Goods or Services (includes the collection, transportation, processing, and/or recycling of Goods, and any advice or recommendations) provided by WA Transition to the Client at the Client's request from time to time, as described on the quotations, invoices, consignment note, manifests, sales order or any other forms as provided by WA Transition to the Client, and includes storage and pre-packing of the Goods, any advice or recommendations.

1.5 "Sub-Contractor" means and include;
(a) any other person or entity with whom WA Transition may arrange for the carriage or storage of any Goods the subject of the contract; or
(b) and any person who is now or hereafter a servant, agent, employee or sub-contractor of any of the persons referred to in clause 1.5(a).

1.6 "Price" means the Price payable (including GST) for the Services as agreed between WA Transition and the Client subject to clause 6 of this contract.

1.7 "GST" means Goods and Services Tax (GST) as defined within the "A New Tax System (Goods and Services Tax) Act 1999" (Cth).

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

2.1 Nothing in this agreement is intended to have the effect of contracting out of any applicable provisions of the CCA or the FTA in each of the States and Territories of Australia (including any substitute to those Acts or re-enactment thereof), except to the extent permitted by those Acts where applicable.

2.2 The Client must inspect the Goods on delivery and must within twenty-four (24) hours of delivery notify WA in writing of any evident defect/damage, shortage in quantity, or failure to comply with the description or quote. The Client must notify any other alleged defect in the Goods as soon as reasonably possible after any such defect becomes evident. Upon such notification the Client must allow WA Transition to inspect the Goods.

2.3 Where the Client purchases Services as a consumer these terms and conditions shall be subject to any laws or legislation governing the rights of consumers and shall not affect the consumer's statutory rights.

2.4 Liability of WA Transition arising out of any one incident whether or not there has been any declaration of value of the Goods, for breach of warranty implied into these terms and conditions by the CCA or howsoever arising, is limited to any of the following as determined by WA Transition
(a) rectifying the Services; or
(b) providing the Services again; or
(c) paying for the Services to be provided again.

2.5 If WA Transition is required to rectify, re-provide, or pay the cost of re-providing the Services under clause 2.4 or the CCA, but is unable to do so, then WA Transition may refund any money the Client has paid for the Services but only to the extent that such refund shall take into account the value of Services which have been provided to the Client which were not defective.

2.6 In the case of second hand Goods, unless the Client is a consumer under the CCA, the Client acknowledges that it has had full opportunity to inspect the second hand Goods prior to delivery and accepts them with all faults and that to the extent permitted by law no warranty is given by WA Transition as to the quality or suitability for any purpose and any implied warranty, statutory or otherwise, is expressly excluded. The Client acknowledges and agrees that WA Transition has agreed to provide the Client with the second hand Goods and calculated the Price of the second hand Goods in reliance of this clause 2.6.

3. Acceptance

3.1 The Client is taken to have exclusively accepted and is immediately bound, jointly and severally, by these terms and conditions if the Client places an order for, or accepts Services provided by WA Transition.

3.2 These terms and conditions may only be amended with both parties consent in writing and shall prevail to the extent of any inconsistency with any other document or agreement between the Client and WA Transition.

3.3 These terms and conditions are to be read in conjunction with WA Transition's quotation, consignment note, agreement, airway bills, manifests, or any other forms as provided by WA Transition to the Client. If there are any inconsistencies between these documents then the terms and conditions contained in this document shall prevail.

3.4 Electronic signatures shall be deemed to be accepted by either party providing that the parties have complied with Section 10 of the Electronic Transactions Act 2011 or any other applicable provisions of that Act or any Regulations referred to in that Act.

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

3.6 The Client expressly warrants to WA Transition that the Client is either the owner, or the authorised agent of the owner, of any Goods or property that is the subject matter of this contract of cartage and/or storage, and by entering into this contract the Client accepts these conditions of contract for all other persons on whose behalf the Client is acting.

3.7 The Client recognises that there are always risks involved in the carriage of Goods, or the provision of Services, under this contract, many of which are outside WA Transition's or the Client's control. All basic quoted prices are for the provision of carriage and other services whereby the Client understands and accept that there are such risks, accept any financial detriment or other losses that may result from the performance or non-performance of such work, and agrees that WA Transition shall not be responsible or liable for such losses. The effect of this clause may be varied where it is otherwise agreed in writing between the parties.

4. Errors & Omissions

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

4.2 In the event such an error and/or omission occurs in accordance with clause 4.1, and is not attributable to the negligence and/or wilful misconduct of WA Transition; the Client shall not be entitled to treat this contract as repudiated nor render it invalid.

5. Change in Control

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

6. Price and Payment

6.1 At WA Transition's sole discretion the Price shall be either:
(a) as indicated on any invoice provided by WA Transition to the Client; or
(b) WA Transition's quoted price (subject to clauses 6.2) which will be valid for the period stated in the quotation or otherwise for a period of thirty (30) days.

6.2 WA Transition reserves the right to change the Price:
(a) if a variation to WA Transition's quotation is requested. An additional charge may apply for the carriage of substantially heavy items, such as pool tables or pianos;
(b) to reflect any increase in the cost to WA Transition beyond the reasonable control of WA Transition (including, without limitation, foreign exchange fluctuations, or increases in taxes, customs duties (if applicable), insurance premiums, or warehousing costs);
(c) after re-weighing, or re-valuing or re-measuring the Goods;
(d) in the event that any information supplied by the Client at the time of quotation is incorrect, inadequate, or inaccurate. WA Transition reserves the right (at its sole discretion) to either change the Price or to perform the Services strictly in accordance with the original quotation. If WA Transition agrees to perform the additional/alternative Services, the Price shall be varied pro-rata to allow for an adjustment in quantity, volume and/or weight of the Goods, plus additional loading and unloading times;
(e) if the loading or unloading process is delayed for a period of time in excess of thirty (30) minutes due to any factor outside of WA Transition's control, an additional charge shall apply for such delay based on WA Transition's usual hourly rate.

6.3 At WA Transition's sole discretion, a non-refundable deposit shall be required upon acceptance of WA Transition's quotation to enable the booking date to be confirmed.

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

6.5 The Client shall not be entitled to set off against, or deduct from the Price, any sums owed or claimed to be owed to the Client by WA Transition nor to withhold payment of any invoice because part of that invoice is in dispute.

6.6 Time for payment for the Services being of the essence, the Price will be payable by the Client on the date/s determined by WA Transition, which may be:
(a) on completion of the Services;
(b) the date specified on any invoice or other form as being the date for payment; or
(c) failing any notice to the contrary, the date which is seven (7) days following the date of any invoice given to the Client by WA Transition.

6.7 Payment may be made by cash, electronic/on-line banking, credit card (plus a surcharge may apply per transaction), or by any other method as agreed to between the Client and WA Transition.

6.8 Unless otherwise stated the Price does include GST. In addition to the Price the Client must pay to WA Transition an amount equal to any GST WA Transition must pay for any provision of Services by WA Transition under this or any other agreement. The Client must pay GST, without deduction or set off of any other amounts, at the same time and on the same basis as the Client pays the Price. In addition the Client must pay any other taxes and duties that may be applicable in addition to the Price except where they are expressly included in the Price.

6.9 The Client acknowledges and agrees that the Client's obligations to WA Transition for the provision of the Services shall not cease until:
(a) the Client has paid WA Transition all amounts owing for the particular Services; and
(b) the Client has met all other obligations due by the Client to WA Transition in respect of all contracts between WA Transition and the Client.

6.10 Receipt by WA Transition of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised and until then WA Transition's ownership or rights in respect of the Services, and this agreement, shall continue.

7. Provision of the Services

7.1 The Client shall be deemed to authorise any deviation from the usual route or manner of carriage of Goods that may in the absolute discretion of WA Transition be deemed reasonable or necessary in the circumstances.

7.2 The Client shall provide an authorised representative at pickup to ensure the correct Goods are loaded. Regardless of whether or not such a representative is provided, and whether or not the Client provides WA Transition with a list of items to be moved, the Client shall be liable for all reasonable additional charges whatsoever arising from the movement of incorrect Goods or the non-carriage of Goods which the Client intended to be carried.

7.3 The Goods will be delivered in unassembled state. If assembly is required, the Client must request this at the time of booking and additional charges will be applicable.

7.4 The Client will be asked at the time of booking if access to the upload and delivery locations are deemed standard (defined as follows):
(a) a ground level building to which a legally registered heavy vehicle (maximum height 4.3 metres) collecting or delivering a consignment can safely and legally approach, park and depart without disruption, overhead obstructions or cost, and
(b) once parked be within a walking distance of no more than fifteen (15) metres from the vehicle's loading or unloading point to the allocated entry of the building via max of five (5) steps; and
(c) be a regular, safe and stable surface, and over the distance the rise and fall shall not exceed one and a half (1.5) metres with a gradient of not more than one in five (1 in 5); and
(d) the point of collection or placement within the building shall not exceed twenty-five (25) metres from the allocated building entry point.

7.5 Should the Client's pickup or delivery points be outside what is deemed standard, as defined in clause 7.4 (and the Client has not notified WA Transition prior to the pickup/delivery date), WA Transition reserves the right to amend the quotation (as per clause 6.2) and request further payment due to the difficulty of the access.

7.6 The Client must take delivery by receipt or collection of the Goods whenever they are tendered for delivery. In the event that the Client is unable to take delivery of the Goods as arranged then WA Transition shall be entitled (at their sole discretion) to either leave the Goods at the unattended location (left at the Client's sole risk), or to return at a later time until delivery in completed (storing the Goods at any convenient place in the meantime), and the Client agrees to pay any reasonable additional charges incurred thereby to WA Transition.

7.7 Any time specified by WA Transition for the delivery of Goods is an estimate only and WA Transition will not be liable for any loss or damage incurred by the Client as a result of delivery being late. However both parties agree that they shall make every endeavour to enable the Goods to be delivered at the time and place as was arranged between both parties. In the event that WA Transition is unable to deliver the Goods as agreed solely due to any action or inaction of the Client then WA Transition shall be entitled to charge the Client any additional costs incurred by WA Transition as a direct consequence of any resultant delay or rescheduling of the delivery.

8. Additional Services

8.1 Unless otherwise stated elsewhere in this contract:
(a) demolished goods remain the Client's property; and
(b) any Services (including but not limited to, clean-up and disposal of waste from the site or sale of items via public auction or private treaty) carried out by a Subcontractor (subject to clause 9.2) and/or any third party outside the original scope of Services will constitute a separate contract, therefore, payment due for those Services shall be the sole responsibility of the Client payable directly to the Subcontractor and/or third party.

9. Nominated Sub-contractor

9.1 The Client hereby authorises WA Transition (if it should think fit to do so) to arrange with a Sub-contractor for the carriage of any Goods that are the subject of the contract. Any such arrangement shall be deemed to be ratified by the Client upon delivery of the said Goods to such Sub-contractor, who shall thereupon be entitled to the full benefit of these terms and conditions to the same extent as WA Transition. In so far as it may be necessary to ensure that such Sub-contractor shall be so entitled WA Transition shall be deemed to enter into this contract for its own benefit and also as agent for the Sub-contractor and the Client has no authority to give any instruction to any of WA Transition's Sub-contractors without the authority of WA Transition.

9.2 WA Transition may elect to subcontract out any part of the Services but shall not be relieved from any liability or obligation under this contract by so doing. Furthermore, the Client agrees and understands that where the scope of Services pertains to either a deceased estate or aged care relocation Services:
(a) WA Transition shall be entitled to enter into contracts with such Sub-contractors in the name of the Client, but all quotes or tenders are to be approved by the Client prior to commencement of any Services; and
(b) the Client shall be responsible for all payments (including but not limited to, initial deposits or progress payments) to such Sub-contractors; and
(c) the Client must provide to WA Transition evidence of Power of Attorney and/or evidence that the Client is the Executor of the estate before any Services can commence;
(d) it shall be the Client's responsibility to remove any sentimental items from the house prior to WA Transition entering the house on the agreed date, WA Transition will pack and clear the house as per their instructions and will not be responsible for any items within the house at this stage as the contents of the house are now within WA Transitions control, unless otherwise agreed;
(e) at WA Transitions discretion some items may be donated to charities or non-profit organisations, unless otherwise agreed and any extra travel distance due to the Client's choice of charity will be charged accordingly;
(f) WA Transition is responsible for the Services performed at the property but shall not be responsible for the security of the property other than what has been provided i.e. keys; and
(g) where an auction house rejects or does not believe that they can sell the items on behalf of a Client, then WA Transition will propose an alternative to the Client. WA Transition are not liable in the event that the auction house rejects any items presented on behalf of the Client for sale;
(h) the auction house acting as a Sub-contractor on behalf of the Client, will always endeavour to obtain the best price possible, however, it is matter of demand and items will sell for what they sell for, WA Transition does not accept any liability for the final sale price.

10. Risk

10.1 Risk of damage to or loss of the Goods passes to the Client on Delivery and the Client must insure the Goods on or before Delivery.

10.2 If any of the Goods are damaged or destroyed following delivery but prior to ownership passing to the Client, WA Transition is entitled to receive all insurance proceeds payable for the Goods. The production of these terms and conditions by WA Transition is sufficient evidence of WA Transition's rights to receive the insurance proceeds without the need for any person dealing with WA Transition to make further enquiries.

10.3 If the Client requests WA Transition to leave Goods outside WA Transition premises for collection or to deliver the Goods to an unattended location, then such Goods shall be left at the Client's sole risk.

11. Title to Goods (Recycled)

11.1 WA Transition and the Client agree that ownership of the Goods shall not pass until:
(a) the Client has paid WA Transition all amounts owing to WA Transition; and
(b) the Client has met all of its other obligations to WA Transition.

11.2 Receipt by WA Transition of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared or recognised.

11.3 It is further agreed that, until ownership of the Goods passes to the Client in accordance with clause 11.1:
(a) the Client is only a bailee of the Goods and must return the Goods to WA Transition on request.
(b) the Client holds the benefit of the Client's insurance of the Goods on trust for WA Transition and must pay to WA Transition the proceeds of any insurance in the event of the Goods being lost, damaged or destroyed.
(c) the Client irrevocably authorises WA Transition to enter any premises where WA Transition believes the Goods are kept and recover possession of the Goods.
(d) WA Transition may recover possession of any Goods in transit whether or not delivery has occurred.
(e) WA Transition may commence proceedings to recover the Price of the Goods sold notwithstanding that ownership of the Goods has not passed to the Client.

12. Insurance

12.1 The Client acknowledges that:
(a) the Goods are carried and stored at the Client's risk; and
(b) WA Transition is under no obligation (or subsequent liability) to arrange insurance of the Goods and it remains the Client's responsibility to organise insurance for any Goods or property that is being carried by WA Transition; and
(c) neither WA Transition (or their insurers) accept liability for pot plants, pots, kitset furniture that has not been dismantled, kitset wardrobes, deterioration of deep freeze, refrigerated food, or damage caused by moths, rats, vermin, wear and tear, pre-existing damaged or gradual deterioration, whilst in transit or storage;
(d) Plasma televisions must be packed in the carton designed for them and it is the Client's responsibility to ensure the arrangement of this.

13. Client-Packed Containers

13.1 If the Goods have not been packed by or on behalf of WA Transition, WA Transition shall not be liable for loss of or damage to the Goods caused by:
(a) the manner in which the Goods have been packed; or
(b) the unsuitability of the Goods for carriage or storage in the container(s); or
(c) the unsuitability or defective condition of the container(s).

13.2 WA Transition shall, unless specifically instructed by the Client, pre-pack the Goods to a standard which suits the distance those Goods are to be transported.

13.3 The Client agrees to notify WA Transition in writing, prior to pick up, of any Goods that are inherently fragile or of a nature or value that is not readily apparent, and of any special precautions which should be taken when carrying the Goods, of which WA Transition cannot be reasonably expected to be aware.

14. Dangerous Goods

14.1 Goods are accepted by WA Transition on the condition that they comply with the requirements of any applicable law relating to the nature, condition and packaging of the Goods. The Client agrees to:
(a) to notify WA Transition in the event that any Dangerous Goods Act or similar legislation ("DGA") applies to the Goods, and guarantees that all requirements of any such laws have been met;
(b) ensure that the Goods are fully described in writing on all relevant paperwork, including their name and nature, and in the case of Goods to which a DGA applies, are accompanied by a consignment note that complies with the Act, etc.

14.2 Where, in the opinion of WA Transition, any Goods are dangerous, corrosive, noxious, explosive, flammable, perishable or capable of attracting vermin or pests, WA Transition may refuse to carry or, if carriage has commenced, take any action reasonable to dispose, destroy or otherwise deal with the Goods at the expense of the Client, and without incurring any liability to the Client.

15. Loss or Damage

15.1 The Client acknowledges that WA Transition undertakes to carry out the carriage and/or storage of Goods with professionalism, due care and skill. Transit cover up to thirty thousand dollars ($30,000) applies to Goods in transit and covers the Goods against damages or loss resulting from fire, theft or rollover of the conveying vehicle.

15.2 Save as expressly provided in these terms and conditions and subject to any statutory provisions imposing liability in respect of the loss of or damage to the Goods, WA Transition shall not be liable to the Client for any loss or damage suffered by the Client directly or indirectly (including but not limited to economic loss, loss of profits, liabilities to third parties) caused by:
(a) any damage, loss or destruction to Goods in the provision of the Services;
(b) a mis-delivery, delay in delivery or non-delivery of Goods;
(c) theft, overturning, fire, collision, road or rail accident not involving the conveying vehicle;
(d) mishandling, incorrect loading or unloading or stowage of any vehicle, the method by which it is driven or through any other cause whatsoever;
(e) the carriage of Goods by a route other than the shortest or usual route; and
(f) this clause shall apply whether or not any such occurrence was due to any wilful, fraudulent negligent or other act or omission of WA Transition.

15.3 The Client shall indemnify WA Transition against any action, claim, suit, fine or demand brought by any third party, the Client or the owner of the Goods, against WA Transition as a result of or in connection with any breach by the Client of any term of this contract or the occurrence of any of the events listed in this clause 15, or clauses 2 or 24, and this indemnity shall extend to the reasonable solicitor client costs of WA Transition in defending any action and in enforcing this indemnity.

16. Claims

16.1 Notwithstanding clauses 15 and 11, in the event that the Client believes that they have any claim against WA Transition then they must lodge any notice of claim for consideration and determination by WA Transition within forty-eight (48) hours of the date of delivery or of non-delivery of the anticipated date of delivery or the removal or destruction of the Goods.

16.2 The failure to notify a claim within the time limits under clause 16.1 is evidence of satisfactory performance by WA Transition of its obligations.

17. Conditions of Storage

17.1 WA Transition will prepare an inventory of Goods received for storage and will ask the Client to sign that inventory. The Client will be provided with a copy of the inventory. If the Client signs the inventory, or does not do so and fails to object to its accuracy within seven (7) days of receiving it from WA Transition, then the inventory will be conclusive evidence of the Goods received. The inventory will disclose only visible items and not any contents unless the Client asks for the contents to be listed, in which case WA Transition will be entitled to make a reasonable additional charge.

17.2 WA Transition is authorised to remove the Goods from one warehouse to another without cost to the Client. WA Transition will notify the Client of the removal and advise the address of the warehouse to which the Goods are being removed not less than five (5) days before removal (except in emergency, when such notice will be given as soon as possible).

17.3 The Client is entitled, upon giving WA Transition reasonable notice, to inspect the Goods in store but a reasonable charge may be made by WA Transition for this service.

17.4 Subject to payment for the balance of any fixed or minimum period of storage agreed, the Client may require the Goods to be removed from the store at any time on giving WA Transition not less than five (5) working days' notice. If the Client gives WA Transition less than the required notice WA Transition will still use their best endeavours to meet the Client's requirements, but shall be entitled to make a reasonable additional charge for the short notice.

17.5 The Client agrees to remove the Goods from storage within twenty-eight (28) days of a written notice of requirement from WA Transition to do so. In default, WA Transition may SELL ALL OR ANY OF THE GOODS in accordance with clause 24.

18. Compliance with Laws

18.1 In the event that during the course of the Services WA Transition discovers any undisclosed waste and/or hazardous materials (including, but not limited to the discovery of asbestos) then WA Transition reserves the right to halt all Services and immediately notify the Client. It shall be the responsibility of the Client to arrange the removal of all such materials. In the event that WA Transition agrees to remove such materials for the Client then this shall be treated as a variation in accordance with clause 6.2 and shall be in addition to the Price. WA Transition under no circumstances shall undertake the removal of asbestos.

18.2 Both the Client and WA Transition agree that they will at all times ensure that they comply with the provisions of all statutes, regulations and bylaws of government, local and other public authorities that may be applicable to the Services, including any Work Health and Safety (WHS) laws and any other relevant safety standards or legislation.

19. Cancellation

19.1 Without prejudice to any other remedies WA Transition may have, if at any time the Client is in breach of any obligation (including those relating to payment) under these terms and conditions WA Transition may suspend or terminate the provision of Services to the Client. WA Transition will not be liable to the Client for any loss or damage the Client suffers because WA Transition has exercised its rights under this clause.

19.2 WA Transition may cancel any contract to which these terms and conditions apply or cancel provision of Services at any time before the Services have commenced by giving written notice to the Client. On giving such notice WA Transition shall repay to the Client any money paid by the Client for the Services. WA Transition shall not be liable for any loss or damage whatsoever arising from such cancellation.

19.3 In the event that the Client cancels provision of the Services the Client shall be liable for any and all loss incurred (whether direct or indirect) by WA Transition as a direct result of the cancellation (including, but not limited to, any loss of profits).

19.4 In the event that the Client cancels provision of the Services after WA Transition's arrival for pickup of the Goods, the Client shall pay WA Transition the lesser of either the full Price or the time spent at pickup, which shall be charged at WA Transition's usual hourly rate with a minimum charge of two (2) hours.

20. Personal Property Securities Act 2009 ("PPSA")

20.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.

20.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a security interest in the Goods and all collateral (account) – being a monetary obligation of the Client for the Services – that have previously been provided, and that will be provided in the future, by WA Transition for the Client.

20.3 The Client undertakes to:
(a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up-to-date in all respects) which WA Transition may reasonably require to;
  (i) register a financing statement or financing change statement in relation to a security interest on the Personal Property Securities Register;
  (ii) register any other document required to be registered by the PPSA; or
  (iii) correct a defect in a statement referred to in clause 20.3(a)(i) or 20.3(a)(ii);
(b) indemnify, and upon demand reimburse, WA Transition for all expenses incurred in registering a financing statement or financing change statement on the Personal Property Securities Register established by the PPSA or releasing any registration made thereby;
(c) not register a financing change statement in respect of a security interest without the prior written consent of WA Transition;
(d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Goods and/or the collateral (account) in favour of a third party without the prior written consent of WA Transition.

20.4 WA Transition and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.

20.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

20.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.

20.7 Unless otherwise agreed to in writing by WA Transition, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.

20.8 The Client must unconditionally ratify any actions taken by WA Transition under clauses 20.3 to 20.5.

20.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.

21. Default and Consequences of Default

21.1 Interest on overdue invoices shall accrue daily from the date when payment becomes due, until the date of payment, at a rate of two and a half percent (2.5%) per calendar month (and at WA Transition's sole discretion such interest shall compound monthly at such a rate) after as well as before any judgment.

21.2 If the Client owes WA Transition any money the Client shall indemnify WA Transition from and against all costs and disbursements incurred by WA Transition in recovering the debt (including but not limited to internal administration fees, legal costs on a solicitor and own client basis, WA Transition's contract default fee, and bank dishonour fees).

21.3 Further to any other rights or remedies WA Transition may have under this contract, if the Client has made payment to WA Transition and the transaction is subsequently reversed, the Client shall be liable for the amount of the reversed transaction, in addition to any further costs incurred by WA Transition under this clause 21 where it can be proven that such reversal is found to be illegal, fraudulent or in contravention to the Client's obligations under this contract.

21.4 Without prejudice to WA Transition's other remedies at law WA Transition shall be entitled to cancel all or any part of any order of the Client which remains unfulfilled and all amounts owing to WA Transition shall, whether or not due for payment, become immediately payable if:
(a) any money payable to WA Transition becomes overdue, or in WA Transition's opinion the Client will be unable to make a payment when it falls due;
(b) the Client has exceeded any applicable credit limit provided by WA Transition;
(c) the Client becomes insolvent, convenes a meeting with its creditors or proposes or enters into an arrangement with creditors, or makes an assignment for the benefit of its creditors; or
(d) a receiver, manager, liquidator (provisional or otherwise) or similar person is appointed in respect of the Client or any asset of the Client.

22. Security and Charge

22.1 In consideration of WA Transition agreeing to provide the Services, the Client charges all of its rights, title and interest (whether joint or several) in any land, realty or other assets capable of being charged, owned by the Client either now or in the future, to secure the performance by the Client of its obligations under these terms and conditions (including, but not limited to, the payment of any money).

22.2 The Client indemnifies WA Transition from and against all WA Transition's costs and disbursements including legal costs on a solicitor and own client basis incurred in exercising WA Transition's rights under this clause.

22.3 The Client irrevocably appoints WA Transition and each director of WA Transition as the Client's true and lawful attorney/s to perform all necessary acts to give effect to the provisions of this clause 22 including, but not limited to, signing any document on the Client's behalf.

23. Privacy Act 1988

23.1 The Client agrees for WA Transition to obtain from a credit reporting body (CRB) a credit report containing personal credit information (e.g. name, address, D.O.B, occupation, previous credit applications, credit history) about the Client in relation to credit provided by WA Transition.

23.2 The Client agrees that WA Transition may exchange information about the Client with those credit providers and with related body corporates for the following purposes:
(a) to assess an application by the Client; and/or
(b) to notify other credit providers of a default by the Client; and/or
(c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
(d) to assess the creditworthiness of the Client including the Client's repayment history in the preceding two (2) years.

23.3 The Client consents to WA Transition being given a consumer credit report to collect overdue payment on commercial credit.

23.4 The Client agrees that personal credit information provided may be used and retained by WA Transition for the following purposes (and for other agreed purposes or required by):
(a) the provision of Services; and/or
(b) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services; and/or
(c) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
(d) enabling the collection of amounts outstanding in relation to the Services.

23.5 WA Transition may give information about the Client to a CRB for the following purposes:
(a) to obtain a consumer credit report;
(b) allow the CRB to create or maintain a credit information file about the Client including credit history.

23.6 The information given to the CRB may include:
(a) personal information as outlined in 23.1 above;
(b) name of the credit provider and that WA Transition is a current credit provider to the Client;
(c) whether the credit provider is a licensee;
(d) type of consumer credit;
(e) details concerning the Client's application for credit or commercial credit (e.g. date of commencement/termination of the credit account and the amount requested);
(f) advice of consumer credit defaults, overdue accounts, loan repayments or outstanding monies which are overdue by more than sixty (60) days and for which written notice for request of payment has been made and debt recovery action commenced or alternatively that the Client no longer has any overdue accounts and WA Transition has been paid or otherwise discharged and all details surrounding that discharge (e.g. dates of payments);
(g) information that, in the opinion of WA Transition, the Client has committed a serious credit infringement;
(h) advice that the amount of the Client's overdue payment is equal to or more than one hundred and fifty dollars ($150).

23.7 The Client shall have the right to request (by e-mail) from WA Transition:
(a) a copy of the information about the Client retained by WA Transition and the right to request that WA Transition correct any incorrect information; and
(b) that WA Transition does not disclose any personal information about the Client for the purpose of direct marketing.

23.8 WA Transition will destroy personal information upon the Client's request (by e-mail) or if it is no longer required unless it is required in order to fulfil the obligations of this contract or is required to be maintained and/or stored in accordance with the law.

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

24. Unpaid Seller's Rights to Dispose of Goods

24.1 All Goods or carried for, on behalf of, the Client that are received by WA Transition shall be subject to a general lien for any monies owed by the Client to WA Transition as a result of this contract or any previous contract between WA Transition and the Client. In order to exercise its rights under this lien, WA Transition shall have the right to seize or retain or to defer or refuse delivery of any Goods that are the subject of this lien should circumstances arise that make it reasonable to conclude that the Client is unwilling or unable to pay any due charges in the required form or at the required place or time. Where the charges of WA Transition remain unpaid for a minimum period of twenty-eight (28) days, WA Transition may give twenty-eight (28) days' written notice by certified or registered mail to the last known address of the Client of intention to sell the Goods. If the amount owing is not paid within that further period WA Transition may open any packages, DISPOSE OF THE GOODS or SELL ALL OR ANY OF THE GOODS by auction or by private treaty at its absolute discretion. Out of any monies arising WA Transition may retain its charges and all charges and expenses of the detention and sale. It shall credit the surplus, if any, to the person entitled to it. Any such sale shall not prejudice or affect any other rights that WA Transition may have to recover any outstanding charges due or payable in respect of such service or the said detention or sale.

25. Disputes

25.1 If a dispute arises between the parties to this contract then either party shall send to the other party a notice of dispute in writing adequately identifying and providing details of the dispute. Within fourteen (14) days after service of a notice of dispute, the parties shall confer at least once, to attempt to resolve the dispute. At any such conference each party shall be represented by a person having authority to agree to a resolution of the dispute. In the event that the dispute cannot be so resolved either party may by further notice in writing delivered by hand or sent by certified mail to the other party refer such dispute to arbitration. Any arbitration shall be:
(a) referred to a single arbitrator to be nominated by the President of the Institute of Arbitrators Australia; and
(b) conducted in accordance with the Institute of Arbitrators Australia Rules for the Conduct of Commercial Arbitration.

26. General

26.1 The failure by either party to enforce any provision of these terms and conditions shall not be treated as a waiver of that provision, nor shall it affect the party's right to subsequently enforce that provision. If any provision of these terms and conditions shall be invalid, void, illegal or unenforceable the validity, existence, legality and enforceability of the remaining provisions shall not be affected, prejudiced or impaired.

26.2 These terms and conditions and any contract to which they apply shall be governed by the laws of Western Australia, the state in which WA Transition has its principal place of business, and are subject to the jurisdiction of the Perth Court in that state.

26.3 Subject to clause 2, WA Transition shall be under no liability whatsoever to the Client for any indirect and/or consequential loss and/or expense (including loss of profit) suffered by the Client arising out of a breach by WA Transition of these terms and conditions (alternatively WA Transition's liability shall be limited to damages which under no circumstances shall exceed the Price).

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

26.5 WA may licence and/or assign all or any part of its rights and/or obligations under this contract without the Client's consent.

26.6 The Client cannot licence or assign without the written approval of WA Transition.

26.7 The Client agrees that WA Transition may amend these terms and conditions by notifying the Client in writing. These changes shall be deemed to take effect from the date on which the Client accepts such changes, or otherwise at such time as the Client makes a further request for WA Transition to provide Goods and/or Services to the Client.

26.8 Neither party shall be liable for any default due to any act of God, war, terrorism, strike, lock-out, industrial action, fire, flood, storm or other event beyond the reasonable control of either party.

26.9 Both parties warrant that they have the power to enter into this contract and have obtained all necessary authorisations to allow them to do so, they are not insolvent and that this contract creates binding and valid legal obligations on them.

26.10 This contract is the entire agreement between the parties in respect of its subject matter and supersedes all prior and contemptuous understanding and agreements relating to its subject matter

PLEASE NOTE: a larger print version of the Terms and Conditions is available from WA Transitions on request.

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